

**Reprint  
as at 1 October 2012**



**Securities Act (Real Property  
Proportionate Ownership Schemes)  
Exemption Notice 2002**

(SR 2002/315)

Securities Act (Real Property Proportionate Ownership Schemes) Exemption  
Notice 2002: expired, on 1 October 2012, by clause 3.

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

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**Note**

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989  
have been made in this reprint.

A general outline of these changes is set out in the notes at the end of this reprint, together  
with other explanatory material about this reprint.

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

## Notice

### 1 Title

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

### 2 Commencement

This notice comes into force on 1 October 2002.

### 3 Expiry

This notice expires on the close of 30 September 2012.

Clause 3: amended, on 28 September 2007, by clause 4 of the Securities Act (Real Property Proportionate Ownership Schemes) Exemption Amendment Notice 2007 (SR 2007/289).

### 4 Interpretation

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

**Act** means the Securities Act 1978

**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

**generally accepted accounting practice** has the meaning given to that term by section 3 of the Financial Reporting Act 1993

**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)

**offeror** means a person who offers specified participatory securities to the public for subscription by or through a person who is—

- (a) the holder of a licence issued in accordance with Part 2 of the Real Estate Agents Act 1976; or
- (b) a trustee corporation; or
- (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)

**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

**registered valuer** means a person who is a registered valuer within the meaning of the Valuers Act 1948

**Regulations** means the Securities Regulations 1983

**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 participatory security** means a participatory security issued by an offeror in respect of a proportionate ownership scheme

**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.
- (2) For the purposes of this notice, a registered valuer is not an independent registered valuer if—
- (a) that registered valuer and the offeror are relatives, one being the spouse, civil union partner, or de facto partner of the other or being the parent, brother, sister, or child of the other or of the spouse, civil union partner, or de facto partner of the other; or
  - (b) that registered valuer or any person employed by that registered valuer is, or has been within 1 year of the preparation of the independent valuer's report,—
    - (i) a member, shareholder, or director of the offeror; or
    - (ii) a member, shareholder, or director of any company that is a holding company or a subsidiary of the offeror or that is a partner or joint venturer with the offeror; or
  - (c) there is any other relationship or interest between the registered valuer and the offeror that is likely to influence the judgment of the registered valuer.
- (3) 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.

Clause 4(1) **certificate of title**: revoked, on 2 November 2007, by clause 4(1) of the Securities Act (Real Property Proportionate Ownership Schemes) Exemption Amendment Notice (No 2) 2007 (SR 2007/337).

Clause 4(1) **computer register**: inserted, on 2 November 2007, by clause 4(1) of the Securities Act (Real Property Proportionate Ownership Schemes) Exemption Amendment Notice (No 2) 2007 (SR 2007/337).

Clause 4(1) **key event**: inserted, on 2 November 2007, by clause 4(4) of the Securities Act (Real Property Proportionate Ownership Schemes) Exemption Amendment Notice (No 2) 2007 (SR 2007/337).

Clause 4(1) **offeror** paragraph (b): amended, on 1 August 2008, by clause 4(2) of the Securities Act (Real Property Proportionate Ownership Schemes) Exemption Amendment Notice (No 2) 2007 (SR 2007/337).

Clause 4(1) **offeror** paragraph (c): added, on 1 August 2008, by clause 4(2) of the Securities Act (Real Property Proportionate Ownership Schemes) Exemption Amendment Notice (No 2) 2007 (SR 2007/337).

Clause 4(1) **proportionate ownership scheme**: substituted, on 2 November 2007, by clause 4(3) of the Securities Act (Real Property Proportionate Ownership Schemes) Exemption Amendment Notice (No 2) 2007 (SR 2007/337).

Clause 4(1) **real property**: substituted, on 2 November 2007, by clause 4(3) of the Securities Act (Real Property Proportionate Ownership Schemes) Exemption Amendment Notice (No 2) 2007 (SR 2007/337).

Clause 4(1) **settlement period**: inserted, on 2 November 2007, by clause 4(4) of the Securities Act (Real Property Proportionate Ownership Schemes) Exemption Amendment Notice (No 2) 2007 (SR 2007/337).

