



Securities Act (Centro MCS Manager Limited) Exemption Notice 2007

Pursuant to the Securities Act 1978, the Securities Commission gives the following notice (to which is appended a statement of reasons of the Securities Commission).

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Notice

- 1 Title**
This notice is the Securities Act (Centro MCS Manager Limited) Exemption Notice 2007.
- 2 Commencement**
This notice comes into force on the day after the date of its notification in the *Gazette*.
- 3 Expiry**
This notice expires on the close of 29 February 2012.

4 Interpretation

- (1) In this notice, unless the context otherwise requires,—

Act means the Securities Act 1978

Centro Manager means Centro MCS Manager Limited, a company incorporated under the laws of Australia

Centro Trust means the Centro MCS 38 (New Zealand) Trust, a managed investment scheme that is registered with the Australian Securities and Investments Commission under section 601EB of the Corporations Act 2001 of the Commonwealth of Australia

Centro unit means a unit in Centro Trust

convertible note means an unsecured convertible note that—

- (a) is to be issued by Centro Manager and stapled to a Centro unit; and
- (b) is convertible into Centro units, on the terms and conditions set out in the relevant trust deed

Regulations means the Securities Regulations 1983.

- (2) Any term or expression that is defined in the Act or the Regulations and used, but not defined, in this notice has the same meaning as in the Act or the Regulations.

5 Exemptions from sections 37 and 37A of Act for conversion of notes into units at option of holder

Centro Manager and every person acting on its behalf are exempted from sections 37 and 37A of the Act in respect of the conversion of convertible notes into Centro units at the option of the holder in accordance with the relevant trust deed.

6 Conditions of exemptions in clause 5

The exemptions in clause 5 are subject to the conditions that—

- (a) the convertible notes were issued under an investment statement that related to both the convertible notes and the Centro units; and
- (b) the convertible notes were allotted under a registered prospectus that contained particulars of all material matters relating to the offer of Centro units to be allotted on conversion of the convertible notes; and
- (c) the holder of the convertible notes has received—
 - (i) an annual report of Centro Trust in respect of each year before the conversion; and

- (ii) a half yearly report, including the current value of Centro units, in respect of each half year before the conversion; and
- (d) before allotment of any Centro units on conversion of the convertible notes at the option of the holder, the following documents have been sent to every person who was, at the time the documents were sent, a registered holder of convertible notes in respect of which Centro units are allotted:
 - (i) all material information in relation to a conversion decision; and
 - (ii) a prominent statement of any material adverse circumstances which would make the original prospectus or investment statement false or misleading in a material particular by reason of failing to refer, or give proper emphasis, to those circumstances (whether or not the investment statement or registered prospectus became so false or misleading as a result of a change of circumstances occurring after the date of the investment statement or registered prospectus); and
 - (iii) a copy of Centro Trust's most recent audited financial statements that comply with the Financial Reporting Act 1993 and with the provisions of any other relevant laws to which Centro Trust is subject; and
 - (iv) if the date of allotment of Centro units on conversion of the convertible notes would be later than 9 months after the date of the financial statements referred to in subparagraph (iii), a copy of—
 - (A) interim financial statements, for the period beginning on the day after the date of the financial statements referred to in subparagraph (iii) and ending on a date that is not later than 9 months after that date, that comply with the provisions of the Financial Reporting Act 1993 relating to financial statements and with the provisions of any other relevant laws to which Centro Trust is subject (except that they need not be audited); and

- (B) a statement containing a description of Centro Trust as at the time of conversion; and
- (e) the date of allotment of the units on conversion of the convertible notes is not more than 9 months after the date of the financial statements or interim financial statements referred to in paragraph (d).

7 Exemption from section 37A(1)(c) of Act for conversion of notes into units at option of Centro Manager

Centro Manager and every person acting on its behalf are exempted from section 37A(1)(c) of the Act in respect of any Centro units that are, or are to be, allotted under the terms of the convertible notes at the option of Centro Manager in accordance with the relevant trust deed.

