

## Securities Act (Forest Enterprises Limited) Exemption Notice 2011

Pursuant to section 70B 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 (Forest Enterprises Limited) Exemption Notice 2011.
- 2 Commencement**  
This notice comes into force on 29 October 2011.
- 3 Expiry**  
This notice expires on the close of 31 December 2013.
- 4 Interpretation**
  - (1) In this notice, unless the context otherwise requires, —  
**Act** means the Securities Act 1978  
**contractual manager** means the manager contracted to manage a scheme



**general partner** means a company who is the general partner in the limited partnership

**information memorandum** means the information memorandum which includes the information prescribed in clauses 6(j) and 6(k)

**limited partner** means a person who is a limited partner in a limited partnership

**limited partnership** means a limited partnership registered under the Limited Partnerships Act 2008

**management agreement** means the management agreement between the general partner and Forest Enterprises Limited (or any person that succeeds Forest Enterprises Limited as contractual manager in accordance with the rules of the scheme)

**members of the scheme** means the holders of the specified equity securities and specified participatory securities

**notice of special resolution** means a notice of the written resolution to be voted on by the QC shareholders to determine whether to accept the offer by approving the restructure by special resolution

**offer** means an offer to the QC shareholders by –

- (i) the general partner and QC Transition Limited of specified equity securities ; and
- (ii) the limited partnership, the general partner and QC Transition Limited of specified participatory securities,

as set out in the notice of special resolution and described in the information memorandum

**partnership of qualifying companies** means any one of the partnerships of qualifying companies set out in the schedule, in which the securities were offered in a prospectus registered on the date specified in the schedule

**QC shareholders** means all holders of shares in a partnership of qualifying companies as at the transition date

**QC Transition Limited** means QC Transition Limited, a wholly owned subsidiary of Forest Enterprises Limited, and the initial holder of the specified equity securities and specified participatory securities

**qualifying company** has the meaning given to that term by section HA 2 of the Income Tax Act 2007

**Regulations** means the Securities Regulations 2009

**restructure** means all changes or modifications made to replace a partnership of qualifying companies with a limited partnership



**scheme** means the arrangement to which the specified equity securities and specified participatory securities relate following the restructure

**specified equity securities** means the shares in a general partner that will be distributed to QC shareholders under the restructure

**specified participatory securities** means the interests in a limited partnership that will be distributed to QC shareholders under the restructure

**transition date** means the date at the end of the income year before the transitional income year

**transitional income year** has the meaning given to that term by section HZ 4B of the Income Tax Act 2007

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

#### **5 Exemptions from sections 37 and 37A of the Act**

- (a) Every general partner, QC Transition Limited, and every person acting on behalf of either or both of them, are exempted from sections 37 and 37A of the Act in respect of the specified equity securities.
- (b) Every limited partnership, every general partner, QC Transition Limited, and every person acting on behalf of any or all of them, are exempted from sections 37 and 37A of the Act in respect of the specified participatory securities.

#### **6 Conditions of exemptions in clause 5**

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

- (a) all directors of Forest Enterprises Limited must be directors of the general partner at the time of the offer and allotment of the specified equity securities and specified participatory securities and must sign the information memorandum as directors of the general partner;
- (b) Forest Enterprises Limited must sign the information memorandum as a promoter of the specified equity securities and specified participatory securities;
- (c) it is a term of the offer that the restructure proceeds in accordance with a process approved by the statutory supervisor;
- (d) the specified equity securities and the specified participatory securities are only allotted to the persons who are QC

- shareholders at the transition date, ignoring any person who dies in the transitional income year;
- (e) it is a term of the offer that, following the allotment of the specified equity securities and specified participatory securities, the assets and liabilities, and associated rights and obligations, of the qualifying companies are held by the limited partnership, excluding those that are inappropriate for a limited partnership because of:
    - (i) statutory requirements relating to the structure and governance of limited partnerships; and
    - (ii) statutory requirements relating to the structure and governance of qualifying companies;
  - (f) it is a term of the offer that, following the allotment of the specified equity securities and specified participatory securities, each QC shareholder must have the same net position in a limited partnership in relation to the relevant assets and liabilities, and associated rights and obligations, as would arise on the winding up of the qualifying companies at the transition date, treating any person who dies in the transitional income year as still being a partner;
  - (g) the following documents are distributed to all QC shareholders with the notice of special resolution:
    - (i) the information memorandum;
    - (ii) the constitution for the general partner;
    - (iii) the limited partnership agreement between the general partner, the limited partners, and the limited partnership;
    - (iv) the deed of participation between the limited partnership, the general partner, and the statutory supervisor;
    - (v) the management agreement;
  - (h) the management agreement must at all times while the specified equity securities and specified participatory securities have not been cancelled, redeemed, forfeited, or in respect of which obligations under them have not been discharged, provide that:
    - (i) the contractual manager has the following duties:
      - A. to use its best endeavours and skill to ensure that the affairs of the scheme are conducted in a proper and efficient manner;

- B. to use due diligence and vigilance in the exercise and performance of its powers, functions, and duties as contractual manager;
  - C. to account to the members of the scheme for all money that it receives on behalf of the scheme;
  - D. not to pay out or invest or apply any money belonging to the scheme for any purpose that is not directed by or authorised in the deed of participation relating to the scheme;
  - E. to supply to the members of the scheme, in general meeting, any oral or written information relating to the affairs of the scheme that any member has given it reasonable notice to supply;
- (ii) the contractual manager has the same liability for any of its acts and omissions in the exercise and performance of the powers, functions, and duties as contractual manager as it would have if it exercised and performed those powers, functions, and duties as a trustee of the property of the scheme under the Act;
  - (iii) the contractual manager is entitled to the same relief from that liability as it would have if it were a trustee of the property of the scheme under the Act;
- (i) the management agreement must be approved by the statutory supervisor;
  - (j) the information memorandum must include particulars of all matters that are material for investors to make a decision on the restructure;
  - (k) without limiting (j) above, the information memorandum must include:
    - (i) a summary of the material information relating to the restructure to assist a prudent, but non-expert, QC shareholder to understand and make a decision on the restructure, to be set out near the front of the information memorandum;
    - (ii) the purpose and effect of the restructure;
    - (iii) the steps necessary to bring the restructure into effect;
    - (iv) the terms of the specified equity securities and the terms of the specified participatory securities;