Clause 4(1) **specified units**: added, on 2 November 2007, by clause 4(4) of the Securities Act (Real Property Proportionate Ownership Schemes) Exemption Amendment Notice (No 2) 2007 (SR 2007/337).

Clause 4(1) **stratum estate**: added, on 2 November 2007, by clause 4(4) of the Securities Act (Real Property Proportionate Ownership Schemes) Exemption Amendment Notice (No 2) 2007 (SR 2007/337).

Clause 4(1) **subscription contract**: added, on 2 November 2007, by clause 4(4) of the Securities Act (Real Property Proportionate Ownership Schemes) Exemption Amendment Notice (No 2) 2007 (SR 2007/337).

Clause 4(1) **undivided property scheme**: added, on 2 November 2007, by clause 4(4) of the Securities Act (Real Property Proportionate Ownership Schemes) Exemption Amendment Notice (No 2) 2007 (SR 2007/337).

Clause 4(1) **undivided unit title scheme**: added, on 2 November 2007, by clause 4(4) of the Securities Act (Real Property Proportionate Ownership Schemes) Exemption Amendment Notice (No 2) 2007 (SR 2007/337).

Clause 4(1) **unit**: added, on 2 November 2007, by clause 4(4) of the Securities Act (Real Property Proportionate Ownership Schemes) Exemption Amendment Notice (No 2) 2007 (SR 2007/337).

Clause 4(1) **unit plan**: added, on 2 November 2007, by clause 4(4) of the Securities Act (Real Property Proportionate Ownership Schemes) Exemption Amendment Notice (No 2) 2007 (SR 2007/337).

Clause 4(1) **unit title pooled scheme**: added, on 2 November 2007, by clause 4(4) of the Securities Act (Real Property Proportionate Ownership Schemes) Exemption Amendment Notice (No 2) 2007 (SR 2007/337).

Clause 4(2)(a): amended, on 26 April 2005, by section 12 of the Relationships (Statutory References) Act 2005 (2005 No 3).

## **5 Exemption**

- (1) Every offeror and every person acting on behalf of that offeror are exempted from sections 33(3), 37, 37A, and 51 to 54 of the Act in respect of specified participatory securities.
- (2) The exemption granted by subclause (1) is subject to the following conditions:
  - (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
- (b) that no subscriptions for the specified participatory securities will be received by, or on behalf of, the offeror unless the contract referred to in paragraph (a) has been entered into; and
  - (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
  - (d) that the trust account referred to in paragraph (c) is maintained by—



- (i) a solicitor of the High Court of New Zealand and is subject to the Solicitors' Trust Account Regulations 1998 and the money held in the trust account is money to which section 169A(3)(c) of the Law Practitioners Act 1982 applies; or
  - (ii) a trustee corporation or a person approved by the Commission to act as a trustee under section 48 of the Act and the trust account is audited at least annually; or
  - (iii) a person who is the holder of a licence issued in accordance with Part 2 of the Real Estate Agents Act 1976 and the trust account is audited at least annually; and
- (e) that every subscriber for specified participatory securities has, before entering into the contract referred to in paragraph (a), been provided with a written statement that sets out the matters referred to in Schedule 1 and that is signed by the offeror or, if the offeror is a body corporate, the directors of the offeror and dated not more than 2 months before the subscriber's receipt of the written statement; and
- (f) that the offeror's written statement contains or has attached a copy of a report by an independent registered valuer that sets out the matters referred to in Schedule 2 and that is signed by the registered valuer and dated not more than 4 months before the date of the offeror's written statement; and
- (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
- (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.

Clause 5(2)(a): substituted, on 2 November 2007, by clause 5(1) of the Securities Act (Real Property Proportionate Ownership Schemes) Exemption Amendment Notice (No 2) 2007 (SR 2007/337).

Clause 5(2)(c): substituted, on 2 November 2007, by clause 5(2) of the Securities Act (Real Property Proportionate Ownership Schemes) Exemption Amendment Notice (No 2) 2007 (SR 2007/337).

