



Securities Act (Real Property Proportionate Ownership Schemes) Exemption Amendment Notice (No 2) 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 (Real Property Proportionate Ownership Schemes) Exemption Amendment Notice (No 2) 2007.

- 2 **Commencement**
 - (1) Clause 4(2) comes into force on the commencement of section 6 of the Lawyers and Conveyancers Act 2006.

- (2) The rest of this notice comes into force on the day after the date of its notification in the *Gazette*.

3 Principal notice amended

This notice amends the Securities Act (Real Property Proportionate Ownership Schemes) Exemption Notice 2002.

4 Interpretation

- (1) Clause 4(1) is amended by revoking the definition of **certificate of title** and substituting the following definition:

“**computer register** means—

“(a) a computer register within the meaning of section 4 of the Land Transfer (Computer Registers and Electronic Lodgement) Amendment Act 2002; or

“(b) a certificate of title issued under the Land Transfer Act 1952 or the Unit Titles Act 1972”.

- (2) The definition of **offeror** in clause 4(1) is amended by adding “; or” to paragraph (b) and also by adding the following paragraph:

“(c) a lawyer, an incorporated law firm, a conveyancing practitioner, or an incorporated conveyancing firm (within the meaning of section 6 of the Lawyers and Conveyancers Act 2006)”.

- (3) Clause 4(1) is amended by revoking the definitions of **proportionate ownership scheme** and **real property** and substituting the following definitions:

“**proportionate ownership scheme** means—

“(a) a unit title pooled scheme; or

“(b) an undivided unit title scheme; or

“(c) an undivided property scheme

“**real property** means,—

“(a) in relation to a unit title pooled scheme or an undivided unit title scheme, the units on the unit plan that form part of the scheme; or

“(b) in relation to an undivided property scheme, the estate or interest in land capable of registration under the Land Transfer Act 1952 that is to be purchased for the purposes of the scheme”.

- (4) Clause 4(1) is amended by inserting the following definitions in their appropriate alphabetical order:

“key event means,—

“(a) in relation to a subscriber for specified participatory securities in a unit title pooled scheme, the taking of all of the necessary steps referred to in clause 5(2)(a)(i) in relation to the subscriber’s subscription contract; or

“(b) in relation to a subscriber for specified participatory securities in an undivided unit title scheme,—

“(i) the subscription in full of all of the specified participatory securities offered in accordance with the scheme in relation to the relevant unit on the unit plan; and

“(ii) the taking of all of the necessary steps referred to in clause 5(2)(a)(ii) in relation to the subscriber’s subscription contract; and

“(iii) the taking of all of the necessary steps referred to in clause 5(2)(a)(ii) in relation to the subscription contracts of all other subscribers with an interest in the relevant unit on the unit plan; or

“(c) in relation to a subscriber for specified participatory securities in an undivided property scheme,—

“(i) the subscription in full of all of the specified participatory securities offered in accordance with the scheme; and

“(ii) the taking of all of the necessary steps referred to in clause 5(2)(a)(iii)

“settlement period means,—

“(a) in relation to a subscriber for specified participatory securities in a unit title pooled scheme or an undivided unit title scheme, the period of 36 months from the date that the subscription is received by, or on behalf of, the offeror; or

“(b) in relation to a subscriber for specified participatory securities in an undivided property scheme, the period of 36 months from the date referred to in clause 1 of Schedule 1 specified in the written statement that is provided to the subscriber under clause 5(2)(e)

“specified units has the meaning set out in clause 4(a) of Schedule 2

“**stratum estate** means a stratum estate in freehold or leasehold

“**subscription contract** means a contract entered into between each subscriber for specified participatory securities and the offeror for the subscription and allotment of specified participatory securities

“**undivided property scheme** means a contributory scheme that involves the investment of money in circumstances where—

“(a) each subscriber for specified participatory securities will acquire an interest in the same real property (whether freehold or leasehold); and

“(b) each interest acquired under the scheme by a subscriber for specified participatory securities will comprise 1 or more undivided shares in the whole of the real property

“**undivided unit title scheme** means a contributory scheme that involves the investment of money in circumstances where—

“(a) each subscriber for specified participatory securities will acquire an interest in a stratum estate in a unit on a unit plan through the issue or creation of a computer register in the subscriber’s name for the subscriber’s interest in the stratum estate; and

“(b) each interest acquired under the scheme by a subscriber for specified participatory securities will comprise 1 or more undivided shares in the stratum estate

“**unit** has the same meaning as in section 2 of the Unit Titles Act 1972

“**unit plan** means the plan in relation to the proportionate ownership scheme that has been, or is intended to be, deposited under section 4 of the Unit Titles Act 1972

“**unit title pooled scheme**—

“(a) means a contributory scheme that involves the investment of money in circumstances where each subscriber for specified participatory securities will acquire a stratum estate in a unit on a unit plan through the issue or creation of a computer register in the subscriber’s name for the relevant stratum estate; but

“(b) does not include an undivided unit title scheme”.

