

Reprint  
as at 1 October 2016



## Securities Act (Contributory Mortgage—Solicitors and Incorporated Law Firms) Exemption Notice 2013

(SR 2013/286)

Securities Act (Contributory Mortgage—Solicitors and Incorporated Law Firms) Exemption Notice 2013: revoked, on the close of 30 September 2016, by clause 3.

Pursuant to sections 70B and 70D of the Securities Act 1978, the Financial Markets Authority gives the following notice (to which is appended a statement of reasons of the Financial Markets Authority).

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### Notice

#### 1 Title

This notice is the Securities Act (Contributory Mortgage—Solicitors and Incorporated Law Firms) Exemption Notice 2013.

#### 2 Commencement

This notice comes into force on 1 July 2013.

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#### Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.  
Note 4 at the end of this reprint provides a list of the amendments incorporated.

**This notice is administered by the Financial Markets Authority.**

### 3 Revocation of this notice

This notice is revoked on the close of 30 September 2016.

### 4 Interpretation

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

**Act** means the Securities Act 1978

**contributory mortgage broker** has the meaning given in section 2(1) of the Act

**financial service providers register** means the register of financial service providers established and maintained under the Financial Service Providers (Registration and Dispute Resolution) Act 2008

**incorporated law firm** has the meaning given in section 6 of the Lawyers and Conveyancers Act 2006

**legal services** has the meaning given in section 6 of the Lawyers and Conveyancers Act 2006

**Regulations** means the Securities Act (Contributory Mortgage) Regulations 1988

**solicitor** means a person enrolled as a barrister and solicitor of the High Court under or by virtue of the Lawyers and Conveyancers Act 2006 and practising as a solicitor, whether or not that person also practises as a barrister.

- (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 Solicitors and incorporated law firms exempted from Regulations

- (1) Every solicitor is exempted from the provisions of the Regulations in respect of any thing done or omitted to be done in his or her capacity as a solicitor.
- (2) Every incorporated law firm is exempted from the provisions of the Regulations in respect of any thing done or omitted to be done by it in relation to the provision of legal services.

### 6 Conditions of exemptions

- (1) The exemptions in clause 5 are subject to the conditions that—
- (a) there are in force—
- (i) regulations made under section 115 of the Lawyers and Conveyancers Act 2006 relating to trust accounts; and
- (ii) practice rules made under section 96 of that Act relating to nominee companies; and

- (b) the solicitor or incorporated law firm is in compliance, in all material respects, with the provisions of the regulations and practice rules described in paragraph (a).
- (2) After 1 July 2014, the exemptions in clause 5 are subject to the further condition that at all times after that date during which the solicitor or incorporated law firm acts as a contributory mortgage broker, the solicitor or incorporated law firm (as the case may be) is registered as a financial service provider on the financial service providers register.

**7 Revocation of Securities Act (Contributory Mortgage) Regulations (Solicitors) Exemption Notice 1996**

The Securities Act (Contributory Mortgage) Regulations (Solicitors) Exemption Notice 1996 (SR 1996/13) is revoked.

Dated at Wellington this 21st day of June 2013.

Sue Brown,  
Head of Primary Regulatory Operations.

**Statement of reasons**

This notice, which comes into force on 1 July 2013 and is revoked on 30 September 2016, revokes and replaces the Securities Act (Contributory Mortgage) Regulations (Solicitors) Exemption Notice 1996 (the **1996 notice**).

The effect of this notice is that solicitors and incorporated law firms are exempted from the Securities Act (Contributory Mortgage) Regulations 1988, which prescribe the general requirements relating to the offer and management of contributory mortgages by market participants. The exemptions are on the basis that these persons and entities comply with alternative relevant requirements applying to them.

The Financial Markets Authority, after satisfying itself as to the matters set out in section 70B(2) of the Securities Act 1978, considers it appropriate to grant the exemptions because—

- the notice continues long-standing exemptions granted to solicitors under the 1996 notice and its predecessors in relation to contributory mortgage investments offered and managed by solicitors. These exemptions were granted in the circumstances that solicitors offering and managing contributory mortgages were subject to alternative relevant regulations governing the operation of trust accounts by solicitors and practice rules made by the New Zealand Law Society:

- the Financial Markets Authority does not consider that there is an enduring good basis for the offer and management of contributory mortgage investments by solicitors and incorporated law firms to be subject to significantly different requirements than for securities of this nature offered and managed by other market participants. The Financial Markets Authority, however, recognises that solicitors and incorporated law firms would need to undertake a significant procedural and compliance review of their contributory mortgage investment practice in order to implement any changes necessary to comply with the general requirements relating to the offer and management of contributory mortgages by other market participants. The Financial Markets Authority also recognises that financial markets legislation is currently undergoing a comprehensive review. This includes a review of disclosure and governance requirements applying to contributory mortgage investments. The Financial Markets Authority expects the regime developed for these financial products should apply to all market participants seeking to offer contributory mortgage-type financial products. Requiring a review of solicitors' practices in advance of the conclusion of the development of this regime would require 2 practice change reviews in a short time period, resulting in significant practice review work and cost:
- in this interim period, the Financial Markets Authority considers that, subject to some increased compliance requirements, the exemption from the standard contributory mortgage investment regime remains appropriate in light of the alternative relevant requirements applying to these persons. The conditions of the exemptions have changed to require compliance with the alternative relevant requirements (rather than just requiring that there are alternative relevant requirements in force). This means the Financial Markets Authority will have the ability to intervene in the continuing offer and management of contributory mortgages by persons relying on the exemptions in the event of material non-compliance with those requirements where it considers this is in investors' interests. Additionally, as from 1 July 2014, any person relying on the exemptions must be registered as a financial service provider under the Financial Service Providers (Registration and Dispute Resolution) Act 2008. This will require that if they offer services to retail clients, they also join a dispute resolution scheme under that Act:
- additionally, as solicitors may now practise in incorporated law firms, the Financial Markets Authority considers that it is appropriate that the exemptions also apply to incorporated law firms undertaking contributory mortgage lending on the same basis as an exemption is granted to solicitors practising in sole practice or in partnership:
- in summary, the Financial Markets Authority considers that, with these changes, the exemptions will not cause significant detriment to subscribers who are members of the public in New Zealand who invest in contributory mortgages offered by solicitors or incorporated law firms. Further, the exemptions provide an adequate opportunity for solicitors and incorporated law firms

to assess whether they wish to continue to offer and manage contributory mortgages, taking into account their obligations under the Financial Advisers Act 2008, the Financial Service Providers (Registration and Dispute Resolution) Act 2008, and the Financial Markets Conduct Bill, when enacted. Having regard to the time required for a contributory mortgage broker to transition out of managing an existing mortgage book, the grant of the exemptions until 30 September 2016 gives time for a proper assessment to be made and, if considered desirable, the necessary transition to occur. The Financial Markets Authority considers this extension is not longer than is reasonably necessary to enable this assessment to be made and the necessary transition to occur, and that in these circumstances the exemptions are not broader than is reasonably necessary to address the matters that gave rise to the exemptions.

Issued under the authority of the Legislation Act 2012.  
Date of notification in *Gazette*: 27 June 2013.

## Reprints notes

### **1** *General*

This is a reprint of the Securities Act (Contributory Mortgage—Solicitors and Incorporated Law Firms) Exemption Notice 2013 that incorporates all the amendments to that notice as at the date of the last amendment to it.

### **2** *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

### **3** *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

### **4** *Amendments incorporated in this reprint*

Securities Act (Contributory Mortgage—Solicitors and Incorporated Law Firms) Exemption Notice 2013 (SR 2013/286): clause 3