Clause 5(2)(ca): inserted, on 2 November 2007, by clause 5(2) of the Securities Act (Real Property Proportionate Ownership Schemes) Exemption Amendment Notice (No 2) 2007 (SR 2007/337).

Clause 5(2)(fa): inserted, on 2 November 2007, by clause 5(3) of the Securities Act (Real Property Proportionate Ownership Schemes) Exemption Amendment Notice (No 2) 2007 (SR 2007/337).

Clause 5(2)(fb): inserted, on 2 November 2007, by clause 5(3) of the Securities Act (Real Property Proportionate Ownership Schemes) Exemption Amendment Notice (No 2) 2007 (SR 2007/337).

Clause 5(2)(g): substituted, on 2 November 2007, by clause 5(4) of the Securities Act (Real Property Proportionate Ownership Schemes) Exemption Amendment Notice (No 2) 2007 (SR 2007/337).

Clause 5(2)(h): added, on 2 November 2007, by clause 5(4) of the Securities Act (Real Property Proportionate Ownership Schemes) Exemption Amendment Notice (No 2) 2007 (SR 2007/337).

Clause 5(2)(i): added, on 2 November 2007, by clause 5(4) of the Securities Act (Real Property Proportionate Ownership Schemes) Exemption Amendment Notice (No 2) 2007 (SR 2007/337).

Clause 5(2)(j): added, on 2 November 2007, by clause 5(4) of the Securities Act (Real Property Proportionate Ownership Schemes) Exemption Amendment Notice (No 2) 2007 (SR 2007/337).

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## Schedule 1

r 5(2)(e)

### Matters to be specified or contained in offeror's statement

**1 Date of offeror's statement**

In a prominent place, the date as at which the offeror's statement is prepared.

Important information for investors

**2 Information at front of offeror's statement**

A statement in the following form (to be set out at the front of the offeror's statement):

**"IMPORTANT INFORMATION**

(The information in this section is required under the Securities Act 1978.)

Investment decisions are very important. They often have long-term consequences. Read all documents carefully. Ask questions. Seek advice before committing yourself.

**Warning**

This offer is exempt under the Securities Act (Real Property Proportionate Ownership Schemes) Exemption Notice 2002 from the legal requirement to register a prospectus for this scheme and to appoint an independent supervisor to monitor the interests of subscribers. Your attention is drawn to the absence of these statutory protections.

**Choosing an investment**

When deciding whether to invest, consider carefully the answers to the following questions that can be found on the pages noted below:

*What sort of investment is this?*

*Who is involved in providing it for me?*

*How much do I pay?*

*What are the charges?*

*What returns will I get?*

*What are my risks?*

*Can the investment be altered?*

*How do I cash in my investment?*

*Who do I contact with enquiries about my investment?*

*Is there anyone to whom I can complain if I have problems with the investment?*

*What other information can I obtain about this investment?*

### **Engaging an investment adviser**

An investment adviser must give you a written statement that contains information about the adviser and his or her ability to give advice. You are strongly encouraged to read that document and consider the information in it when deciding whether or not to engage an adviser.

Tell the adviser what the purpose of your investment is. This is important because different investments are suitable for different purposes, and carry different levels of risk.

The written statement should contain important information about the adviser, including—

- relevant experience and qualifications, and whether dispute resolution facilities are available to you; and
- what types of investments the adviser gives advice about; and
- whether the advice is limited to investments offered by 1 or more particular financial institutions; and
- information that may be relevant to the adviser's character, including certain criminal convictions, bankruptcy, any adverse findings by a court against the adviser in a professional capacity, and whether the adviser has been expelled from, or prohibited from joining, a professional body; and
- any relationships likely to give rise to a conflict of interest.

The adviser must also tell you about fees and remuneration before giving you advice about an investment. The information about fees and remuneration must include—

- the nature and level of the fees you will be charged for receiving the advice; and
- whether the adviser will or may receive a commission or other benefit from advising you.

An investment adviser commits an offence if he or she does not provide you with the information required.”