5 Exemption

- (1) Clause 5(2) is amended by revoking paragraph (a) and substituting the following paragraph:
- “(a) that it is a term of each subscription contract that,—
 - “(i) in the case of a unit title pooled scheme, the offeror will take all necessary steps to enable the subscriber for specified participatory securities to be registered as the proprietor of a stratum estate for a unit on the unit plan (on or immediately after the settlement by the subscriber of the purchase of the unit):
 - “(ii) in the case of an undivided unit title scheme, the offeror will take all necessary steps to enable the subscriber for specified participatory securities to be registered as the holder of an interest in a stratum estate for a unit on the unit plan (on or immediately after the settlement by the subscriber of the purchase of the subscriber’s interest in the unit):
 - “(iii) in the case of an undivided property scheme, the offeror will take all necessary steps to enable—
 - “(A) the subscriber for specified participatory securities to be registered as the holder of the subscriber’s interest in the real property (on or immediately after the acquisition of the real property in accordance with the scheme); or
 - “(B) a trustee corporation or a nominee, acting on behalf of all the subscribers for specified participatory securities, to be registered as the proprietor of the real property (on or immediately after the acquisition of the real property in accordance with the scheme); and”.
- (2) Clause 5(2) is amended by revoking paragraph (c) and substituting the following paragraphs:
- “(c) that all subscriptions for specified participatory securities and any interest on those subscriptions are held on trust and must, immediately after each of them is received, be paid into a trust account; and

- “(ca) that no subscription is paid out of the trust account referred to in paragraph (c) unless it is paid—
- “(i) to the offeror when or after—
 - “(A) the key event has occurred in relation to the relevant subscriber; and
 - “(B) all conditions relating to the receipt of subscriptions by the offeror contained in the relevant subscription contract have been satisfied; or
 - “(ii) to—
 - “(A) the offeror in satisfaction of the offeror’s right to forfeit and retain the part of a subscription that forms a deposit in accordance with the relevant subscription contract; and
 - “(B) the relevant subscriber, to the extent that any of the relevant subscription remains after the deposit referred to in subparagraph (A) has been retained; or
 - “(iii) to the relevant subscriber in accordance with paragraph (i); or
 - “(iv) to the relevant subscriber in accordance with paragraph (j); or
 - “(v) to the relevant subscriber in accordance with any other right to have the relevant subscription repaid; and”.
- (3) Clause 5(2) is amended by inserting the following paragraphs after paragraph (f):
- “(fa) that no advertisement in respect of the proportionate ownership scheme may contain prospective financial information about the scheme unless that prospective financial information is set out in the offeror’s written statement; and
 - “(fb) that every advertisement in respect of the proportionate ownership scheme refers to the offeror’s written statement; and”.
- (4) Clause 5(2) is amended by revoking paragraph (g) and substituting the following paragraphs:
- “(g) that every subscriber for specified participatory securities is provided with audited annual financial statements

in respect of the performance, financial position, and cash flows of the proportionate ownership scheme (being financial statements that comply with the Financial Reporting Act 1993) no later than 3 months after each balance date of the proportionate ownership scheme; and

- “(h) that, in the case of an undivided unit title scheme, every subscriber for specified participatory securities is provided with audited annual financial statements in respect of the performance, financial position, and cash flows of the unit on the unit plan in which the subscriber has an interest no later than 3 months after each balance date of the proportionate ownership scheme (being financial statements that comply with the Financial Reporting Act 1993 and are prepared on the basis that the unit is a separate fund of the scheme in terms of section 9A of that Act); and
- “(i) that, if the key event has not occurred in relation to a subscriber for specified participatory securities within the settlement period, no specified participatory securities may be allotted to the relevant subscriber in relation to the subscription paid by the relevant subscriber and that subscription must promptly be returned to the relevant subscriber, unless, before the end of the settlement period,—
 - “(i) the offeror has given the relevant subscriber written notice that the key event will not occur before the end of the settlement period and that the subscriber is entitled to have that subscription returned at the end of the settlement period; and
 - “(ii) the subscriber and the offeror have both signed a written agreement that clearly states that the settlement period is to be extended and specifies the period of time by which the settlement period is to be extended; and
- “(j) that, if a subscriber signs a written agreement in accordance with paragraph (i)(ii) and the key event has not occurred within the extended period of time specified in that agreement, no specified participatory securities may be allotted to that subscriber in relation to his or

her or its subscription and that subscription must promptly be returned to that subscriber.”

