

THIRD DRAFT

31 August, 1984

DRAFT PROPOSALS UNDER THE SECURITIES ACT 1978

FOR REGULATIONS RELATING TO

CONTRIBUTORY MORTGAGES

Securities Commission
Level 6, Greenock House,
39 The Terrace,
Wellington.

INTRODUCTION

Section 70 of the Securities Act 1978 as amended by the Securities Amendment Act 1982 authorises the Securities Commission to make recommendations for the enactment of regulations about offers to the public of interests in contributory mortgages. The recommendations are required to be developed under the scheme of consultation set out in section 70(3) of the Act, which requires the Commission to consult with interested parties and give them a reasonable opportunity to make submissions to the Commission.

The Commission published the first draft of its proposals on 7 December 1981. In preparing the draft, the Commission concluded that it would be desirable to amend certain provisions of the Act in respect of contributory mortgages. The amendments were enacted on 16 December 1982 by the Securities Amendment Act 1982. In the meantime, the Commission had given careful consideration to the submissions that had been received. The second draft of the proposals was published on 22 September 1982. This draft, with a copy of the Bill incorporating the proposed amendments to the Act, was sent to all parties who had made submissions on the first draft, and to others who asked for the documents.

The submissions on the second draft have been carefully considered by the Commission. Extensive and prolonged discussions have been held with the New Zealand Law Society,

whose members operate contributory mortgage schemes under regulations and rules made in accordance with the Law Practitioners Act 1955 which have been continued in force under the Law Practitioners Act 1982.

In November 1982 the Hon. Mr. Justice D.G. Stewart, a Judge of the Supreme Court of New South Wales, who had been appointed by the governments of the Commonwealth of Australia and of certain Australian States as a Royal Commission to enquire into drug trafficking, was appointed as a Royal Commission in New Zealand to undertake certain enquiries here. In his Report to His Excellency the Governor-General, the Royal Commissioner raised a number of questions regarding the nominee company system operated by lawyers. On 6 July 1983 the Minister of Justice established a Committee of Inquiry into Solicitors Nominee Companies under the chairmanship of the Right Hon. Mr. Justice Richardson. In addition to the questions regarding the duty of solicitors who suspect that money placed with them for investment has been obtained unlawfully, the Committee was asked to enquire into the development and purposes of the solicitors nominee companies, allegations of misuse of the system and the use of aliases by investors. The Richardson Committee recommended a number of changes to the solicitors nominee companies rules, and recommended that its report should be referred to the Securities Commission so that comparable provisions could be included in the Commission's proposals for regulations governing contributory mortgages.

The Law Practitioners (Trust Accounts) Bill, being a Bill to authorise regulations in accordance with those recommendations of the Richardson Committee that required statutory sanction, was introduced in the House of Representatives and referred to the Statutes Revision Committee, which reported back to the House on 14 June 1984, but the Bill lapsed with the dissolution of Parliament on that day. A second Bill, the Law Practitioners (Trust Accounts) Bill No. 2, in the terms recommended by the Statutes Revision Committee on the previous Bill, is now before the House. All of these developments have been carefully considered by the Securities Commission, with the result that the third draft incorporates provisions to give effect to the recommendations of the Richardson Committee in respect of persons other than solicitors.

Extensive discussions have taken place between the Securities Commission and the New Zealand Law Society relating to the application of the Securities Commission's proposals to solicitors. These have resulted in agreement to the effect that the rules and regulations under the Law Practitioners Act will be amended in relation to contributory mortgage schemes operated by solicitors to put solicitors in all essential respects on all fours with mortgage brokers who are not solicitors. On that basis, the Commission's final recommendations to the Government under the Securities Act will include an exemption for solicitors who are subject to the amended rules and regulations under the Law Practitioners

Act. The Commission considers that it is important to ensure that the conduct of solicitors in relation to monies entrusted to them by their clients should continue to be governed by the Law Practitioners Act. The amendments necessary to the Society's rules are in preparation, and it is intended that they will be brought into force at the same time as the regulations under the Securities Act on this subject come into force. This will implement the policy agreed between the Society and the Commission that in the substance of the law there should be no discrimination between the entities that offer contributory mortgage investments to the public.

The Companies Amendment (No. 2) Act 1983 made extensive changes to the law relating to the constitution and powers of companies. As a consequence, the forms of memorandum and articles of association for brokers nominee companies have been redrafted to conform with the new legislation, (see First and Second Schedules).

The third draft is being sent to all persons who have sent submissions to the Commission, and other persons may obtain copies from the Commission.

The Securities Commission will be pleased if those who wish to make submissions to the Commission will notify the Commission accordingly by letter, with an indication of the time when their submissions will be available. Letters should be addressed to the Executive Director, Securities Commission, P.O. Box 1179, Wellington, 1.

THE SECURITIES ACT (CONTRIBUTORY MORTGAGE) REGULATIONS 1984

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31 August, 1984

1. Title and commencement - (1) These regulations may be cited as the Securities Act (Contributory Mortgage) Regulations 1984.

(2) These regulations shall come into force on

2. Interpretation - (1) In these regulations, unless the context otherwise requires, -

"The Act" means the Securities Act 1978:

"Auditor" means a qualified auditor:

"Broker" means a contributory mortgage broker:

"Capital value" of land has the same meaning as in the Valuation of Land Act 1951:

"Commission" means the Securities Commission established by the Act:

"Company" has the same meaning as in the Companies Act 1955:

"Contribution" means money paid by any person, including a contributory mortgage broker, for the purpose of obtaining, or that is used to obtain, an interest in a contributory mortgage:

"Contributor" means -

- (a) A person who makes a contribution; and
- (b) A person who holds an interest in a contributory mortgage:

"Contributory mortgage" means a mortgage of land that -

- (a) Secures money owing to 2 or more persons or to a nominee on behalf of 2 or more persons, whether or not the mortgage originally secured money owing to only one person; or

- (b) Has the same priority in respect of the land as another mortgage or mortgages of that land; - and, for the purposes of this definition, money owing to not more than 5 persons as joint tenants shall be deemed to be owed to one person:

"Contributory mortgage broker" means a person (not being a mortgagor under the mortgage or any other person to whom or for whose benefit any money is lent in consideration for the mortgage given by the mortgagor) who -

- (a) Offers an interest in a contributory mortgage to the public for subscription; or

- (b) Manages interests in a contributory mortgage, being interests that have been offered to the public for subscription, whether or not that person holds beneficially any interest in that mortgage:

"Development mortgage" has the meaning assigned to it by regulation 3 of these regulations:

"Finance rate" has the same meaning as in the Credit Contracts Act 1981:

"Government valuation" in relation to any land means the capital value of the land set forth in a district valuation roll or supplementary roll, as the case may be, in accordance with the Valuation of Land Act 1951:

"Immediate relative" in relation to any person, means any spouse of that person, or any parent, brother, sister, or child of the person or spouse:

"Improvements" has the same meaning as in the Valuation of Land Act 1951:

"Interest in a contributory mortgage" means an interest in, or right to receive, the whole or part of any moneys secured by a contributory mortgage:

"Land value" has the same meaning as in the Valuation of Land Act 1951:

"Mortgagor" in relation to a contributory mortgage means -

(a) The proprietor of any estate or interest in land charged with the contributory mortgage; and

(b) Any other person to whom, or for whose benefit, money is paid in consideration for the contributory mortgage given by the proprietor of any estate or interest in land, and whose obligation to repay is secured by that contributory mortgage:

"Nominee company", in relation to a broker, means a company -

(a) That has a memorandum of association in the form set out in the First Schedule to these regulations; and

(b) That has articles of association in the form set out in the Second Schedule to these regulations; and

(c) That has a name that has a recognisable connection with the broker and ends with the words "Nominee Company Limited"; and

(d) All the shares in which are held by or on behalf of the broker:

"Nominee mortgage" means a contributory mortgage held in the name of a nominee company as a mortgagee:

"Principal sum" in relation to a contributory mortgage means the amount secured by the mortgage:

"Proprietor" means any person seised or possessed of any estate or interest in land, at law or in equity, in possession or expectancy:

"Qualified auditor" means a member of the New Zealand Society of Accountants who holds a certificate of public practice, the Audit Office, or a member, fellow, or associate of an association of accountants constituted outside New Zealand who is for the time being approved for the purpose of this Act by the Minister by notice in the Gazette:

Provided that -

(a) None of the following persons shall be qualified for appointment as auditor of the accounting or other records of a contributory mortgage broker:

(i) The contributory mortgage broker,
or a principal officer, officer,
or employee of the contributory
mortgage broker:

(ii) A person who is a partner of or in
the employment of a person
specified in subparagraph (i) of
this paragraph:

(iii) A body corporate:

(b) A person shall not be qualified for appointment as auditor of a contributory mortgage broker if he is by virtue of paragraph (a) of this

proviso, disqualified for appointment as auditor of any person that is the contributory mortgage broker's subsidiary or holding company or a subsidiary of the contributory mortgage broker's holding company, or would be so disqualified if that person were a company:

"Registered valuer" means a person who is a registered valuer within the meaning of the Valuers Act 1948:

"Registrar" means the Registrar of Companies:

"Solicitor" has the same meaning as in the Law Practitioners Act 1982:

"Trading bank" has the same meaning as in the Reserve Bank of New Zealand Act 1964:

"Trust account" means a trust account of a broker's nominee company:

"Valuation report" means a valuation report prepared by a registered valuer, but does not include a valuation report in relation to land which is or is to be charged as security for a contributory mortgage if -

(a) The registered valuer and any broker who offers interests in that mortgage to the public for subscription are associated persons; or

(b) The registered valuer and any person who is, or is to be, a mortgagor under that mortgage are associated persons; or

(c) The registered valuer, or any person employed by the registered valuer is, or at any time within 1 year of the preparation of the valuation report has been, an employee or partner of -

(i) Any broker who offers interests in that mortgage to the public for subscription; or

(ii) Any person who is, or is to be, a mortgagor under that mortgage; or

(d) Any payment to the registered valuer in connection with the preparation of that valuation report is conditional, either in whole or in part, upon the subscription of interests in the mortgage.

(2) In these regulations a person is associated with another person, if -

(a) The persons are immediate relatives; or

(b) The persons are related bodies corporate; or

(c) It is a body corporate that is managed or controlled by the other person or by any immediate relative or related body corporate of

the other person (or by any one or more of them acting together); or

- (d) It is a body corporate, and the aggregate amount of equity securities issued by it and held by the other person, or any immediate relative or related body corporate of the other person, is not less than one fifth of all equity securities issued by that body corporate; -

and "associated person" has a corresponding meaning.

(3) In these regulations, a body corporate is related to another body corporate if -

- (a) The other body is its holding company or subsidiary; or

- (b) There is another body corporate to which both bodies are related by virtue of paragraph (a) of this subclause, -

and "related body corporate" has a corresponding meaning.

(4) Where any term or expression used in these regulations is not defined in these regulations but is defined in the Act, that term or expression shall, unless the context otherwise requires, have, in these regulations, the meaning given to it by the Act.

3. Development mortgage defined - (1) For the purposes of these regulations "development mortgage" means a contributory mortgage secured by a charge over land that is being, or is intended to be subdivided or improved or on which buildings or other improvements are being, or are intended to be, erected, or altered, or developed where:

(a) The mortgagor is required to apply the whole or part of the principal sum secured, or to be secured by the mortgage towards the costs of subdividing or improving the land, or erecting, or altering, or developing any buildings or other improvements on the land, as the case may be; and

(b) The amount of the principal sum secured or to be secured, by the mortgage, or the aggregate amount of the principal sums secured or intended to be secured by the mortgage and any other mortgages ranking or intended to rank prior to or equally therewith, exceeds two-thirds of the capital value of the land as determined by a registered valuer at the time the mortgage is entered into.

(2) For the purposes of subclause (1) of this regulation, where it is intended that any buildings or other improvements existing on any such land be removed or demolished, the capital value of the land is the capital value

so determined less the value of any such buildings or improvements and the costs of removal or demolition as assessed by a registered valuer.

5. Saving - The provisions of these regulations are additional to the provisions contained in the Securities Regulations 1983.

Registrar to maintain Register

6. Registrar to maintain register of documents -

(1) The Registrar shall keep in his office a register of all documents required to be registered under these regulations.

(2) The register kept under subclause (1) of this regulation shall be open to inspection by any person on payment of such fees as may be prescribed.

(3) Any person may on payment of the prescribed fee obtain a copy of or an extract from any document or any part of a document registered under these regulations.

(4) Whenever any act is required by these regulations to be done to or by the Registrar, it shall unless the context otherwise requires, be done to or by the District Registrar of Companies at Wellington.

Registration of Brokers
and other requirements relating to Brokers

7. Brokers to be registered - (1) No person shall act as a broker unless -

- (a) That person is registered as a broker with the Registrar in accordance with these regulations; and
- (b) An auditor has consented to act as his auditor in the form contained in the Third Schedule to these regulations; and
- (c) The auditor referred to in paragraph (b) of this regulation acts as the auditor for that person; and
- (d) A nominee company carries on business or has been formed to carry on business for that person as the nominee company of that person; and
- (e) The nominee company maintains a trust account at a trading bank.

(2) No person shall act as a broker if he holds or is beneficially entitled to shares in more than one nominee company.

8. Application for registration as a broker - Every application for registration as a broker shall -

- (a) Be dated; and
- (b) Be signed by the applicant, or where the applicant is a body corporate or other body, by every director thereof; and
- (c) Contain all of the information specified in the Fourth Schedule to these regulations; and
- (d) Have attached thereto all of the documents and certificates specified in the Fifth Schedule to these regulations; and
- (e) Be accompanied by payment of the prescribed fee.

9. Registration of brokers -

The Registrar shall forthwith register as a broker every person who delivers to him an application that complies with regulation 9 of these regulations.

Annual Reports

10. Annual reports to be delivered to Registrar -

(1) Every broker shall deliver an annual report to the Registrar in accordance with these regulations.

(2) Every annual report shall -

(a) Be dated; and

(b) Be signed by the broker, or where the broker is a body corporate, by every director thereof; and

(c) Contain all of the information specified in the Sixth Schedule to these regulations; and

(d) Have attached thereto all the documents and certificates specified in the Seventh Schedule to these regulations.

(3) Subject to subclause (4) of this regulation, every annual report shall be delivered to the Registrar -

(a) In the case of a broker who is an individual, not later than the 31st day of May in each year; and

(b) In the case of a broker who is not an individual, within 3 months after the end of the broker's financial year.

(4) A broker is not required to deliver an annual report in the calendar year in which he is first registered as a broker.

11. Registration of annual reports -

The Registrar shall forthwith register every annual report that complies with regulation 10 of these regulations.

Changes in Information Supplied by Brokers

12. Notification of changes in information previously supplied - (1) Every broker shall notify the Registrar of any alteration in the information specified in the Fourth Schedule to these regulations and contained in the application for registration previously made by the broker pursuant to regulation 8 of these regulations.

(2) Every broker shall notify the Registrar of any alteration in the information specified in the Sixth Schedule to these regulations and contained in any annual report previously delivered by the broker pursuant to regulation 10 of these regulations.

(3) Notification required under subclauses (1) and (2) of this regulation shall be given -

- (a) In writing and be dated and signed by the broker,
or where the broker is a body corporate or
other body, by every director thereof; and
- (b) Within 14 days after the alteration occurs.

Suspension and Revocation of Registration

13. Suspension and revocation of registration -

(1) Where the Commission makes an order under section 44B(2) (a) of the Act, the Registrar shall upon receiving a copy of that order under the seal of the Commission, suspend the registration of the broker named in the order for such period of time as is specified in the order.

(2) Where the Commission makes an order under section 44B(2) (b) of the Act, the Registrar shall upon receiving a copy of that order under the seal of the Commission, revoke the registration of the broker named in the order.

(3) Where a broker fails to comply with the requirements of regulation 10 of these regulations, the Registrar may, on giving not less than 14 days written notice to the broker, suspend the registration of the broker until the broker complies with those requirements.