Schedule 1 clause 2: amended, on 7 March 2008, by clause 3(1) of the Securities Act (Amendments to Exemption Notices Affecting Investment Adviser Information) Exemption Notice 2008 (SR 2008/60).

What sort of investment is this?

**3 Description of proportionate ownership scheme**

A description of the proportionate ownership scheme, the interests in the proportionate ownership scheme being offered, and how long the scheme has been in operation.

**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).

Schedule 1 clause 4: substituted, on 2 November 2007, by clause 6 of the Securities Act (Real Property Proportionate Ownership Schemes) Exemption Amendment Notice (No 2) 2007 (SR 2007/337).

**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.

Schedule 1 clause 5: substituted, on 2 November 2007, by clause 6 of the Securities Act (Real Property Proportionate Ownership Schemes) Exemption Amendment Notice (No 2) 2007 (SR 2007/337).

**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).

Schedule 1 clause 6: substituted, on 2 November 2007, by clause 6 of the Securities Act (Real Property Proportionate Ownership Schemes) Exemption Amendment Notice (No 2) 2007 (SR 2007/337).

**7 Land information memorandum relating to real property**

Any material matters referred to in a land information memorandum under section 44A of the Local Government Official Information and Meetings Act 1987 that have been referred to the independent registered valuer for the purposes of the valuation report referred to in clause 5(2)(f) of this notice, and a description of those matters.

**8 Options, etc, in respect of real property**

A description of any option, buyback, or similar arrangement, and any rental guarantees in relation to the real property.

**9 Material details concerning rights of occupation of real property**

- (1) Material details concerning any rights of occupation to which the real property is subject, whether by lease, licence, or otherwise, including—
  - (a) the term of the agreement; and
  - (b) any rights of renewal; and
  - (c) any rent reviews; and
  - (d) the financial standing of tenants or occupiers; and
  - (e) any guarantees or other special provisions.
- (2) A statement—
  - (a) of the place where copies of any agreement relating to those rights of occupation may be inspected free of charge; and
  - (b) whether any existing occupant of the real property has failed to meet any material obligations under the terms of any agreement that confers a right of occupation.

Who is involved in providing it for me?

**10 Information about persons associated with proportionate ownership scheme**

The names and addresses of the following persons associated with the proportionate ownership scheme and a description of their role in the scheme:

- (a) the offeror and the directors of the offeror; and
- (b) the manager of the scheme and, if that person was not the person first appointed as the manager of the scheme, the person first appointed as the manager of the scheme; and
- (c) the person referred to in clause 5(2)(d)(i) to (iii) of the notice; and
- (d) the sales organisation (if any) through which the offer of specified participatory securities is made to the subscriber; and
- (e) the names and addresses of any promoters.



**11 Qualifications and experience of manager of proportionate ownership scheme**

The qualifications and experience of the manager of the proportionate ownership scheme.

**12 Management agreements relating to real property**

- (1) Material details of any management agreement that has been, or is proposed to be, entered into for the management of the real property, including—
  - (a) the term of the agreement; and
  - (b) the management fee; and
  - (c) the procedures for making decisions that may affect the interests of subscribers for specified participatory securities.
- (2) A statement of the place where copies of the management agreement may be inspected free of charge.

**13 Interests of offeror, manager, promoter, and others**

- (1) The following information if any of the circumstances in subclause (2) exist:
  - (a) the names of the parties to the transaction and the date of the transaction; and
  - (b) a brief description of the material terms of the transaction; and
  - (c) the nature of the interest in the transaction.
- (2) If the offeror, the manager of the proportionate ownership scheme, any promoter of the proportionate ownership scheme, or any shareholder, director, or employee of the offeror or manager or promoter—
  - (a) is a party to, or will or may derive a material financial benefit from, any transaction relating to the proportionate ownership scheme or the real property; or
  - (b) has a material financial interest in another party to, or a person who will or may derive a material financial benefit from, any transaction relating to the proportionate ownership scheme or the real property; or
  - (c) is a director, officer, or trustee of another party to, or a person who will or may derive a material financial

- benefit from, any transaction relating to the proportionate ownership scheme or the real property; or
- (d) is the parent, child, or spouse, civil union partner, or de facto partner of another party to, or a person who will or may derive a material financial benefit from, any transaction relating to the proportionate ownership scheme or the real property; or
  - (e) is otherwise directly or indirectly materially interested in any transaction relating to the proportionate ownership scheme or the real property.

