

Securities Act (ING Management Limited, Ingenia Communities Holdings Ltd and Ingenia Communities RE Ltd) Exemption Notice 2012

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).

Contents

	Page
1 Title	1
2 Commencement	1
3 Expiry	1
4 Interpretation	1
5 Exemption for overseas quoted securities offered to existing security holders	2
6 Exemption for securities that vary overseas quoted securities	3
7 Conditions of exemptions in clause 6	3

Notice

- Title**

This notice is the Securities Act (ING Management Limited, Ingenia Communities Holdings Ltd and Ingenia Communities RE Ltd) Exemption Notice 2012.
- Commencement**

This notice comes into force on 6 April 2012.
- Expiry**

This notice expires on the close of 31 March 2017.
- Interpretation**

(1) In this notice, unless the context otherwise requires, —
Act means the Securities Act 1978
ASX means the Australian Securities Exchange
existing holders means holders of existing stapled securities



existing stapled security means an existing stapled security quoted on ASX under the name ING Real Estate Community Living Group comprising one unit in the Fund and one unit in the Trust

explanatory memorandum means the explanatory memorandum to be sent to existing holders outlining the management internalisation proposal and containing the information prescribed in subclauses 7(c) to 7(e)

Fund means the ING Real Estate Community Living Fund (ARSN 107 459 576)

Ingenia Holdings means Ingenia Communities Holdings Ltd, a company incorporated in Australia

Ingenia RE means Ingenia Communities RE Ltd, a company incorporated in Australia

ING Management means ING Management Limited, a company incorporated in Australia in its capacity as the responsible entity of the Fund and the Trust

management internalisation proposal means the proposal for internalisation of management of each of the Fund and the Trust involving, among other things, the issue of shares by Ingenia Holdings to existing holders, the stapling of each of those shares to one unit in the Fund and one unit in the Trust, and the change of responsible entity of each of the Fund and the Trust under Australian law from ING Management to Ingenia RE

notice of meeting means the notice of meeting to be sent to the existing holders convening a meeting to approve all matters necessary to effect the management internalisation proposal

Regulations means the Securities Regulations 2009

Trust means the ING Real Estate Community Living Management Trust (ARSN 122 988 410).

- (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 for overseas quoted securities offered to existing security holders

- (1) Ingenia Holdings, and every person acting on its behalf, is exempted from sections 37, 37A, 38A, and 51 to 54B of the Act and the Regulations (except regulation 23) in respect of any securities of which Ingenia Holdings is the issuer if—



- (a) the securities are of a class that is quoted on ASX, or an application has been made for quotation of the securities on ASX and at the time of the offer of those securities to the public in New Zealand all the requirements of ASX relating to the application for quotation which are required to be complied with at that time have been complied with; and
 - (b) the only members of the public to whom the securities are offered in New Zealand are persons who, at the time of the offer, are existing holders; and
 - (c) ING Management is:
 - (i) a promoter of the offer of the securities; and
 - (ii) a company of which Ingenia Holdings is an associated body corporate or a related body corporate.
- (2) Subclause (1)(b) applies whether or not the offer is renounceable in favour of any other person.

6 Exemption for securities that vary overseas quoted securities

ING Management, Ingenia RE, and every person acting on behalf of either or both of them are exempted from sections 33(3), 37, 37A, 38A, and 51 to 54B of the Act and the Regulations (except regulation 23) in respect of any security that varies the terms or conditions of an existing security of which ING Management or Ingenia RE is an issuer and which is held by an existing holder if -

- (a) the existing security is of a class that is quoted on ASX; and
- (b) the security does not:
 - (i) extend the time for payment of money due, or to become due, under the existing security by ING Management or Ingenia RE; or
 - (ii) decrease the amount of money that is to become due under the existing security by ING Management or Ingenia RE.

7 Conditions of exemption in clause 6

The exemption in clause 6 is subject to the conditions that -

- (a) the offer of the securities to the public in New Zealand is made in compliance with:
 - (i) the laws of Australia; and
 - (ii) any code, rules, or other requirements relating to the offer of the security that apply in Australia; and



Securities Act (ING Management Limited, Ingenia
Communities Holdings Ltd and Ingenia
Communities RE Ltd) Exemption Notice 2012

- (b) the explanatory memorandum is distributed to existing holders together with the notice of meeting; and
- (c) the explanatory memorandum must include particulars of all matters that are material to an existing holder making a decision on whether to approve the variation to the existing security; and
- (d) without limiting (c) above, the explanatory memorandum must include the following:
 - (i) all information relevant to the management internalisation proposal required to be disclosed in accordance with Australian law to existing holders; and
 - (ii) the terms of the management internalisation proposal; and
 - (iii) the purpose and effect of the management internalisation proposal; and
 - (iv) the steps necessary to bring the management internalisation proposal into effect; and
- (e) the explanatory memorandum must include a statement to the effect that the process for the approval of the management internalisation is governed by Australian law and may not be subject in all respects to New Zealand law.