8 Conditions of exemption in clause 7

The exemption in clause 7 is subject to the conditions that—

- (a) the convertible notes were allotted under a registered prospectus that contained particulars of all material matters relating to the offer of the Centro units to be allotted on conversion of the convertible notes; and
- (b) before the allotment of Centro units on conversion of the convertible notes at the option of Centro Manager, the following documents have been sent to every person who was, at the time the documents were sent, a registered holder of the same class of convertible notes in respect of which Centro units are allotted:
 - (i) a copy of Centro Trust's most recent audited financial statements that comply with the Financial Reporting Act 1993 and with the provisions of any other relevant laws to which Centro Trust is subject; and
 - (ii) if the date of allotment of the Centro units on conversion of the convertible notes would be later than 9 months after the date of the financial statements referred to in subparagraph (i), a copy of—
 - (A) interim financial statements, for the period beginning on the day after the date of the financial statements referred to in subparagraph (i) and ending on a date that is not later than 9 months after that date, that

- comply with the provisions of the Financial Reporting Act 1993 relating to financial statements and with the provisions of any other relevant laws to which Centro Trust is subject (except that they need not be audited); and
- (B) a statement containing a description of Centro Trust as at the time of conversion; and
- (c) the date of allotment of the Centro units on conversion of the convertible notes is not more than 9 months after the date of the financial statements or interim financial statements referred to in paragraph (b).

9 Exemption from regulation 3(2) of Regulations

Centro Manager and every person acting on its behalf are exempted from regulation 3(2) of the Regulations in respect of convertible notes.

10 Condition of exemption in clause 9

The exemption in clause 9 is subject to the condition that the registered prospectus for the convertible notes complies with regulation 3(2) of the Regulations as if Centro Trust were the issuer, and the directors of Centro Manager were the directors of the issuer, of the convertible notes.

Dated at Wellington this 6th day of March 2007.

The Common Seal of the Securities Commission was affixed in the presence of:

[Seal]

J Diplock,
Chairperson.

Statement of reasons

This notice, which comes into force on the day after the date of its notification in the *Gazette* and expires on 29 February 2012, exempts Centro MCS Manager Limited (**Centro Manager**), subject to conditions, from certain provisions of the Securities Act 1978 (the **Act**) and from regulation 3(2) of the Securities Regulations 1983 (the **Regulations**). The exemptions relate to the offer and allotment of certain securities relating to Centro MCS 38 (New Zealand) Trust (the **Trust**), an Australian registered managed scheme. The securities are to be offered in New Zealand, but not in Australia.

The exemptions are—

- from sections 37 and 37A of the Act, in respect of units in the Trust that are allotted on the conversion of convertible notes at the option of the holder. The effect is that a new prospectus or investment statement will not be needed for these conversions:
- from section 37A(1)(c) of the Act, in respect of units in the Trust that are allotted on the conversion of convertible notes at the option of Centro Manager. The effect is that a prospectus or investment statement will be needed for these conversions, but that the life of the original prospectus is extended:
- from regulation 3(2) of the Regulations. The effect is that the prospectus will have to contain information about the Trust, instead of about Centro Manager.

The Commission considers that it is appropriate to grant the exemptions for the following reasons:

- the unsecured notes can only be converted by the holders of those notes in limited circumstances and only immediately prior to the termination of the Trust. Given this, the information that holders will require in relation to their redemption decision is more limited than that which would normally be provided in a registered prospectus and investment statement. As such, the cost of providing holders of the unsecured notes with a registered prospectus and investment statement in relation to their conversion decision outweighs the benefit that they would derive from that information:
- the conditions require that, before making any redemption decision, holders of the unsecured notes must be provided with all material information in relation to the conversion of the unsecured notes into units in the Trust, updated financial information, and a prominent statement of any material

adverse circumstances which would make the original investment statement false or misleading. This information will allow investors to make an informed redemption decision:

- the exemption from disclosure on conversion is consistent with other Commission exemptions granted in respect of convertible securities and requires all material matters that must be disclosed to be disclosed at the time of the offer of the unsecured notes:
- as manager of an Australian unit trust, Centro Manager is the issuer, under New Zealand law, of debt securities issued by the Trust. This means Centro Manager would need to provide full borrowing group financial statements in a prospectus. However, investors in those securities have recall only against the assets of the Trust, not all the assets of Centro Manager (which also manages other trusts). This means that investors will get a better idea of their potential investment from financial statements of the Trust rather than those of Centro Manager.

Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 8 March 2007.

This notice is administered by the Securities Commission.