Nominee Companies

14. Restrictions on business carried on by nominee companies - (1) Notwithstanding section 15A of the Companies Act 1955 and notwithstanding anything contained in its Memorandum or Articles of Association, no nominee company shall carry on any business or do any act, matter or thing except in accordance with or incidental to the following objects:

- (a) To act as a nominee company holding mortgages charges debentures instruments by way of security and securities of all kinds (whether contributory or otherwise) or any interest therein upon a bare trust for the legal or beneficial owner or owners thereof and as such nominee to lend moneys:
- (b) On behalf of the beneficial owner or owners to exercise and enforce all and any powers, remedies or benefits conferred by or attaching to or resulting from or incidental to or consequent upon the holding of any such security or interest therein:
- (c) On behalf of the beneficial owner or owners to buy in at the sale by the Company as mortgagee of any land subject to any such mortgage or interest therein and to resell such land or any part or parts thereof by public auction,

private contract or otherwise and pending such resale to exercise all or any of the rights and powers of an owner of land and pay and discharge the rates and other outgoings in respect thereof and generally manage the same:

- (d) On behalf of the beneficial owner or owners to execute and give all such variations, discharges, transfers, instruments, acknowledgments and other documents and perform all such acts and things as may be required in respect of any security or interest therein held by the Company:
- (e) To act as a nominee company holding such investments as are specified in subsection (1) of section 4 of the Trustee Act 1956 as investments in which a trustee may invest trust funds in his hands upon a bare trust for the legal or beneficial owner or owners thereof:
- (f) To establish and maintain a trust account at a trading bank and to act as a nominee company making deposits and withdrawals of moneys therein upon a bare trust for the legal or beneficial owner or owners thereof.

(2) No broker shall cause or permit the nominee company of that broker to carry on any business or do any act, matter or thing except in accordance with or incidental to the objects specified in subclause (1) of this regulation.

(3) No director or other officer of a nominee company shall cause or permit a nominee company of which he is a director or officer to carry on any business or do any act, matter or thing except in accordance with or incidental to the objects specified in subclause (1) of this regulation.

Trust Accounts

15. Trust accounts - (1) A broker shall not cause or permit his nominee company's trust account -

(a) To be overdrawn; or

(b) To be used for any purposes other than those of receiving, holding, and disbursing contributions and payments of principal and interest and other moneys received on behalf of contributors.

(2) A broker shall not permit the account of any person in the trust account of that broker's nominee company to be overdrawn.

(3) A broker shall not permit any account in the trust account of that broker's nominee company to be opened for a contributor in a name which he believes, or has reason to believe, is not the true or commonly used name of that contributor unless he is satisfied on reasonable grounds (of which the burden of proof shall be upon the broker) that there is a lawful reason for so doing.

(4) Where any account in the trust account of a broker's nominee company is opened for a contributor in a name which the broker knows is not a true or commonly used name of that contributor, the account shall be clearly marked in its title under the name assumed or adopted by the contributor for the

purpose of that account as well as the true or commonly used name of that contributor.

Contributions and Repayments to be
Held in Trust Account

16. Mortgage contributions and repayments to be held in trust account - (1) Every broker shall ensure that any contribution paid to him or to his nominee company by any person for the purpose of obtaining an interest in a contributory mortgage (not being an interest owned by the broker) is forthwith paid into the trust account of that broker's nominee company.

(2) Subject to subclauses (3), (4) and (8) of this regulation, contributions paid into the trust account of the broker's nominee company shall be held in trust for the contributor pending -

(a) Payment to or on behalf of the mortgagor or the vendor of an interest in a contributory mortgage, as the case may be; or

(b) Repayment to the contributor.

(3) A contribution may, pending payment to or on behalf of the mortgagor, or the vendor of an interest in a contributory mortgage, be invested by the broker on behalf of the contributor in any investment in which trust funds may be invested pursuant to section 4(1) of the Trustee Act 1956 if -

(a) The authority signed by the contributor authorises the broker to so invest the money; and

- (b) The investment is made either in the name of the contributor or in the name of the broker's nominee company as trustee for the contributor.

(4) Subject to subclause (8) of this regulation, every broker shall ensure that any contribution held in the trust account of his nominee company or invested pursuant to subclause (3) of this regulation, as the case may be, for more than 60 days, is repaid to the contributor forthwith after receipt by the broker of a request for repayment by the contributor.

(5) Subject to subclauses (6), (7) and (9) of this regulation, every broker shall ensure that -

- (a) Every payment of interest, repayment of principal, and other money received by him or his nominee company from a mortgagor under a mortgage in respect of which he acts as broker; and

- (b) All money received by him or his nominee company as consideration for a transfer of any interest in a contributory mortgage in respect of which he acts as broker, -

is immediately paid into the trust account of his nominee company and is forthwith thereafter paid to the contributors entitled thereto.

(6) Any money referred to in subclause (5) (a) or (b) of this regulation may be applied by the broker in reimbursement

of any payment made by the broker for or on behalf of the contributor.

(7) Money held in the trust account of a broker's nominee company pursuant to subclause (5) of this regulation may be retained in that trust account if -

- (a) The contributor entitled to the money gives a general or special authority to the broker which authorises the money to be applied as a contribution to any other contributory mortgage; and
- (b) The broker gives notice in writing, forthwith upon receipt of the money, to the contributor entitled to the money that the money is held in the trust account in accordance with the general or special authority given by the contributor; and
- (c) The money is held in the trust account in accordance with the general or special authority.

(8) Notwithstanding anything contained in this regulation, money held in the trust account of a broker's nominee company may be paid to the broker or any other person if -

- (a) The contributor gives written authority to the broker specifying the amount and rate of the

payments and the person to whom they may be made; and

(b) The payments are made in accordance with that authority.

(9) For the purposes of this regulation, contributions of a contributor which are credited to the account of a mortgagor under an existing contributory mortgage for the purpose of repaying whether directly or indirectly, the contributions of another contributor, shall be deemed to be contributions which are paid to a vendor of an interest in a contributory mortgage.

17. Restrictions on distribution of contributions to mortgagor or vendor of mortgage interest - (1) A broker shall not permit any contributions to be paid out of the trust account of his nominee company to or applied on behalf of a mortgagor under a contributory mortgage or a vendor of an interest in a contributory mortgage in respect of which he acts as broker unless -

(a) The contributions are paid or applied in accordance with a general authority; or

(b) The contributions are paid or applied in accordance with a special authority.

(2) Every general authority shall be in the form set out in the Eighth Schedule to these regulations and shall be dated, properly completed and signed by the contributor.

(3) Every special authority shall be in the form set out in the Ninth Schedule to these regulations and shall be dated, properly completed and signed by the contributor.

(4) Before any money is paid or applied in accordance with a special authority authorising investment in a development mortgage the broker shall ensure that the contributor has received -

(a) A statement signed by the broker containing the information and other matters specified in the Tenth Schedule to these regulations; and

- (b) A written valuation report with respect to the land charged as security for the mortgage prepared and signed by a registered valuer that contains the information and other matters specified in the Twelfth Schedule to these regulations.

(5) Before any money is paid or applied in accordance with a special authority authorising investment in a mortgage not being a development mortgage, the broker shall ensure that the contributor has received -

- (a) A written statement signed by the broker containing the information and other matters specified in the Eleventh Schedule to these regulations;
and

- (b) A valuation report with respect to the land charged as security for the mortgage prepared and signed by a registered valuer that contains the information and other matters specified in the Twelfth Schedule to these regulations.

(6) Nothing in paragraph (b) of subclause 5 of this regulation applies where the broker, on reasonable grounds considers that it is unnecessary for the protection of the contributor to obtain a valuation report with respect to the land charged as security for the mortgage.

(7) For the purposes of this regulation the requirements of paragraph (a) of subclause (4) and paragraph (a) of

subclause (5) shall be deemed to be satisfied if the special authority refers to a document previously received by the contributor that -

- (a) Relates to the contributory mortgage in respect of which his contributions are to be paid or applied; and
- (b) Contains the information and other matters required by those paragraphs.

subclause (5) shall be deemed to be satisfied if the special authority refers to a document previously received by the contributor that -

- (a) Relates to the contributory mortgage in respect of which his contributions are to be paid or applied; and
- (b) Contains the information and other matters required by those paragraphs.