Schedule 1 clause 13(2)(d): amended, on 26 April 2005, by section 12 of the Relationships (Statutory References) Act 2005 (2005 No 3).

### How much do I pay?

#### **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
- (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).

Schedule 1 clause 14: substituted, on 2 November 2007, by clause 6 of the Securities Act (Real Property Proportionate Ownership Schemes) Exemption Amendment Notice (No 2) 2007 (SR 2007/337).

### What are the charges?

#### **15 Types of charges**

- (1) A statement as to which of the following types of charges are or may be payable to the offeror or a promoter, or an associated person of the offeror or promoter, or the proportionate ownership scheme, by a subscriber (whether directly or indirectly, including by deduction):
  - (a) entry charges:
  - (b) trustee, administration, or management charges:
  - (c) expenses or overhead charges:
  - (d) charges or expenses relating to goods or services that the subscriber is required to obtain:

- (e) early termination charges:
  - (f) switching or sale charges (including the difference between any buying and selling prices for the securities):
  - (g) alteration charges:
  - (h) other charges.
- (2) A statement as to which of the types of charges specified in subclause (1) are or may be payable by the offeror or from the scheme to a promoter or administration manager or investment manager or an associated person of the offeror or the promoter or the administration manager or the investment manager, being charges that will or may affect the amount of the returns to subscribers.
- (3) A brief description of any practices of the offeror or any associated person in relation to charges that will or may affect the amount of the returns to subscribers.
- (4) A brief description of the rights of the offeror or any other person to alter any of the charges applicable to the specified participatory securities.

#### **16 Amount of charges**

- (1) If a charge, or the minimum or maximum amount of a charge, referred to in clause 15(1) can, at the date of the offeror's statement, be expressed as a dollar amount (or as a percentage of another dollar amount), a statement of the dollar amount (or of the percentage and a description of the other dollar amount).
- (2) If a charge, or the minimum or maximum amount of a charge, referred to in clause 15(1) cannot, at the date of the offeror's statement, be expressed as a dollar amount (or as a percentage of another dollar amount), a statement describing how the charge will be calculated and what procedure is available to the subscriber to ascertain the amount at the time of, and following, the subscription.

#### **17 Remuneration of offeror relating to proportionate ownership scheme**

The remuneration and other benefits the offeror will receive for establishing and promoting the proportionate ownership

scheme and the manner in which this remuneration and other benefits are to be paid or provided.

What returns will I get?

**18 Income and expenses relating to proportionate ownership scheme**

Material details concerning the manner in which all income and expenses relating to the proportionate ownership scheme are to be accounted for and the basis upon which profits are to be distributed.

**19 Financial information in respect of proportionate ownership scheme or real property**

To the extent that it is in the possession or control of the offeror or can reasonably be obtained by the offeror, the following financial information in respect of the proportionate ownership scheme or the real property that is the subject of the proportionate ownership scheme:

- (a) a statement of income and expenditure for a financial year ending not more than 5 months before the date of the offeror's statement that accords with generally accepted accounting practice and that has been reviewed by a member of the New Zealand Institute of Chartered Accountants; and
- (b) a statement of cash flows for a financial year ending not more than 5 months before the date of the offeror's statement that accords with generally accepted accounting practice and that has been reviewed by a member of the New Zealand Institute of Chartered Accountants.

Schedule 1 clause 19 heading: amended, on 2 November 2007, by clause 6 of the Securities Act (Real Property Proportionate Ownership Schemes) Exemption Amendment Notice (No 2) 2007 (SR 2007/337).

Schedule 1 clause 19: amended, on 2 November 2007, by clause 6 of the Securities Act (Real Property Proportionate Ownership Schemes) Exemption Amendment Notice (No 2) 2007 (SR 2007/337).