- (v) a statement as to why the directors of Forest Enterprises Limited consider the restructure is in the best interests of QC shareholders;
- (vi) a summary of the material advantages, disadvantages and risks of the restructure;
- (vii) a summary of the costs of the restructure;
- (viii) an opinion from a lawyer addressed to QC shareholders comparing investors' rights and protections under the existing structure of the investment with an investment held in the proposed limited partnership structure;
- (ix) a brief description of any alternative investment structures considered by Forest Enterprises Limited;
- (x) information comparing the tax obligations arising under the existing structure of the investment with an investment held in the proposed limited partnership structure, and a report from a chartered accountant confirming the relevant information.

### SCHEDULE

#### PARTNERSHIPS OF QUALIFYING COMPANIES

Partnership	Prospectus Date
Pinedale Forest Investment	09/10/1992
Ormond Forest Investment	14/01/1993
Blairlogie Forest Investment	05/03/1993
Blairlogie North Forest Investment	07/04/1993
Hokoroa Forest Investment	18/06/1993
Hokoroa North Forest Investment	25/06/1993
Millwood Forest Investment	24/09/1993
Glenwood Forest Investment	15/10/1993
Longwood Forest Investment	03/12/1993
Majestic Pine Forest Investment	25/02/1994
Goodwood Forest Investment	18/03/1994
Homewood Forest Investment	06/05/1994
Te Karaka North Forest Investment	30/06/1994
Te Karaka Forest Investment	12/08/1994
Lowlands Forest Investment	05/10/1994
Ruakiwi Forest Investment	25/11/1994
Portview Forest Investment	09/12/1994
Portview North Forest Investment	03/02/1995
Millmore Forest Investment	12/04/1995

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Woodfield Forest Investment	20/04/1995
Springhill Forest Investment	09/06/1995
Broadview Forest Investment	16/06/1995
Cleland Forest Investment	21/07/1995
Awadale Forest Investment	25/08/1995
Ngahape Forest Investment	15/09/1995
Bloomfield Forest Investment	29/09/1995
Brentwood Forest Investment	03/11/1995
Greenhills Forest Investment	15/12/1995
Woodgate Forest Investment	09/02/1996
Clearview Forest Investment	01/03/1996
Tinui Forest Investment	12/04/1996
Winslow Forest Investment	17/05/1996
Dunsirk Forest Investment	24/05/1996
Esk Valley Forest Investment	31/05/1996
Hartley Forest Investment	05/07/1996
Ashcroft Forest Investment	11/10/1996
Pukerewa Forest Investment	03/02/1997
Glenross Forest Investment	24/04/1997
Hampton Forest Investment	24/10/1997
Standford Forest Investment	06/08/1999
Rata Hills Forest Investment	03/12/1999
Baywood Forest Investment	08/08/2001
Waterfalls Forest Investment	31/01/2004
Kowhai Forest Investment	27/02/2004

Dated at Wellington this 28<sup>th</sup> day of October 2011



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Sue Brown  
Head of Primary Regulatory Operations  
Financial Markets Authority

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### Statement of reasons

This notice, which comes into force on 29 October 2011 and expires on 31 December 2013, provides exemptions from sections 37 and 37A of the Securities Act 1978 (**Act**), in relation to general partner shares and limited partner shares in a limited partnership to holders of shares in qualifying companies, pursuant to a restructure of forestry investment schemes.

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

- the prospectus and the investment statement disclosure requirements of the Act focus on providing information about securities being offered. This offer arises in the context of a proposed restructure of forestry schemes offered and managed by Forest Enterprises Limited, a company that specialises in forestry investments. Accordingly, prospective investors are existing investors in the forestry schemes. They have previously decided to invest in the forestry schemes, and may be expected to already be familiar with the assets and business of the forestry scheme. They must now decide whether subscribing for shares in a limited partnership, to put in place a new structure for their existing forestry investment, is preferable to continuing to hold their forestry investment interests by means of shares in a qualifying company. As such, the nature of the information investors require is different from the usual prospectus and investment statement disclosure requirements of the Act:
- conditions of exemption will require investors to receive material information with the notice of special resolution to vote on the proposed restructure to enable them to make an informed decision:
- conditions relating to the statutory supervisor and Forest Enterprises Limited are imposed to protect investors' interests and property rights. In particular the conditions maintain Forest Enterprises Limited's responsibility for the offer as promoter, and the responsibility of the directors of Forest Enterprises Limited for the offer and management of the investment including as directors of the general partner (and accordingly an issuer of the securities):
- in light of the conditions relating to information provided and protections of investors' interests, we consider the exemptions will not cause significant detriment to subscribers for the securities who are members of the public in New Zealand. Further, these exemptions are limited to the offer of securities made in the context of the proposed restructure of forestry schemes managed by Forest Enterprises Limited, and provide relief from the requirements to disclose information which is not material to investors' decision whether to approve the proposed restructure. In these circumstances, the exemptions are not broader than reasonably necessary to address the matters that gave rise to the exemptions.