18. Further restrictions on distribution of contributions to mortgagor or vendor of mortgage interest -

(1) A broker shall not permit any contributions to be paid out of the trust account of his nominee company to or applied on behalf of a mortgagor under a contributory mortgage or a vendor of an interest in a contributory mortgage in respect of which he acts as a broker if -

(a) At the time of the payment the broker knows or ought to know that any statement received by any contributor to that mortgage pursuant to regulation 17(4) (a) or 17(5) (a), as the case may be, or regulation 19 of these regulations is:

(i) False or misleading in a material particular (whether or not the statement became so misleading as a result of a change of circumstances occurring after the statement was given to the contributor); or

(ii) Inconsistent with the mortgage; or

(b) After that payment the principal sum secured by the mortgage would exceed the amount specified in any special authority given by the contributor or in the mortgage, as the case may be, as the principal sum of the mortgage; or

(c) The date when the final balance of the principal sum is due and payable under the mortgage is

later than any date specified in any special authority given by any contributor to that mortgage as the date for repayment of contributions to that contributor; or

- (d) At the time of the payment, the total amount of the contributions paid to, or applied on behalf of, the mortgagor under the mortgage is less than the principal sum of the mortgage.

(2) Nothing in subclause (1)(d) of this regulation applies in respect of any payment if -

- (a) The general or special authority held by the broker from each of the contributors to the mortgage, authorises the broker to pay the principal sum to the mortgagor by instalments; or
- (b) In the case of a development mortgage, at the time of the payment there are in the trust account of the broker's nominee company or in investments made pursuant to regulation 16(3) of these regulations, contributions made by contributors to that mortgage, which equal in aggregate a sum equal to the amount of the principal sum of the mortgage less the amount of any instalments which have previously been paid or applied.

(3) A broker shall not permit any contributions to be paid out of the trust account of his nominee company to or

applied on behalf of a mortgagor under a contributory mortgage or a vendor of an interest in a contributory mortgage in respect of which he acts as a broker unless -

(a) The mortgage, executed by the mortgagor and in a form that is registrable under the Land Transfer Act 1952, has been received by the broker or a solicitor acting on his behalf; and

(b) All buildings and improvements situated upon the property which is charged with the mortgage, are insured to the full insurable value thereof, against loss or damage by fire and other extraneous perils by an insurance office in New Zealand approved by the broker, and the policy of insurance names the broker's nominee company or all of the contributors to the mortgage, as the case may be, as loss payees thereunder; and

(c) The provisions of the Credit Contracts Act 1981 have been complied with.

(4) Where the mortgage is a development mortgage which provides that the principal sum is to be paid to the mortgagor in instalments, no instalment shall be paid unless -

(a) An independent valuation report has been obtained; and

(b) The total amount advanced under the mortgage does not at any time exceed the amount certified by the registered valuer as suitable for an advance; and

(c) The balance of the principal sum not yet advanced is adequate to complete the development on the basis of the registered valuer's report.

(5) For the purposes of this regulation, contributions of a contributor which are credited to the account of a mortgagor under an existing contributory mortgage for the purpose of repaying, whether directly or indirectly, the contributions of another contributor, shall be deemed to be contributions which are paid to a vendor of an interest in a contributory mortgage.

19. Information to be given to contributor where advances made to mortgagor pursuant to general authority - Not later than 7 days after any contribution is paid or credited in accordance with a general authority pursuant to regulation 16 of these regulations, the broker shall send to the contributor a written statement containing the following information and other matters concerning the contributory mortgage in respect of which his contributions have been paid or credited -

(a) The amount of money paid:

(b) The information and other matters specified in the Eleventh Schedule to these regulations.

Duties of Brokers

20. Offers to the public of interests in contributory mortgages - (1) No broker shall offer an interest in a contributory mortgage to the public unless the broker, after proper enquiry, is satisfied on reasonable grounds -

(a) of the ability of the proposed mortgagor to -

(i) Meet instalments of principal and interest due under the mortgage; or

(ii) Meet instalments of interest and repay the principal sum on maturity (either by refinancing or otherwise); and

(b) of the financial standing of any proposed guarantor; and

(c) In any case where the broker does not supply to the contributor a valuation report pursuant to regulation 17(6) of these regulations, that the aggregate of the principal sum secured by the mortgage and the amount of all charges ranking ahead or equally therewith does not exceed two-thirds of the value of the property to be charged by the mortgage.

21. Contributory mortgages to be in name of contributor or nominee company - It is the duty of every broker to ensure that every contributory mortgage in respect of which he acts as broker states -

(a) If the mortgage is to be a nominee mortgage, the name of the broker's nominee company as mortgagee; or

(b) If the mortgage is to be in the name of the contributors, the names of all the contributors to that mortgage as mortgagees.

22. Registration and custody of contributory mortgages - (1) Every broker shall ensure, in respect of every contributory mortgage for which he acts as broker, that -

(a) The mortgage is registered under the Land Transfer Act 1952 as soon as possible after it has been executed; and

(b) The mortgage, any collateral securities, and where the mortgage is a first mortgage, the certificate of title to the land charged and any policies of insurance, are at all times safely held on behalf of the contributors.

(2) If any contributory mortgage in respect of which a broker acts is not registered under the Land Transfer Act 1952 within 60 days after the principal sum secured thereby has been paid to, or applied on behalf of, the mortgagor, the broker shall promptly send written notification of the fact to all of the contributors to that mortgage, together with a statement of the reasons for the delay and when registration can be expected.

23. Duty of broker to ensure continuing management of contributory mortgages - (1) This regulation applies to -

(a) A broker:

(b) The personal representatives of an individual who, at the time of his death, was a broker.

(2) Subject to the Act and these regulations, no person to whom this regulation applies shall cease to act as a broker in respect of any contributory mortgage unless -

(a) In the case of a nominee mortgage -

(i) Another person who is registered under these regulations as a broker has agreed to act as broker in respect of the management of the mortgage; and

(ii) All of the contributors having an interest in the mortgage agree in writing to the appointment of that person to act as broker in respect of the mortgage; and

(iii) That person delivers to the person so appointed everything in his possession or control, or in the possession or control of his nominee company, relating to the mortgage including, without limitation -

(A) The mortgage; and

(B) All policies of insurance properly endorsed relating to the mortgage; and

(C) Any money held in the trust account of the broker's nominee company on behalf of the contributors to the mortgage; and

(iv) That person delivers to the person so appointed a memorandum of transfer (registrable under the Land Transfer Act 1952) transferring the interest of the broker's nominee company to the nominee company of the person so appointed; or

(b) In the case of a mortgage not being a nominee mortgage -

(i) All of the contributors having an interest in the mortgage agree in writing that that person is no longer required to collect moneys payable to them under the mortgage; and

(ii) The signed, stamped, and registered mortgage has been delivered to a person, approved in writing by all of the contributors, for holding in safe custody on their behalf; or

(c) All money payable to the contributors under the mortgage has been paid to them.

24. Restriction on transfer of nominee mortgages -

(1) A broker shall not permit a nominee mortgage in respect of which he acts as broker to be mortgaged or transferred to another person unless -

(a) The contributors receive written notice of the proposed mortgage or transfer (including the name of the proposed mortgagee or transferee and the consideration to be paid therefor); and

(b) After receiving such notice, the contributors consent in writing to the mortgage or transfer.

(2) A broker shall not permit the interest of a contributor in a nominee mortgage in respect of which he acts as broker to be mortgaged or transferred to another person

unless -

(a) The contributor receives written notice of the proposed mortgage or transfer and, if he so requires it, the name of the proposed mortgagee or transferee and the consideration to be paid therefor; and

(b) After receiving such notice, the contributor consents in writing to the mortgage or transfer.

25. Restrictions on creation of prior charges and discharges of nominee mortgages - (1) A mortgagor under a nominee mortgage shall not, except with the prior written consent of all contributors, give over the mortgaged land any other mortgage or charge that ranks prior to or equally with the nominee mortgage.

(2) Subject to subclause (3) of this regulation, no broker or any other person shall permit a nominee mortgage to be discharged (whether wholly or partially) before payment to or on behalf of the contributors thereto of all money due under the mortgage, without the prior written consent of all contributors.