Schedule 1 clause 19(a): amended, on 7 July 2010, by section 11 of the New Zealand Institute of Chartered Accountants Amendment Act 2010 (2010 No 74).

Schedule 1 clause 19(b): amended, on 7 July 2010, by section 11 of the New Zealand Institute of Chartered Accountants Amendment Act 2010 (2010 No 74).

**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 New Zealand Institute of Chartered Accountants.

Schedule 1 clause 20: substituted, on 2 November 2007, by clause 6 of the Securities Act (Real Property Proportionate Ownership Schemes) Exemption Amendment Notice (No 2) 2007 (SR 2007/337).

Schedule 1 clause 20(2)(c): amended, on 7 July 2010, by section 11 of the New Zealand Institute of Chartered Accountants Amendment Act 2010 (2010 No 74).

What are my risks?

**21 Liabilities relating to proportionate ownership scheme**

A description and, where practicable, quantification of all liabilities (including contingent liabilities) that a subscriber for specified participatory securities will or may incur as a holder of the specified participatory securities.

Can the investment be altered?

**22 Alteration of securities**

A brief description of any right of a subscriber, the offeror, or any other person to alter the terms of a subscriber's interest in the proportionate ownership scheme.

How do I cash in my investment?

**23 Early termination**

A brief description of any right of the offeror, a subscriber, or any other person to terminate a subscriber's interest in the proportionate ownership scheme.

**24 A right to sell security**

- (1) A statement as to whether or not a subscriber is entitled to sell his or her interest in the proportionate ownership scheme to another person and, if so, whether in the opinion of the offeror there is an established market for those sales.
- (2) If any charges are payable by a subscriber on a sale, a brief description of those charges.

Who do I contact with enquiries about my investment?

**25 Enquiries about scheme**

The names or descriptions of officers, employees, or agents of the offeror to whom enquiries about the proportionate ownership scheme can be made, and the addresses and business telephone numbers of those people.

Is there anyone to whom I can complain if I have problems with the investment?

**26 Complaints about scheme**

- (1) The names or descriptions of officers, employees, or agents of the offeror to whom complaints about the proportionate ownership scheme can be made, and the addresses and business telephone numbers of those people.
- (2) If complaints about the proportionate ownership scheme can be made to a trustee or to an industry body, a statement to this effect and the addresses and business telephone numbers of those people.
- (3) A statement as to whether complaints about the proportionate ownership scheme can be made to an ombudsman and, if so, the address and business telephone number of the ombudsman.

What other information can I obtain about this investment?

**27 Annual information**

A statement of the type of information (if any) that is required to be, or otherwise will be, given annually to subscribers by the offeror.

**28 On request information**

A statement—

- (a) describing the type of information that is required to be, or otherwise will be, available on request from the offeror; and
- (b) explaining how the request should be made; and
- (c) whether any charge may be made for that information and the amount of the charge.

Other information

**29 Other material information**

Any other information that would be material to a prospective subscriber's decision to invest in the scheme.

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## Schedule 2

r 5(2)(f)

### Matters to be specified in independent registered valuer's report

- 1 Name and address of valuer**  
The name and address of the registered valuer and a brief description of that registered valuer's qualifications.
- 2 Statement by registered valuer**  
A statement that the valuation report is made by the registered valuer as an independent registered valuer.
- 3 Purpose of report**  
A statement that the registered valuer is making the valuation report for the purposes of the proportionate ownership scheme and for use by prospective subscribers for specified participatory securities.
- 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.

Schedule 2 clause 4: substituted, on 2 November 2007, by clause 7 of the Securities Act (Real Property Proportionate Ownership Schemes) Exemption Amendment Notice (No 2) 2007 (SR 2007/337).



**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.

Schedule 2 clause 5: substituted, on 2 November 2007, by clause 7 of the Securities Act (Real Property Proportionate Ownership Schemes) Exemption Amendment Notice (No 2) 2007 (SR 2007/337).

**6 Present use of real property**

The present use of the real property.

**7 Compliance with regional or district plan rules**

- (1) The nature of any regional or district plan rules, existing use rights, resource consents, or other statutory requirements relating to the real property.
- (2) Whether the intended use of the real property for the purposes of the proportionate ownership scheme complies with the rules, rights, consents, or other statutory requirements referred to in subclause (1).