6 Schedule 1 amended

Schedule 1 is amended in the manner set out in Schedule 1 of this notice.

7 Schedule 2 amended

Schedule 2 is amended in the manner set out in Schedule 2 of this notice.

8 Transitional provision

If, before the commencement of this clause, an offeror has offered specified participatory securities in reliance on the principal notice, an offer and allotment of those securities may continue to be made by the offeror in accordance with either—

- (a) the principal notice as amended by this notice; or
- (b) the principal notice as in force immediately before the commencement of this clause.

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**Schedule 1
Amendments to Schedule 1 of principal notice**

Clauses 4 to 6

Revoke and substitute:

“4 Description of real property

A description of—

- “(a) the units on the unit plan that form part of the proportionate ownership scheme and the common property shown on the unit plan (in the case of a unit title pooled scheme or an undivided unit title scheme); or
- “(b) the real property to be purchased by the subscribers for the purposes of the proportionate ownership scheme (in the case of an undivided property scheme).

Clauses 4 to 6—continued**“5 Material contracts relating to improvements to real property**

- “(1) In the case of a unit title pooled scheme or an undivided unit title scheme, material details of the contracts relating to the building or improvements if—
- “(a) it is proposed to construct a building on the units on the unit plan or the common property; or
 - “(b) at the date of the offeror’s statement, a building is in the course of construction on the units on the unit plan or the common property; or
 - “(c) it is proposed to make other improvements to the units on the unit plan or the common property.
- “(2) In the case of an undivided property scheme, material details of the contracts relating to the building or improvements if—
- “(a) it is proposed to construct a building on the real property; or
 - “(b) at the date of the offeror’s statement, a building is in the course of construction on the real property; or
 - “(c) it is proposed to make other improvements to the real property.

“6 Covenants, etc, in respect of real property

A description of any existing or proposed covenants, conditions, restrictions, and easements in respect of,—

- “(a) in the case of a unit title pooled scheme or an undivided unit title scheme, the units on the unit plan (whether or not they are registered on the computer registers in respect of the units) and the common property shown on the unit plan; or
- “(b) in the case of an undivided property scheme, the real property (whether or not they are registered on the computer register in respect of the real property).”

Clause 14

Revoke and substitute:

“14 Purchase price

The purchase price to be paid by—

- “(a) the subscriber for his or her or its unit on the unit plan (in the case of a unit title pooled scheme); or

Clause 14—*continued*

- “(b) the subscriber for his or her or its interest in a stratum estate in a unit on the unit plan (in the case of an undivided unit title scheme); or
- “(c) subscribers for the real property (in the case of an undivided property scheme).”

Clause 19

Heading to clause 19: insert “**proportionate ownership scheme or**” after “**Financial information in respect of**”.

Insert “the proportionate ownership scheme or” after “the following financial information in respect of”.

Clause 20

Revoke and substitute:

“20 Prospective financial statements

- “(1) This clause applies if prospective financial information in respect of the proportionate ownership scheme is set out in the offeror’s statement.
 - “(2) If this clause applies, prospective financial statements in respect of the proportionate ownership scheme for the first accounting period of 1 year commencing on or after the date of the offeror’s statement that—
 - “(a) comprise statements of financial position, financial performance, and cash flows; and
 - “(b) accord with generally accepted accounting practice; and
 - “(c) have been reviewed by a member of the Institute of Chartered Accountants of New Zealand.”
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Schedule 2

Amendments to Schedule 2 of principal notice

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Clauses 4 and 5

Revoke and substitute:

“4 Description of real property

A description of,—

- “(a) in the case of a unit title pooled scheme or an undivided unit title scheme, the units on the unit plan that form part of the proportionate ownership scheme at the date of the registered valuer’s report (the **specified units**), including where they are situated on the unit plan, and confirmation that the registered valuer has inspected—
 - “(i) the buildings and improvements on the specified units; and
 - “(ii) the plans and specifications of any new buildings and improvements that are proposed by the offeror in respect of the specified units; or
- “(b) in the case of an undivided property scheme, the real property that is the subject of the proportionate ownership scheme and, if new buildings and improvements are proposed in respect of the real property, confirmation that the plans and specifications have been inspected by the registered valuer.