(3) Nothing in subclause (2) of this regulation applies to the discharge of a development mortgage if -

(a) The mortgage authorises partial releases to be given; and

(b) It is a condition of the mortgage that before a partial release is given a written valuation report prepared and signed by a registered valuer shall be obtained which states that in the opinion of the valuer the value of the balance of the land or interest in land after the partial release provides adequate security for the principal sum secured by the mortgage; and

- (c) The mortgage states any other conditions on which partial releases may be given; and
 - (d) The statement given to contributors pursuant to regulation 16(4)(a) of these regulations states that partial releases of the mortgage may be given and also states the conditions on which partial releases may be given; and
 - (e) All of those conditions are fulfilled.
- (4) Nothing in subclause (2) of this regulation applies to the discharge of a nominee mortgage, not being a development mortgage, if -
- (a) The mortgage authorises partial releases to be given; and
 - (b) The mortgage states any conditions on which partial releases may be given; and
 - (c) The statement given to contributors pursuant to regulation 16(5)(a) or regulation 19 of these regulations, as the case may be, states that partial releases of the mortgage may be given and also states any conditions on which partial releases may be given; and
 - (d) All of those conditions are fulfilled.

26. Default by mortgagor - (1) Subject to subclause (3) of this regulation, every broker shall give written notice to the contributors to every contributory mortgage in respect of which he acts as broker of -

(a) A default for at least 30 days by the mortgagor in the payment of interest due under the mortgage or in the repayment of any part of the principal sum:

(b) Any other material default by the mortgagor under the mortgage which is not remedied within 30 days after the default is or should have become known to the broker.

(2) Every notice under subclause (1) of this regulation shall specify the action the broker is taking or proposes to take in respect of the default.

(3) Nothing in subclauses (1) and (2) of this regulation applies if -

(a) The payments due to the contributors under the mortgage are promptly paid by the broker or any guarantor or indemnifier under the mortgage;
and

(b) The default does not materially affect the contributors.

(4) A broker shall not charge the contributors to a contributory mortgage in respect of which he acts as a broker

any sum in connection with the exercise by the broker on behalf of the contributors of the powers of the mortgagee under the mortgage except for disbursements including reasonable legal fees actually incurred by the broker.

(5) Where the mortgage is a nominee mortgage, the broker shall, within 7 days after the broker knows of their registration, give written notice to all the contributors to that mortgage of any charges which are registered in respect of the land which is charged with the mortgage which have, or may have, priority over, or rank equally with, that mortgage.

27. Broker to furnish names of contributors - Where the contributors to a contributory mortgage have not been paid any sums of principal or interest within 7 days after the same are due, the broker who acts in respect of that mortgage shall, forthwith after he receives a written request to do so from any contributor to that mortgage, send to that contributor a list of the names and last known addresses of all the contributors to that mortgage.

28. Meetings of contributors - (1) A broker who acts in respect of a contributory mortgage may, from time to time, summon a meeting of all the contributors to the mortgage.

(2) Every broker who acts in respect of a contributory mortgage shall, at the request in writing of his auditor, summon a meeting of all the contributors to the mortgage.

(3) The auditor of a broker may, from time to time, summon a meeting of all the contributors to a contributory mortgage in respect of which that broker acts.

(4) Any auditor who summons a meeting pursuant to subclause (3) of this regulation shall, in summoning that meeting, be deemed to be acting only as the agent of the contributors.

(5) In the case of a default to which subclause (1) of regulation 26 of these regulations applies, a broker shall, if requested by the contributors to whom not less than one third of the principal sum secured by the mortgage is owing (whether due for payment or not), summon a meeting of all contributors to the mortgage.

(6) Every meeting of contributors to a contributory mortgage shall be summoned by sending by post a notice, specifying the time and place of the meeting, to every contributor at his last known address not later than 14 days before the date of the proposed meeting.

(7) Every meeting summoned pursuant to this regulation shall be held under the chairmanship of the person appointed as chairman by the contributors present at the meeting.

(8) All matters calling for a decision at any meeting summoned pursuant to this regulation shall be decided by a majority of the contributors present and voting.

(9) At any meeting summoned pursuant to this regulation each contributor is entitled to one vote for each \$100 of the principal sum secured by the mortgage and owed to that contributor (whether due for repayment or not).

(10) The decision of any meeting summoned pursuant to this regulation shall be binding on the broker.

29. No contracting out - The provisions of these regulations shall have effect notwithstanding any provision to the contrary in any contract or agreement.

Accounting Records and Audits

30. Brokers to keep register and accounting records -

(1) Every broker shall at all times keep a register, in a form approved by his auditor, of all contributory mortgages in respect of which he acts as a broker, and shall enter in that register the following particulars in respect of each mortgage -

- (a) A description of the mortgage sufficient to identify it; and
- (b) The principal sum secured by the mortgage; and
- (c) The dates when interest is payable under the mortgage; and
- (d) The date or dates when the principal sum or any portion thereof is repayable; and
- (e) The names and addresses of all of the contributors to the mortgage; and
- (f) The amount of each contributor's contributions to the mortgage; and
- (g) Such other particulars as the auditor may specify.

(2) Every broker shall at all times keep books of account, in a form approved by his auditor, in respect of the trust account of the broker's nominee company, which books of

account shall contain a record of all transactions effected through that trust account sufficient to identify each contributor on whose behalf such transaction was effected.

(3) Every broker shall at all times keep, in a form approved by his auditor, such other accounting records as will -

- (a) Correctly record and explain the transactions of the broker and the broker's nominee company in each contributory mortgage in respect of which he acts as a broker; and
- (b) At any time enable information relating to each mortgage and each contributor in that mortgage to be ascertained; and
- (c) Will at any time enable the auditor to determine whether the broker is complying with the Act and these regulations.

31. Auditors - (1) Subject to subclauses (2), (3) and (5) of this regulation, every person who has consented to act as auditor for a broker shall audit the accounting and other records relating to the broker's nominee company and the contributory mortgages in respect of which the broker acts and the register required to be kept pursuant to regulation 30(1) of these regulations, in order to ascertain whether -

- (a) The broker is complying with the Act and these regulations; and
- (b) The broker is keeping proper accounting records in accordance with regulation 30 of these regulations; and
- (c) Money is being received and disbursed in accordance with the terms of the general authorities or special authorities given by the contributors.

(2) For the purposes of carrying out such audit the auditor shall examine the accounting and other records relating to the broker's nominee company and the contributory mortgages in respect of which he acts and the register required to be kept pursuant to regulation 30(1) of these regulations so that -

- (a) At least one examination is made during the first, second and third quarters of the broker's financial year; and

(b) The fourth examination and the audit is completed not later than 30 days after the close of the broker's financial year.

(3) An auditor shall not be required to audit any records relating to a contributory mortgage if -

(a) The mortgage is registered under the Land Transfer Act 1952; and

(b) The mortgagees named in the mortgage are the contributors to the mortgage; and

(c) Each of the contributors has instructed the broker in writing that all moneys payable to the contributors under the mortgage are to be paid directly to the contributors.

(4) Forthwith after the completion of each examination of the accounting and other records of the broker and the broker's nominee company and the register required to be kept pursuant to regulation 30(1) of these regulations, the auditor shall -

(a) Send to the broker a report of the results of the examination or the completed audit, as the case may be; and

(b) If the report discloses any breach of the Act, or these regulations, or the terms of any general authority or special authority, send a copy of the report to the Registrar.

(5) A person who has consented to act as auditor for a broker shall not be required to comply with this regulation if -

- (a) He sends to the Registrar written notice stating that he has ceased to act as an auditor for the broker named in the notice; or
- (b) Another auditor has consented in accordance with these regulations to act for the broker and that consent has been given to the Registrar.

Miscellaneous

32. Persons to whom notice to be given by broker pursuant to section 57A(2)(c) of the Securities Act 1978 - For the purposes of section 57A(2)(c) of the Act the contributors to a contributory mortgage in respect of a breach of which a broker has become aware are the persons to whom notice of the breach is required to be given.

33. Offences - Every person who contravenes, or fails to comply with, any provision of these regulations commits an offence, and is liable on summary conviction to a fine not exceeding \$5,000.

FIRST SCHEDULE

Reg. 2

FORM OF MEMORANDUM OF ASSOCIATION OF NOMINEE COMPANY

The Companies Act 1955
 Private Company limited by shares

MEMORANDUM OF ASSOCIATION

OF

..... NOMINEE COMPANY LIMITED

1. THE name of the Company is
 Nominee Company Limited.
2. THE Company is a Private Company.
3. THE liability of the members is limited.
4. THE share capital of the Company is dollars
 (\$) divided into shares of one dollar (\$1)
 each.

