

Financial Markets Conduct (Fletcher Building Retirement Plan) Exemption Notice 2017

Pursuant to section 556 of the Financial Markets Conduct Act 2013, the Financial Markets Authority, being satisfied of the matters set out in section 557 of that Act gives the following notice.

Contents

	Page
1 Title	1
2 Commencement	1
3 Revocation	1
4 Interpretation	1
5 Exemption	2
6 Conditions	2

Notice

1 Title

This notice is the Financial Markets Conduct (Fletcher Building Retirement Plan) Exemption Notice 2017.

2 Commencement

This notice comes into force at 5pm on 30 November 2017.

3 Revocation

This notice is revoked on the close of 29 November 2022.

4 Interpretation

In this notice, unless the context otherwise requires –

Act means the Financial Markets Conduct Act 2013

FBI Capital Notes means the following capital notes held by the Plan as at the date of this notice:

- a) NZD\$7,500,000 March 2018 Capital Notes (FBI 110) issued by Fletcher Building Industries Limited and with an interest reset date of 15 March 2018;
- b) NZD\$2,500,000 March 2019 Capital Notes (FBI 130) issued by Fletcher Building Industries Limited and with an interest reset date of 15 March 2019; and
- c) NZD\$5,000,000 March 2020 Capital Notes (FBI 140) issued by Fletcher Building Industries Limited and with an interest reset date of 15 March 2020

FBL means Fletcher Building Limited

Fletcher Building Shares means the ordinary shares in FBL held by the Plan as at the date of this notice

Greenlane Property means part of the land and buildings situated at 323 Great South Road, Greenlane, Auckland and comprised in certificate of title NZ62B/278 being Level 1 of that property which is leased to Fletcher Building Holdings Limited

Member account means the defined contribution account attributable to each member

member means a scheme participant holding a managed investment product in the Plan

Notes option means the investment option available to members in the Plan to receive returns on the whole or part of the amount in their Member account determined by reference to FBI Capital Notes

Penrose Property means all the land and buildings at 37-41 Felix Street, Onehunga, Auckland (Lots 1 and 2, Deposited Plan 56118, Certificates of Title NA8C/1292 and NA8C/1293) co-owned by the Plan which is leased to Winstone Wallboards Limited

Permitted In-House Assets means all or any of the Penrose Property, Greenlane Property, Fletcher Building Shares and the FBI Capital Notes

Plan means the Fletcher Building Retirement Plan

Share option means the investment option available to members in the Plan to receive returns on the whole or part of the amount in their Member account determined by reference to Fletcher Building Shares.

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

5 Exemption

The manager of the Plan is exempted, in respect of the Plan and the Permitted In-House Assets, from clause 39 of Schedule 4 to the Act.

6 Conditions

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

- (a) the statement of investment policy and objectives for the Plan must include the rationale for the Plan's ongoing investment in the Permitted In-House Assets and the considerations that the manager must take into account to monitor and manage the governance, investment concentration or other risks that this presents;
- (b) the manager must, within 3 months after the date of this notice, send all members a written notice, informing them –
 - (i) that the Plan does not comply with the usual legal requirement not to have an in-house assets ratio of 5% or more in relation to any related party or scheme participant; and
 - (ii) of the value of the Permitted In-House Assets (as at the Plan's most recent balance date) expressed in dollar terms and as a percentage of the Plan's total net asset value;
- (c) the manager must, within 3 months after the date of this notice, make available to members who have elected to invest 30% or more of their Member account into the