“5 Covenants, etc, in respect of real property

A list of any covenants, conditions, restrictions, easements, and any other estates or interests that appear on the computer registers in respect of the specified units, or the computer register in respect of the real property, as at the date of the registered valuer’s report.”

Clauses 8 to 12

Revoke and substitute:

“8 Rateable value of real property

The rateable value of—

- “(a) each of the specified units (in the case of a unit title pooled scheme or an undivided unit title scheme); or
- “(b) the real property (in the case of an undivided property scheme).

Clauses 8 to 12—*continued***“9 Leasehold interests or tenancy arrangements in respect of real property**

- “(1) In the case of a unit title pooled scheme or an undivided unit title scheme, current rental payable for each specified unit, and a statement as to whether that rental is being paid, in respect of any existing leasehold interest in the specified units or any existing tenancy arrangement relating to the specified units.
- “(2) In the case of an undivided property scheme, current rental payable, and a statement as to whether that rental is being paid, in respect of any existing leasehold interest in the real property or any existing tenancy arrangement relating to the real property.
- “(3) Other material matters concerning any leasehold interests or tenancy arrangements.

“10 Registered valuer’s opinion as to capital value of real property

- “(1) The opinion of the registered valuer as to—
- “(a) the capital value of each of the specified units (in the case of a unit title pooled scheme or an undivided unit title scheme); or
 - “(b) the capital value of the real property (in the case of an undivided property scheme).
- “(2) The date of, and basis for, that capital value free of charges.

“11 Basis of valuation

The basis upon which the registered valuer’s valuation of the specified units or real property is made and any assumptions used in making the valuation, including any matters referred to the valuer under clause 7 of Schedule 1.

“12 Income from real property

The amount of income that, under the conditions prevailing at the date of the registered valuer’s report,—

- “(a) each of the specified units can reasonably be expected to produce on an annual basis (in the case of a unit title pooled scheme); or

Clauses 8 to 12—*continued*

- “(b) each of the specified units, and each interest in the specified units, can reasonably be expected to produce on an annual basis (in the case of an undivided unit title scheme); or
- “(c) the real property can reasonably be expected to produce on an annual basis (in the case of an undivided property scheme).”

Dated at Wellington this 30th day of October 2007.

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

[Seal]

J Diplock,
Chairperson.

Statement of reasons

This notice, which (with the exception of *clause 4(2)*) comes into force on the day after the date of its notification in the *Gazette*, amends the Securities Act (Real Property Proportionate Ownership Schemes) Exemption Notice 2002 (the **principal notice**) by—

- extending the notice to cover 2 types of unit title schemes (namely, unit title pooled schemes and undivided unit title schemes); and
- in *clause 4(2)*, extending the notice to cover a person who offers specified participatory securities to the public by or through a lawyer, an incorporated law firm, a conveyancing practitioner, or an incorporated conveyancing firm (rather than a real estate agent or trustee corporation). This reflects changes made by the Lawyers and Conveyancers Act 2006 and comes into force with that enactment; and
- updating the notice to reflect changes that have occurred since the notice was granted.

The Securities Commission considers that the amendments are appropriate because—

- the principal notice exempts certain offers of securities from provisions of securities law where subscribers for securities receive title to real estate. The principal notice recognises that the detailed disclosure provisions of the Securities Act 1978 and the Securities Regulations 1983 are not ideally suited to offers of real property. It also recognises the protection afforded to investors where they obtain title to land; and
- the amendment extends the exemption to schemes involving unit titles. This recognises that the same principles apply to land acquired under the Unit Titles Act 1972 as apply to land acquired under the Land Transfer Act 1952; and
- the conditions of exemption require offerors to provide investors with information that is tailored to an investment in real estate and that also takes into account the key elements of these schemes. This is achieved by requiring—
 - that prospective financial information about a scheme complies with applicable financial reporting standards; and
 - the provision of an offeror’s statement based on the requirements for an investment statement; and
 - the provision of a report by an independent registered valuer; and
 - that all advertisements for the scheme refer to the offeror’s statement; and
- the conditions of exemption also provide protection for investors by requiring that subscription money be held on trust until the offeror has taken all necessary steps to allow registration of title; and
- the amendment extends the notice to offers of real estate by lawyers and conveyancers recognising that the Lawyers and Conveyancers Act 2006 will allow lawyers and conveyancers to sell real estate and will regulate that activity. This amendment will come into effect when the Lawyers and Conveyancers Act 2006 comes into force.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 1 November 2007.
This notice is administered by the Securities Commission.