WE, the several persons whose names, addresses and descriptions are subscribed hereto, are desirous of being formed into a Company in pursuance of this Memorandum of Association and we respectively agree to take the number of shares in the capital of the Company set opposite our respective names.

DATED this day of 19 .

Name in full	Signature	Number of Shares	Witness
Description		taken by each	
and address		subscriber	

SECOND SCHEDULE

Reg. 2

FORM OF ARTICLES OF ASSOCIATION OF NOMINEE COMPANY

Preliminary

1. The regulations contained in Table A in the Third Schedule to the Companies Act 1955 and hereinafter called Table A are hereby adopted by the company with and subject to the exclusions, conditions and modifications hereinafter mentioned.

Interpretation

2. In these Articles, "Commission" means the Securities Commission established by section 9 of the Securities Act 1978.

Share Capital and Variation of Rights

3. Regulations 2 to 5 (both inclusive) of Table A are hereby excluded. The holders of the shares in the capital of the company shall be the persons acting as brokers (as that term is defined in Regulation 2(1) of the Securities Act (Contributory Mortgage) Regulations 1984) and persons acting on their behalf:

PROVIDED ALWAYS that the Commission shall be entitled to execute in the name of any shareholder or of the personal representative of any shareholder, a share transfer in favour of any person, firm or corporation and to procure the same to be registered in the books of the company.

Transfer of Shares

4. Regulation 24 of Table A is hereby excluded. The directors may, in their absolute and uncontrolled discretion, refuse to register any transfer of shares other than a transfer pursuant to the proviso to Article 3 hereof and shall not be bound to give any reason therefor.

5. Regulation 76 of Table A is hereby excluded. No director shall be entitled to remuneration or to the payment of any expenses incurred by him.

6. Regulation 77 of Table A is hereby modified by inserting the following proviso at the end thereof:

"PROVIDED ALWAYS, that no director appointed by the Commission pursuant to section 44B of the Securities Act 1978, shall be subject to any shareholding qualification."

7. Clauses (2) and (4) of Regulation 84 of Table A are hereby excluded.

8. A director may vote in respect of any contract or arrangement in which he is interested and if he does so his vote shall be counted and he shall be counted in the quorum present at the meeting.

9. A director notwithstanding his interest may be counted in the quorum present at any meeting whereat he or any other director is appointed to hold any office or place or profit under the company, or whereat the terms of such

appointment are arranged and he may vote on any such appointment or arrangement.

10. Regulation 88 of Table A is hereby modified by deleting subsection (f) thereof and by inserting the following new subsection (f):

"(f) Is removed by the Commission pursuant to section 44B of the Securities Act 1978."

11. Regulations 89 to 97 inclusive of Table A are hereby excluded.

Proceedings of Directors

12. Regulation 100 is hereby modified by inserting the following proviso at the end thereof:

"PROVIDED ALWAYS, that if the Commission appoints any person or persons as a director or directors in place of all of the directors of the company pursuant to section 44B of the Securities Act 1978, such director or directors shall constitute a quorum for the transaction of the business of the directors."

13. Regulation 106 of Table A is hereby modified by inserting the following at the end thereof:

"Notwithstanding the foregoing provisions of this Article, a resolution authorising the execution of discharges,

partial discharges and variations of mortgages and other securities and memoranda of priority of mortgages shall be valid and effectual if signed by not less than two directors where the number of directors is two or more and by the sole director where there is only one director."

Secretary

14. Regulations 110 and 111 of Table A shall apply to the company but shall be subject to the provisions of section 44B of the Securities Act 1978.

The Seal

15. Regulation 113 of Table A is hereby excluded. The seal shall be held by the secretary of the company and shall only be used by the authority of a resolution of the directors and every instrument to which the seal is affixed shall be signed by two directors or by one director and the secretary.

Accounts

16. Regulation 123 of Table A is hereby modified by adding at the end thereof, "and regulation 30 of the Securities Act (Contributory Mortgage) Regulations 1984."

17. The directors shall ensure that all moneys paid by any person for the purpose of obtaining an interest in a contributory mortgage and all moneys payable in respect of any

security or interest therein held by the company are paid directly to the company's trust account and are disbursed from the company's trust account in accordance with the provisions of the Securities Act (Contributory Mortgage) Regulations 1984.

DATED this day of 19

Name in full

Description and address

Signature

Witness

THIRD SCHEDULE

Reg. 7(1)(b)

CONSENT OF AUDITOR

Pursuant to Regulation 7 of the Securities Act
(Contributory Mortgage) Regulations 1984, I, 【Full name of
auditor】 of 【Full address of auditor】

- (a) Hereby consent to act as auditor for
【Full name of broker】 of 【Full address of broker】;
and
- (b) Confirm that I will continue to so act until I am
released from my obligations as auditor in
accordance with Regulation 31(5) of those
regulations.

DATED this

day of

19

Signature of auditor

FOURTH SCHEDULE

Reg. 8(c)

INFORMATION TO BE CONTAINED IN
APPLICATION FOR REGISTRATION AS A BROKER

1. Where the applicant is an individual, the full name and address of the applicant.
2. Where the applicant is a body corporate, the full name of the applicant, the address of its registered office and the full name and address of every director of the applicant.
3. The full name of the applicant's nominee company and the address of its registered office.
4. The full name and address of every person who is an officer, director or shareholder of the applicant's nominee company.
5. The name and address of the trading bank where the trust account of the applicant's nominee company is kept.
6. The name and address of the applicant's auditor.

FIFTH SCHEDULE

Reg. 8(d)

DOCUMENTS AND CERTIFICATES TO BE ATTACHED TO
APPLICATION FOR REGISTRATION AS A BROKER

1. A copy of the Memorandum of Association of the applicant's nominee company.
2. A copy of the Articles of Association of the applicant's nominee company.
3. (1) If the applicant is an individual, the latest audited financial statements of the applicant's business, which shall -
 - (a) Be dated as at a date not earlier than 18 months before the date that the application is delivered to the Registrar; and
 - (b) Include a statement of assets and liabilities and a statement of income and expenses; and
 - (c) Include as a note thereto, a description and quantification of any losses incurred by contributors arising from any contributory mortgage in respect of which the applicant acted as broker during the accounting period for which the financial statements have been made up; and
 - (d) Be signed by the applicant.

(2) If the applicant is not an individual, the latest audited financial statements of the applicant, which shall -

- (a) Be dated as at a date not earlier than 18 months before the date that the application is delivered to the Registrar; and
- (b) Include a balance sheet and a profit and loss account; and
- (c) Include as a note thereto, a description and quantification of any losses incurred by contributors arising from any contributory mortgage in respect of which the applicant acted as broker during the accounting period for which the financial statements have been made up; and
- (d) Be signed by every director of the applicant.

(3) For the purposes of paragraph (c) of subclause (1) and paragraph (c) of subclause (2) of this clause, the term "any losses incurred by contributors arising from any contributory mortgage" includes -

- (a) Any contribution, or any part thereof, which has been paid to a mortgagor under a contributory mortgage and which has not been repaid to the contributor within 6 months of the due date; and
- (b) Any sum due by way of interest to a contributor which has not been paid to the contributor within 6 months of the due date.

4. A copy of the auditor's report on the financial statements of the applicant.

5. The consent of the applicant's auditor being the auditor named in clause 6 of the Fourth Schedule to the regulations, which consent shall be in the form set out in the Third Schedule to these regulations and which shall be signed not earlier than 14 days before the date the application is delivered to the Registrar.

SIXTH SCHEDULE

Reg. 10(2)(c)

INFORMATION TO BE CONTAINED IN
ANNUAL REPORT OF BROKER

1. (1) Where the applicant is an individual, the full name and address of the applicant.
- (2) Where the applicant is a body corporate, the full name of the applicant, the address of its registered office and the full name and address of every director of the applicant.
2. The full name of the broker's nominee company and the address of its registered office.
3. The full name and address of every person who is an officer, director or shareholder of the broker's nominee company.
4. The name and address of the trading bank where the broker's nominee company's trust account is kept.
5. The name and address of the broker's auditor.

