



**THE SECURITIES ACT (CONTRIBUTORY MORTGAGE)
REGULATIONS (SPECIFIED BROKERS) EXEMPTION
NOTICE 1988**

PURSUANT to the Securities Act 1978, the Securities Commission gives the following notice.

NOTICE

1. Title, commencement, and expiry—(1) This notice may be cited as the Securities Act (Contributory Mortgage) Regulations (Specified Brokers) Exemption Notice 1988.

(2) This notice shall come into force on the 1st day of January 1989.

(3) This notice shall expire with the close of the 31st day of December 1990 and shall be deemed to have been revoked as at the close of that day.

2. Interpretation—(1) In this notice, unless the context otherwise requires,—

“The Act” means the Securities Act 1978:

“Nominee company” in relation to a specified broker, means a company that acts as a nominee for the contributors to a contributory mortgage in relation to the management of which that specified broker acts:

“Nominee mortgage” in relation to a specified broker, means a contributory mortgage held in the name of a nominee company as a mortgagee:

“The Regulations” means the Securities Act (Contributory Mortgage) Regulations 1988:

“Specified broker” means a contributory mortgage broker named in the Schedule to this notice.

(2) Any term or expression which is not defined in this notice, but which is defined in the Act or the Regulations, shall have the meaning given to it by the Act or the Regulations.

3. Specified brokers exempt from certain provisions of Securities Act (Contributory Mortgage) Regulations 1988—(1) Subject to this clause, every specified broker is exempted from compliance with the provisions of regulations 9 (a), (d), and (e), 12, and 14 of the Regulations.

(2) The exemption granted by subclause (1) of this clause is subject to the following terms and conditions:

- (a) That the specified broker shall not, on or after the 1st day of January 1989,—
- (i) Offer any interest in a contributory mortgage to the public for subscription; or
 - (ii) Accept any contribution from any person; or
 - (iii) Extend the period of, or renew, a contributory mortgage:
- (b) That any money received by the specified broker or by that broker's nominee company in repayment of any principal sum or by way of interest in respect of a contributory mortgage, in relation to the management of which the broker acts as a broker, shall be held in trust for the contributors entitled thereto, and shall be paid promptly to—
- (i) The contributors; or
 - (ii) The broker in reimbursement for any payment made by the broker to or on behalf of a contributor for which the broker is entitled to be reimbursed; or
 - (iii) Any other person in accordance with a written instruction given by the contributor to the broker that specifies the amount of the payment and the person to whom the payment is to be made:
- (c) That the specified broker continues to act as a broker in respect of every contributory mortgage, in relation to the management of which that broker acts as a broker, unless—
- (i) In the case of a nominee mortgage—
 - (A) A person who is registered under the Regulations as a broker has agreed to act as a broker in respect of the management of that contributory mortgage; and
 - (B) All the contributors having an interest in the contributory mortgage agree in writing to that person acting as broker in respect of that contributory mortgage; and
 - (C) The broker delivers to that person all books and documents in that broker's control, or in the possession or under the control of that broker's nominee company, relating to the contributory mortgage, including without limitation—
 - (AA) The securities and documents referred to in regulation 30 (3) (a) of the Regulations;
 - (BB) A copy of the accounts required to be kept under regulation 38 of the Regulations; and
 - (D) The broker causes to be paid to that person all money held by the broker's nominee company on behalf of the contributors to that contributory mortgage; and
 - (E) The broker delivers to that person a memorandum of transfer (registrable under the Land Transfer Act 1952) transferring the interest of the broker's nominee company in the contributory mortgage to that person's nominee company; or
 - (ii) In the case of a contributory mortgage, not being a nominee mortgage,—

- (A) All the contributors having an interest in the contributory mortgage agree in writing that the broker shall not be required to act as a broker in the management of the interests of those contributors; and
 - (B) The broker delivers to a person designated in writing by all the contributors to the contributory mortgage all securities and documents referred to in regulation 30 (3) (a) of the Regulations in the possession of the broker or under the broker's control; and
 - (C) The broker pays to the contributors to the contributory mortgage all money held by the broker, or under the broker's control, on behalf of those contributors:
- (d) That the provisions of regulation 32 of the Regulations, insofar as they apply to nominee mortgages to which the Regulations apply and to the interests of contributors in those mortgages, are complied with, subject to subclause (3) of that regulation, in relation to every nominee mortgage to which this notice applies and any interest of a contributor in that mortgage:
 - (e) That the specified broker ensures that no memorandum of priority or other document is executed enabling a prior or *pari passu* charge to be created in respect of land charged with a nominee mortgage, in relation to the management of which the broker acts as a broker, without the written consent of all the contributors to the mortgage:
 - (f) That the specified broker gives written notice, within 14 days after becoming aware of the registration of the charge or encumbrance, to all the contributors to a nominee mortgage, in relation to the management of which the broker acts as a broker, of any charge or encumbrance (being a charge or encumbrance which can be registered without a memorandum of priority or other document signed by the mortgagee) which is registered in respect of land which is charged with that mortgage and which has, or may have, priority over, or rank equally with, that mortgage:
 - (g) That the specified broker shall ensure that no nominee mortgage, in relation to the management of which the broker acts as a broker, and no collateral security is discharged (whether wholly or partly) unless—
 - (i) All the contributors consent; or
 - (ii) All money secured by the mortgage has been paid to the broker or the contributors; or
 - (iii) The discharge is a partial discharge, the mortgagee authorises partial releases to be given, specifies any conditions on which partial releases may be given, and those conditions are complied with:
 - (h) That without limiting the application of regulation 34 of the Regulations to the specified broker, the provisions of that regulation, insofar as they relate to a broker's nominee company to which the Regulations apply, are complied with in relation to the specified broker's nominee company:

- (i) That without limiting the application of regulation 36 of the Regulations to the specified broker, the provisions of that regulation, insofar as they relate to a broker's nominee company to which the Regulations apply, are complied with in relation to the specified broker's nominee company:
- (j) That without limiting the application of regulation 38 of the Regulations to the specified broker, the provisions of that regulation, insofar as they relate to a broker's nominee company to which the Regulations apply, are complied with in relation to the specified broker's nominee company:
- (k) That without limiting the application of the provisions of regulation 39 of the Regulations to the specified broker, the provisions of that regulation, insofar as they relate to a broker's nominee company to which the Regulations apply, are complied with in relation to the specified broker's nominee company.

SCHEDULE

AMP Perpetual Trustee Company N.Z. Limited.
Farrow Mortgage Corporation Limited.

Dated at Wellington this 20th day of December 1988.

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

[L.S.]

C. I. PATTERSON,
Chairman.

EXPLANATORY NOTE

This note is not part of the notice, but is intended to indicate its general effect.

This notice, which comes into force on 1 January 1989 and which expires on 31 December 1990, exempts AMP Perpetual Trustee Company N.Z. Limited and Farrow Mortgage Corporation Limited, subject to conditions, from compliance with certain provisions of the Securities Act (Contributory Mortgage) Regulations 1988. The notice exempts both companies from the obligation to register as contributory mortgage brokers and establish and operate a nominee company. It is a condition of the exemption that these brokers do not, on or after 1 January 1989, offer interests in contributory mortgages to the public for subscription or accept contributions for investment in contributory mortgages. The exemption is also subject to conditions which ensure that the brokers comply with requirements of the Regulations in relation to the management of existing contributory mortgages.

Issued under the authority of the Regulations Act 1936.
Date of notification in *Gazette*: 21 December 1988.
This notice is administered in the Securities Commission.