Dated at Wellington this 5th day of April 2012



Sue Brown
Head of Primary Regulatory Operations
Financial Markets Authority

Statement of reasons

This notice, which comes into force on 6 April 2012 and expires on 31 March 2017, exempts:

- Ingenia Communities Holdings Ltd (**Ingenia Holdings**), subject to conditions, from certain provisions of the Securities Act 1978 (the **Act**) and the Securities Regulations 2009 (the **Regulations**) in respect of the issue of ordinary shares in Ingenia Holdings to the holders of interests in the ING Real Estate Community Living Fund (the **Fund**) and the ING Real Estate Community Living Management Trust (the **Trust**); and
- ING Management Limited (ING Management) and Ingenia Communities RE Ltd (Ingenia RE) (a wholly owned subsidiary of Ingenia Holdings), subject to conditions, from certain provisions of the Act and the Regulations in respect of the variation of the terms of existing securities).

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

- The exemption in relation to the issue of shares by Ingenia Holdings which is occurring as part of a management internalisation arrangement is consistent with the policies behind the Securities Act (Overseas Companies) Exemption Notice 2002 (the **Overseas Companies Notice**). The Overseas Companies Notice exempts overseas companies with securities quoted, or which are the subject of an application for quotation, on a stock exchange in certain recognised jurisdictions from substantial requirements of the Act and Regulations including the prospectus and investment statement requirements where members of the public in New Zealand to whom offers are made are already holders of securities issued by the issuer or by an associated body corporate or related body corporate of the issuer. The reason for this is that persons who already hold securities in an overseas company have taken on the risk associated with those securities and can, to a degree, be assumed to have a familiarity with them. Where an offeror is complying with an equivalent overseas statutory disclosure regime under the laws of a reputable home jurisdiction, insistence on disclosure under New Zealand legislation is likely to result in duplication or in an investment opportunity being denied to

New Zealand investors. Consequently, offers of securities made by overseas companies which have previously issued shares to members of the public in New Zealand or by associated bodies corporate or related companies of those overseas companies in circumstances where the original overseas company is a promoter of the offer should generally be permitted to proceed on the basis of the overseas disclosure documents. This notice grants exemptions equivalent to those in the Overseas Companies Notice but particular to the issue of shares by Ingenia Holdings. The offer meets the criteria of the Overseas Companies Notice and is justified on the same basis.

- The Overseas Companies Notice additionally provides the same substantial exemptions for offers of securities by an overseas company that vary the terms or conditions of existing quoted securities of that overseas company. These offers must comply with the laws of the jurisdiction in which the securities are quoted. The exemptions do not however apply to variations which change the issuer of the existing securities. In this case the variation of existing securities involves the change of responsible entity of the Fund and the Trust under Australian law from ING Management to Ingenia RE and each share in Ingenia Holdings being stapled to an interest in the Fund and an interest in the Trust in order to effect the internalisation of management of the Fund and the Trust. ING Management and Ingenia RE is therefore unable to rely on the Overseas Companies Notice. Similarly they are unable to rely on the Securities Act (Renewals and Variations) Exemption Notice 2002 (**Renewals and Variations Notice**), which similarly does not apply in instances where the variation changes the issuer. Additional conditions beyond those usually imposed by the Overseas Companies Notice, or the Renewals and Variations Notice require all material information to be provided about the management internalisation. On this basis the exemptions remain appropriate.
- The exemptions will reduce the costs associated with enabling New Zealand resident holders of interests in the Fund and the Trust to benefit from the management internalisation. In the absence of the exemptions the offer would likely not be extended to them and their existing securities would be compulsorily transferred. Given the disclosure requirements that apply in light of the requirements of the companies' home jurisdiction, and the added express obligation of this Notice requiring all material information be provided about the management internalisation proposal, FMA is satisfied that the exemption is not broader than reasonably necessary to address the matters that gave rise to the exemptions



Securities Act (ING Management Limited, Ingenia
Communities Holdings Ltd and Ingenia
Communities RE Ltd) Exemption Notice 2012

and will not cause significant detriment to New Zealand resident
subscribers.