SEVENTH SCHEDULE

Reg. 10(2)(d)

DOCUMENTS AND CERTIFICATES TO BE ATTACHED TO
ANNUAL REPORT OF A BROKER

1. (1) If the broker is an individual, the latest audited financial statements of the broker's business, which shall -
 - (a) Include a statement of assets and liabilities and a statement of income and expenses; and
 - (b) Include as a note thereto, a description and quantification of any losses incurred by contributors arising from any contributory mortgage in respect of which the broker acted as a broker during the accounting period for which the financial statements have been made up; and
 - (c) Be signed by the broker.

- (2) If the broker is not an individual, the latest audited financial statements of the broker, which shall -
 - (a) Include a balance sheet and a profit and loss account; and
 - (b) Include as a note thereto, a description and quantification of any losses incurred by contributors arising from any contributory mortgage

in respect of which the broker acted as a broker during the accounting period for which the financial statements have been made up; and

(c) Be signed by all of the directors of the broker.

(3) For the purposes of subparagraph (b) of subclause (1) and subparagraph (b) of subclause (2) of this clause, the term "any losses incurred by contributors arising from any contributory mortgage" includes -

(a) Any contribution, or any part thereof, which has been paid to a mortgagor under a contributory mortgage and which has not been repaid to the contributor within 6 months of the due date; and

(b) Any sum due by way of interest to a contributor which has not been paid to the contributor within 6 months of the due date.

2. A copy of the auditor's report on the financial statements which shall contain a statement by the auditor as to whether -

(a) The auditor has completed the audit for the broker's most recent financial year pursuant to regulation 31 of these regulations; and

(b) During that period, the broker has complied with the Act and these regulations; and

- (c) During that period, the broker has kept proper accounting records in accordance with regulation 30 of these regulations; and
- (d) During that period, money has been received and disbursed by the broker and the broker's nominee company in accordance with the terms of the authorities given by contributors.

EIGHTH SCHEDULE

Reg. 17(2)

FORM OF GENERAL AUTHORITY FOR
INVESTMENT ON FIRST MORTGAGE

To [Name of Broker]

I/We hereby authorise and instruct you to invest on my/our behalf the capital sum specified below in accordance with the Securities Act (Contributory Mortgage) Regulations 1984 and the following instructions:

- (1) The capital sum shall be invested in one or more first registered mortgages of freehold land (not being development mortgages within the meaning of those regulations) including contributory mortgages and nominee mortgages within the meaning of those regulations, and, pending such investment, shall be invested in any investment authorised under section 4 of the Trustee Act 1956;
- (2) The principal sum advanced under and secured by each mortgage shall not exceed two-thirds of the value of the land subject to the mortgage as stated in a valuation report by a registered valuer within the meaning of those regulations and the loans shall be made in accordance with the advice of the registered valuer expressed in that report;

- (3) The term of each loan shall be not less than 6 months nor more than 5 years [alternatively state other instructions];
- (4) Interest shall accrue at the rate current when the loan is made and shall be paid quarterly [alternatively state other instructions];
- (5) Where the mortgage is a nominee mortgage within the meaning of those regulations:
 - (a) The documents of security shall be completed and held in the name of [insert name and address of broker's nominee company] (hereinafter referred to as "the Company");
 - (b) The Company will act as a trustee for me/us and other contributors (if any);
 - (c) The Company shall be entitled as its directors deem appropriate to exercise on behalf of the contributors all the rights, powers and remedies conferred by law including the power to buy in at any sale of the property charged by the security;
 - (d) The Company shall be entitled to indemnity from the contributors proportionately to their contributions in respect of all costs, claims and other liabilities arising in relation to the mortgage and the principal sum thereby secured.

(6) Upon repayment of any principal sum you shall -

(a) Reinvest the money in accordance with this authority if it has not then been revoked:

(b) Pay the money to me/us at the address given below:

(c) Pay the money for the credit of my/our bank account mentioned below.

[Delete as appropriate]

(7) Upon receipt of interest you shall -

(a) Invest the money in accordance with this authority if it has not then been revoked:

(b) Pay the money to me/us at the address given below:

(c) Pay the money for the credit of my/our bank account mentioned below.

[Delete as appropriate]

(8) This authority remains in force until revoked by me/us in writing.

(9) I/We acknowledge that I/we have received a copy of this authority.

Full name of Investor(s)

Address of Investor(s)

Capital Sum to be invested

Bank Account - Name of Bank

- Name of Account

- Number of Account

Date of this authority

Signature of Investor(s)

NINTH SCHEDULE

Reg. 17(3)

FORM OF SPECIAL AUTHORITY FOR
INVESTMENT ON MORTGAGE

To: [Name of Broker]

I/We hereby authorise and instruct you to invest on my/our behalf the capital sum specified below in accordance with the Securities Act (Contributory Mortgage) Regulations 1984 and the following instructions:

- (1) The capital sum shall be invested on the security of one or more mortgages of freehold land of which details are given below, and pending such investments shall be invested in any investment authorised under section 4 of the Trustee Act 1956;
- (2) Interest shall accrue at the rate shown, and shall be paid quarterly [alternatively state other instructions].
- (3) Where the mortgage is a nominee mortgage within the meaning of those regulations -
 - (a) The documents of security shall be completed and held in the name of [insert name and address of broker's nominee company] (hereinafter referred to as "the Company");

- (b) The company will act as a trustee for me/us and other contributors (if any);
- (c) The company shall be entitled as its directors deem appropriate to exercise on behalf of the contributors all the rights, powers and remedies conferred by law including the power to buy in at any sale of the property charged by the security;
- (d) The company shall be entitled to indemnity from the contributors proportionately to their contributions in respect of all costs, claims and other liabilities in relation to the mortgage and the principal sum thereby secured.

4. Upon repayment of any principal sum you shall -

- (a) Pay the money to me/us at the address given below:
- (b) Pay the money for the credit of my/our bank account mentioned below:
- (c) Retain the money in your trust account pending further instructions.
[Delete as appropriate]

5. Upon receipt of interest you shall -

- (a) Pay the money to me/us at the address given below:
- (b) Pay the money for the credit of my/our bank account mentioned below:

(c) Retain the money in your trust account pending further instructions.

[Delete as appropriate]

6. The details regarding the mortgage(s) are as follows:

Borrower:

Security (particulars of property to be charged and nature of security):

If the security is not a first charge, details (including amount) of the charge(s) having priority

Total principal sum to be secured:

Term:

Interest:

Priority:

Other terms:

7. I/we acknowledge that I/we have received a copy of this authority.

Full name of Investor(s)

Address of Investor(s)

Capital sum to be invested

Bank account - Name of Bank

- Name of Account

- Number of Account

Date of this authority

Signature of Investor(s)

TENTH SCHEDULE

Reg. 17(4) (a)

INFORMATION TO BE GIVEN TO CONTRIBUTOR
IN RESPECT OF DEVELOPMENT MORTGAGE

1. The name and address of the broker.
2. The name, address and occupation of each mortgagor under the mortgage.
3. The address, book and folio number of the certificate of title of the land which is, or is to be, charged by the mortgage.
4. A description of the mortgagor's estate in the land which is, or is to be, charged by the mortgage.
5. If the mortgagor's estate is leasehold, a statement that a copy of the lease is available to the contributor, free of charge, on request.
6. The present use of the land; and a brief description of the development, or proposed development, of the land.
7. In relation to the principal sum -
 - (a) The principal sum secured, or intended to be secured, by the mortgage; and
 - (b) The due date for repayment of the principal sum; and

(c) The terms of any right of early repayment of the principal sum.

8. If the land which is, or is to be, charged by the mortgage is charged as security for any mortgages or other encumbrances which rank, or are to rank, ahead of, or equally with, the mortgage in point of security, a description of each such mortgage or encumbrance including:

(a) A statement of the ranking, in point of security, of each such mortgage or encumbrance with respect to the mortgage; and

(b) The principal sum secured by each such mortgage or encumbrance; and

(c) A statement whether any of such mortgages or encumbrances provide for future advances that will rank ahead of or equally with the mortgage.