**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).

Schedule 2 clause 8: substituted, on 2 November 2007, by clause 7 of the Securities Act (Real Property Proportionate Ownership Schemes) Exemption Amendment Notice (No 2) 2007 (SR 2007/337).

**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.

Schedule 2 clause 9: substituted, on 2 November 2007, by clause 7 of the Securities Act (Real Property Proportionate Ownership Schemes) Exemption Amendment Notice (No 2) 2007 (SR 2007/337).

#### **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.

Schedule 2 clause 10: substituted, on 2 November 2007, by clause 7 of the Securities Act (Real Property Proportionate Ownership Schemes) Exemption Amendment Notice (No 2) 2007 (SR 2007/337).

#### **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.

Schedule 2 clause 11: substituted, on 2 November 2007, by clause 7 of the Securities Act (Real Property Proportionate Ownership Schemes) Exemption Amendment Notice (No 2) 2007 (SR 2007/337).

#### **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

- (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).

Schedule 2 clause 12: substituted, on 2 November 2007, by clause 7 of the Securities Act (Real Property Proportionate Ownership Schemes) Exemption Amendment Notice (No 2) 2007 (SR 2007/337).

**13 Other material matters relating to real property**

Any other matters concerning the real property that the registered valuer considers to be material according to the standards usually applied by registered valuers in conducting valuations of real property.

**14 Consent to distribution of report**

A statement that the registered valuer has consented to the distribution of the registered valuer's report to prospective subscribers for specified participatory securities and that, as at the date of the report, the registered valuer has not withdrawn that consent.

Dated at Wellington this 27th day of September 2002.

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

[Seal]

L A J Kavanagh,  
Member.

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Issued under the authority of the Acts and Regulations Publication Act 1989.  
Date of notification in *Gazette*: 30 September 2002.

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

(SR 2007/337)

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).

**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*.

**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.

Dated at Wellington this 30th day of October 2002.

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

[Seal]

J Diplock,  
Chairperson.

\_\_\_\_\_  
Date of notification in *Gazette*: 1 November 2007.  
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## **Securities Act (Extension of Term, Amendment, and Transitional Provision) Exemption Notice 2012**

(SR 2012/294)

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).

### **Notice**

**1 Title**

This notice is the Securities Act (Extension of Term, Amendment, and Transitional Provision) Exemption Notice 2012.

**2 Commencement**

This notice comes into force on the day after the date of its notification in the *Gazette*.

**4 Transitional provision relating to real property proportionate ownership schemes**

- (1) If, before the close of 30 September 2012, an offeror offered specified participatory securities in reliance on the 2002 notice, or the 1997 notice, using an offeror's written statement that was dated on or before 30 September 2012, the offeror and every person acting on its behalf may continue to rely on the 2002 notice in respect of specified participatory securities offered using that offeror's written statement (as if the 2002 notice continued in force after 30 September 2012).
- (2) However, this clause does not permit specified participatory securities to be offered in reliance on the 2002 notice after the date that is 2 months after the date of the offeror's written statement.
- (3) In this clause,—

**1997 notice** means the Securities Act (Real Property Proportionate Ownership Schemes) Exemption Notice 1997

**2002 notice** means the Securities Act (Real Property Proportionate Ownership Schemes) Exemption Notice 2002

**offeror** has the same meaning as in the 2002 notice

**offeror's written statement** means the statement referred to in clause 5(2)(e) of the 2002 notice or clause 3(2)(e) of the 1997 notice (as the case may be)

**specified participatory security** has the same meaning as in the 2002 notice.

Dated at Wellington this 24th day of September 2012.

Sue Brown,  
Head of Primary Regulatory Operations.

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Date of notification in *Gazette*: 27 September 2012.

