



Securities Act (Commonwealth Bank of Australia) Exemption Notice 2005

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).

Contents

1	Title	7	Exemption from sections 33(2), 37, 37A(1)(c) and (d), 51, 52, 54, and 54B(3) of Act
2	Commencement	8	Exemption from regulation 7A(1) of Regulations
3	Expiry	9	Conditions of exemptions in clauses 7 and 8
4	Interpretation		
5	Exemption from section 37A(1)(b) of Act		
6	Conditions of exemption in clause 5		

Notice

- 1 **Title**
This notice is the Securities Act (Commonwealth Bank of Australia) Exemption Notice 2005.
- 2 **Commencement**
This notice comes into force on the day after the date of its notification in the *Gazette*.
- 3 **Expiry**
This notice expires on the close of 31 December 2015.
- 4 **Interpretation**
(1) In this notice, unless the context otherwise requires,—
Act means the Securities Act 1978

company means the Commonwealth Bank of Australia, a company incorporated in Australia and a registered bank under the Reserve Bank of New Zealand Act 1989

Regulations means the Securities Regulations 1983

specified debt securities means subordinated notes to be issued by the company, which in certain circumstances may be transferred by the subsidiary to holders of specified equity securities in exchange for their specified equity securities

specified equity securities means redeemable preference shares to be issued by CBA Capital Australia Limited, a company incorporated in Australia and a wholly owned subsidiary of the company

subsidiary means CBA Capital Australia (No 2) Pty Limited, a company incorporated in Australia and a wholly owned subsidiary of the company.

- (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 Exemption from section 37A(1)(b) of Act

The company, the subsidiary, and every person acting on behalf of either or both of them are exempted from section 37A(1)(b) of the Act in respect of the specified debt securities.

6 Conditions of exemption in clause 5

The exemption in clause 5 is subject to the conditions that—

- (a) the prospectus and investment statement under which the holder subscribed for the specified equity securities contain a description of the specified debt securities, and the terms and conditions of the specified debt securities; and
- (b) at the time of the allotment of the specified debt securities, the holder of the specified equity securities receives a document that contains a statement that there is available from the company, on request and free of charge, a copy of the most recent annual report and financial statements (if any) of the company prepared in accordance with the Financial Reporting Act 1993 or any relevant overseas financial reporting requirements; and

- (c) the terms of the offer of the specified equity securities require that if any of the specified debt securities are transferred by the subsidiary to holders of specified equity securities, specified debt securities are transferred to all holders of specified equity securities except, if the company elects, to holders who are resident outside New Zealand and who are excluded by the company to avoid breaching the laws of the holder's country of residence; and
- (d) the specified debt securities transferred to each holder are—
 - (i) transferred on the terms and conditions disclosed to the holder in the prospectus or investment statement under which the holder subscribed for the specified equity securities; and
 - (ii) subject to the same rights as the specified debt securities transferred to all other specified equity security holders.

7 Exemption from sections 33(2), 37, 37A(1)(c) and (d), 51, 52, 54, and 54B(3) of Act

The subsidiary (to the extent that it is an issuer of the specified debt securities under section 6(7) of the Act) and every person acting on its behalf are exempted from sections 33(2), 37, 37A(1)(c) and (d), 51, 52, 54, and 54B(3) of the Act in respect of the specified debt securities.

8 Exemption from regulation 7A(1) of Regulations

The company, the subsidiary, and every person acting on behalf of either or both of them are exempted from regulation 7A(1) of the Regulations to the extent that it requires the investment statement relating to the specified debt securities to contain information about the subsidiary as an issuer of the specified debt securities.

9 Conditions of exemptions in clauses 7 and 8

The exemptions in clauses 7 and 8 are subject to the conditions that the investment statement that relates to the specified debt securities contains—

- (a) a description of the effects of the exemptions in clauses 7 and 8; and

- (b) a statement to the effect that the subsidiary is deemed to be an issuer of the specified debt securities and has obligations as an issuer under the Act and the Regulations.

Dated at Wellington this 6th day of April 2005.

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

[L.S.]

F. R. S. Clouston,
Member.

Statement of reasons

This notice comes into force on the day after the date of its notification in the *Gazette* and expires on 31 December 2015. It exempts:

- the Commonwealth Bank of Australia (**CBA**) and CBA Capital Australia (No 2) Pty Limited (**CC2L**) from section 37A(1)(b) of the Securities Act 1978 (the **Act**); and
- CC2L from sections 33(2), 37, 37A(1)(c) and (d), 51, 52, 54, and 54B(3) of the Act; and
- CBA and CC2L from regulation 7A(1) of the Securities Regulations 1983 (the **Regulations**).

The exemptions are in relation to subordinated notes to be transferred in exchange for redeemable preference shares offered by CBA Capital Australia Limited.

The Securities Commission considers that an exemption from section 37A(1)(b) of the Act is appropriate for the following reasons:

- investors will receive subordinated notes only on the occurrence of a specific exchange event, described in the prospectus and the investment statement for the redeemable preference shares;
- due to the mandatory nature of the exchange of redeemable preference shares to subordinated notes upon such an event, investors' decisions about subordinated notes are made at the

time they subscribe for the redeemable preference shares, and are based on information provided at that time.

The Securities Commission considers that exemptions from regulation 7A(1) of the Regulations and from sections 33(2), 37, 37A(1)(c) and (d), 51, 52, 54, and 54B(3) of the Act are appropriate for the following reasons:

- where Part 2 of the Act applies to an offer of previously allotted securities to the public, both the person offering the securities and the original allotter of the securities have a responsibility for the offer as issuers:
- information relating to CC2L is unlikely to be useful to potential investors in considering whether to subscribe for subordinated notes and may be confusing:
- the credit risk and payment obligations under the subordinated notes lie only with CBA. CBA is a registered bank, and exempt from certain obligations as an issuer under section 5(2C) of the Act. As it is CBA that has the rights and obligations under the subordinated notes, it is consistent with the policy in section 5(2C) of the Act to exempt CC2L in a way equivalent to CBA's exemption from the Act. If the exemptions were not granted, the application of section 5(2C) to this offer would essentially be frustrated:
- the conditions of the exemptions require potential investors to be advised that CC2L remains legally liable as an issuer.

Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 8 April 2005.

This notice is administered by the Securities Commission.