9. In relation to interest payable under the mortgage -

(a) The rate of interest and any penalty rate that is, or is to be, payable:

(b) The dates upon which payment of interest is due:

(c) Details of any collection, commission or other amounts to be deducted from the interest by the broker:

- (d) A description of the manner in which payments of interest will be collected from the mortgagor and disbursed to the contributors.
10. The finance rate calculated in accordance with the Credit Contracts Act 1981 in respect of the credit provided under the mortgage, and if the finance rate is different from the rate of interest, the reasons for the difference.
11. A statement, signed by each mortgagor, stating -
- (a) The expected costs of the development and a description of the basis on which such costs have been calculated; and
 - (b) The source of funds to be used to service all money borrowed in respect of the land including that to be secured by the mortgage during the development; and
 - (c) Whether since the date of the valuation required by regulation 17(4)(b) of these regulations there have arisen any circumstances that materially affect the trading or profitability of the mortgagor, the value of the land, the ability of the mortgagor to pay his liabilities due within the next 12 months, or the ability of the mortgagor to complete the development of the land.
12. The name and address of any person who is, or is to be, a guarantor or indemnifier of the obligations of the

mortgagor under the mortgage and a description of the material terms of the guarantee or indemnity, as the case may be.

13. A brief description of any collateral security.

14. If the broker, or an associate of the broker, is a guarantor or indemnifier of the obligations of the mortgagor under the mortgage, a statement to the effect that the latest financial statements of the guarantor, or the indemnifier, as the case may be, together with a copy of the auditor's report thereon, will be furnished to the contributor, free of charge, upon request.

15. (1) If the mortgage is, or is to be, a nominee mortgage, a statement as to whether under the terms of the mortgage partial releases of the mortgage are authorised to be given and, if so, a description of the conditions on which such partial releases may be given.

(2) All other terms of the mortgage (other than those implied by law).

16. If the mortgage provides that the principal sum is to be paid to the mortgagor in instalments -

(a) A statement to that effect; and

(b) A description of the manner in which the instalment payments will be made including a description of the

conditions to be fulfilled prior to the making of such payments.

17. (1) A statement whether the mortgage is, or is to be, a nominee mortgage.

(2) In the case of a nominee mortgage, the name of the broker's nominee company and the address of its registered office.
18. A description and quantification of any sums paid or to be paid to the broker in connection with the mortgage, including the name of the person who has paid, or is to pay, each sum.
19. A statement to the effect that a copy of the mortgage will be sent to each contributor or his authorised representative upon request and without charge.
20. If the broker or any person who is, or is to be, a guarantor or indemnifier of the obligations of the mortgagor under the mortgage, is associated with the mortgagor, or has any interest in the land charged by the mortgage, a separate statement to that effect describing the nature of the association or interest.
21. The name and address of the auditor to the broker.
22. A statement by the broker to the effect that to the best of his knowledge and belief the information in the

statement is correct and not misleading and there are no material matters relating to the mortgage that are not set out therein.

23. If any information given to the contributor by or on behalf of the broker includes a statement by an expert other than a registered valuer within the meaning of these regulations, a separate statement, signed by the expert, to the effect that the expert has given his consent to his statement being given to the contributor, and a statement of the expert's qualifications.

ELEVENTH SCHEDULE

Regs. 17(4)(b),
and 19INFORMATION TO BE GIVEN TO CONTRIBUTOR
IN RESPECT OF MORTGAGE OTHER THAN DEVELOPMENT MORTGAGE

1. The name and address of the broker.
2. The name, address and occupation of each mortgagor under the mortgage.
3. The address, book and folio number of the certificate of title, and the proposed use of the land which is, or is to be, charged by the mortgage.
4. A description of the mortgagor's estate in the land which is, or is to be, charged by the mortgage.
5. If the mortgagor's estate is leasehold, a statement that a copy of the lease is available to the contributor, free of charge, on request.
6. In relation to the principal sum -
 - (a) The principal sum secured, or intended to be secured, by the mortgage; and
 - (b) The due date for repayment of the principal sum; and
 - (c) The terms of any right of early repayment of the principal sum.

7. If the land which is, or is to be, charged by the mortgage is charged as security for any mortgages or other encumbrances which rank, or are to rank, ahead of, or equally with, the mortgage in point of security, a description of each such mortgage or encumbrance including:
- (a) A statement of the ranking, in point of security, of each such mortgage or encumbrance with respect to the mortgage; and
 - (b) The principal sum secured by each such mortgage or encumbrance; and
 - (c) A statement whether any of such mortgages or encumbrances provide for future advances that will rank ahead of or equally with the mortgage.
8. In relation to interest payable under the mortgage -
- (a) The rate of interest and any penalty rate that is, or is to be, payable:
 - (b) The dates upon which payment of interest is due:
 - (c) Details of any collection, commission or other amounts to be deducted from the interest by the broker:
 - (d) A description of the manner in which payments of interest will be collected from the mortgagor and disbursed to the contributors.

9. The finance rate calculated in accordance with the Credit Contracts Act 1981 in respect of the credit provided under the mortgage, and if the finance rate is different from the rate of interest, the explanation for the difference.
10. The name and address of any person who is, or is to be, a guarantor or indemnifier of the obligations of the mortgagor under the mortgage and a description of the material terms of the guarantee or indemnity, as the case may be.
11. A brief description of any collateral security.
12. If the broker, or an associate of the broker, is a guarantor or indemnifier of the obligations of the mortgagor under the mortgage, a statement to the effect that the latest annual audited financial statements of the guarantor or indemnifier, as the case may be, together with a copy of the auditor's report thereon, will be furnished to the contributor, free of charge, upon request.
13. If the mortgage is, or is to be, a nominee mortgage a statement as to whether under the terms of the mortgage partial releases of the mortgage are authorised to be given and, if so, a description of the conditions on which such partial releases may be given.

14. (1) A statement whether the mortgage is, or is to be, a nominee mortgage.

(2) In the case of a nominee mortgage the name of the broker's nominee company, and the address of its registered office.
15. A description and quantification of any sums paid or to be paid to the broker in connection with the mortgage, including the name of the person who has paid, or is to pay, each sum.
16. A statement to the effect that a copy of the mortgage will be sent to each contributor or his authorised representative upon request and without charge.
17. If the broker or any person who is, or is to be, a guarantor or indemnifier of the obligations of the mortgagor under the mortgage is associated with the mortgagor or has any interest in the land charged by the mortgage, a separate statement to that effect describing the nature of the association or interest.
18. The name and address of the auditor of the broker.
19. A statement by the broker to the effect that to the best of his knowledge and belief the information in the statement is correct and not misleading and that there are no material matters relating to the mortgage that are not set out therein.

20. If any information given to the contributor by or on behalf of the broker includes a statement by an expert, other than a registered valuer within the meaning of these regulations, a separate statement, signed by the expert, to the effect that the expert has given his consent to his statement being given to the contributor, and a statement of the expert's qualifications.

TWELFTH SCHEDULE

Reg. 17(4)(b)
and (5)(b)

INFORMATION AND OTHER MATTERS TO BE
CONTAINED IN VALUATION REPORT

1. The name and address of the registered valuer and a brief description of his qualifications.
2. The situation, description, and area of the land.
3. The land value and the capital value of the land as shown on the most recent government valuation of the land and the date of that valuation.
4. The present use of the land and, if known to the valuer, the proposed use of the land.
5. The nature and value of any improvements situated on the land.
6. The opinion of the valuer as to the capital value of the land.
7. The opinion of the valuer as to the land value of the land.
8. The basis upon which the valuation was made and any assumptions used in making the valuation.
9. If the land is, or to the knowledge of the valuer is proposed to be, used for the purpose of producing income,

a statement by the valuer as to the amount of income that the land can be reasonably expected to produce on an annual basis under conditions prevailing at the time that the report is made.

10. The amount of loan recommended by the valuer.

11. A statement by the valuer that:

(a) The valuation has been prepared for use by intending lenders and takes account of matters which would affect the price for which the property could be realised on sale; and

(b) The valuer consents to the distribution of the report to contributors and that, as of the date of the report, he has not withdrawn his consent.

12. In the case of a development mortgage, the opinion of the valuer as to the reasonably expected capital value of the land after completion of the development.

13. The date as at which the report was prepared being a date not earlier than 4 months before the date on which the broker's statement is given to the contributors pursuant to regulation 17(4)(a) or 17(5)(a), as the case may be, of these regulations.