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## **Contents**

- 1 General
  - 2 Status of reprints
  - 3 How reprints are prepared
  - 4 Changes made under section 17C of the Acts and Regulations Publication Act 1989
  - 5 List of amendments incorporated in this reprint (most recent first)
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## **Notes**

### **1 *General***

This is a reprint of the Securities Act (Real Property Proportionate Ownership Schemes) Exemption Notice 2002. The reprint incorporates all the amendments to the notice as at 1 October 2012, as specified in the list of amendments at the end of these notes.

Relevant provisions of any amending enactments that contain transitional, savings, or application provisions that cannot be compiled in the reprint are also included, after the principal enactment, in chronological order. For more information, see <http://www.pco.parliament.govt.nz/reprints/>.

### **2 *Status of reprints***

Under section 16D of the Acts and Regulations Publication Act 1989, reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by the amendments to that enactment. This presumption applies even though editorial changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in the reprint.

This presumption may be rebutted by producing the official volumes of statutes or statutory regulations in which the principal enactment and its amendments are contained.

### **3 *How reprints are prepared***

A number of editorial conventions are followed in the preparation of reprints. For example, the enacting words are not

included in Acts, and provisions that are repealed or revoked are omitted. For a detailed list of the editorial conventions, see <http://www.pco.parliament.govt.nz/editorial-conventions/> or Part 8 of the *Tables of New Zealand Acts and Ordinances and Statutory Regulations and Deemed Regulations in Force*.

#### **4 Changes made under section 17C of the Acts and Regulations Publication Act 1989**

Section 17C of the Acts and Regulations Publication Act 1989 authorises the making of editorial changes in a reprint as set out in sections 17D and 17E of that Act so that, to the extent permitted, the format and style of the reprinted enactment is consistent with current legislative drafting practice. Changes that would alter the effect of the legislation are not permitted. A new format of legislation was introduced on 1 January 2000. Changes to legislative drafting style have also been made since 1997, and are ongoing. To the extent permitted by section 17C of the Acts and Regulations Publication Act 1989, all legislation reprinted after 1 January 2000 is in the new format for legislation and reflects current drafting practice at the time of the reprint.

In outline, the editorial changes made in reprints under the authority of section 17C of the Acts and Regulations Publication Act 1989 are set out below, and they have been applied, where relevant, in the preparation of this reprint:

- omission of unnecessary referential words (such as “of this section” and “of this Act”)
- typeface and type size (Times Roman, generally in 11.5 point)
- layout of provisions, including:
  - indentation
  - position of section headings (eg, the number and heading now appear above the section)
- format of definitions (eg, the defined term now appears in bold type, without quotation marks)
- format of dates (eg, a date formerly expressed as “the 1st day of January 1999” is now expressed as “1 January 1999”)

- position of the date of assent (it now appears on the front page of each Act)
- punctuation (eg, colons are not used after definitions)
- Parts numbered with roman numerals are replaced with arabic numerals, and all cross-references are changed accordingly
- case and appearance of letters and words, including:
  - format of headings (eg, headings where each word formerly appeared with an initial capital letter followed by small capital letters are amended so that the heading appears in bold, with only the first word (and any proper nouns) appearing with an initial capital letter)
  - small capital letters in section and subsection references are now capital letters
- schedules are renumbered (eg, Schedule 1 replaces First Schedule), and all cross-references are changed accordingly
- running heads (the information that appears at the top of each page)
- format of two-column schedules of consequential amendments, and schedules of repeals (eg, they are rearranged into alphabetical order, rather than chronological).

**5 *List of amendments incorporated in this reprint  
(most recent first)***

New Zealand Institute of Chartered Accountants Amendment Act 2010 (2010 No 74): section 11

Securities Act (Amendments to Exemption Notices Affecting Investment Adviser Information) Exemption Notice 2008 (SR 2008/60): clause 3(1)

Securities Act (Real Property Proportionate Ownership Schemes) Exemption Amendment Notice (No 2) 2007 (SR 2007/337)

Securities Act (Real Property Proportionate Ownership Schemes) Exemption Amendment Notice 2007 (SR 2007/289)

Relationships (Statutory References) Act 2005 (2005 No 3): section 12

Securities Act (Real Property Proportionate Ownership Schemes) Exemption Notice 2002 (SR 2002/315): clause 3

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