- Shares option or the Notes option or a combination of the Shares option and Notes option, access to an authorised financial adviser to individually advise, on a one-off basis, members of their exposure to Fletcher Building Shares or FBI Capital Notes or both as a proportion of their overall investment portfolio and the implication of such exposure (the provision of this service is to be at no cost to the member);
- (d) the manager must, within 3 months after the date of this notice, send all members who have elected the Shares option or the Notes option or a combination of the Shares option and the Notes option for their Member account a written notice –
- (i) informing them of the risks associated with aligning the value of all or a significant amount of their savings with the performance of Fletcher Building Shares or FBI Capital Notes or a combination of Fletcher Building Shares and FBI Capital Notes in the context of also being employed by FBL;
 - (ii) inviting them to either reduce the proportion of their Member account returns that are determined by reference to Fletcher Building Shares or FBI Capital Notes or a combination of Fletcher Building Shares and FBI Capital Notes, or change to one or more of the other investment options offered by the Plan; and
 - (iii) advising that the members referred to in paragraph (c), have the option to discuss their investment portfolio with an authorised financial adviser on a one off basis at no cost to the member;
- (e) the manager must ensure that the Plan only holds that number of Fletcher Building Shares that matches the written request of members to receive returns on their Member account determined by reference to Fletcher Building Shares;
- (f) the manager must ensure that any excess FBI Capital Notes that are not held by the Plan in order to match the written request of a member to receive returns on their Member account determined by reference to FBI Capital Notes, are disposed of on or before their respective interest reset dates;
- (g) the manager must send prospective investors in the Plan a written notice before they invest in the Plan informing them –
- (i) that the Plan does not comply with the usual legal requirement not to have an in-house assets ratio of 5% or more in relation to any related party or scheme participant; and
 - (ii) of the value of the Permitted In-House Assets (as at the Plan's most recent balance date) expressed in dollar terms and as a percentage of the Plan's total net asset value; and
- (h) the manager must ensure that, on or before 29 November 2022, the Plan must have disposed of the Greenlane Property, Fletcher Building Shares and FBI Capital Notes (subject to paragraph (e) and paragraph (f) of this notice).

Dated at Wellington this 30th day of November 2017.



Liam Mason
Director of Regulation
Financial Markets Authority

Statement of reasons

This notice comes into force at 5pm on 30 November 2017 and is revoked on the close of 29 November 2022.

The notice exempts the manager of the Fletcher Building Retirement Plan (**Plan**) from the requirement, pursuant to clause 39 of Schedule 4 to the Financial Markets Conduct Act 2013 (**Act**), to ensure that by 1 December 2017 the Plan does not have an in-house assets ratio of 5% or more in relation to any related party or scheme participant (as determined in accordance with section 176 of the Act). The exemption is in relation to the following in-house assets held by the Plan:

- land and level 1 of the buildings situated at 323 Great South Road, Greenlane, Auckland (certificate of title NZ62B/278) which is leased to Fletcher Building Holdings Limited (**Greenlane Property**);
- land and buildings co-owned by the Plan at 37-41 Felix Street, Onehunga, Auckland (Lots 1 and 2, Deposited Plan 56118, Certificates of Title NA8C/1292 and NA8C/1293) and which is leased to Winstone Wallboards Limited (**Penrose Property**);
- Fletcher Building Limited Shares (**FBL Shares**); and
- Fletcher Building Industries Limited Capital Notes (**FBI Capital Notes**) (together the **Permitted In-House Assets**).

The Financial Markets Authority (**FMA**), after satisfying itself as to the matters set out in section 557 of the Act, considers that it is appropriate to grant the exemption because—

- The Greenlane Property and Penrose Property (together **the Properties**) are leased to Fletcher Building Limited's (**FBL**) subsidiaries on arm's length terms and both are held as long term investments. The value of the Properties is not directly or solely related to the overall fortunes of FBL. The key drivers of value are the value of the particular land leased to subsidiaries of FBL, the value of the leases and the fact that the Properties exist independently from FBL and its subsidiaries. There is therefore only limited alignment of employment risk and risk to investors' retirement savings:
- Appropriate governance arrangements are required to be in place to provide for effective monitoring and risk management in relation to the Permitted In-House Assets, through both the proper performance of the manager's role and duties under the Act and the policies in the Plan's statement of investment policy and objectives that are required as conditions to the exemption:
- The conditions also require appropriate disclosure about the exemption and as to the value of the Permitted In-House Assets to be made to all scheme participants in the Plan:
- If relief is not provided, the manager will be required either to immediately dispose of one or both of the Properties or to breach the terms of one or both of the lease arrangements. Either option will come at some expense to the Plan and will be disruptive for both the Plan and scheme participants:
- The FBL Shares and, in large part, the FBI Capital Notes are held by the Plan to meet the express request of scheme participants in the Plan who elected to receive returns on the whole or part of their defined contribution account (**Member account**) by reference to the performance of FBL Shares and/or FBI Capital Notes (respectively "**the shares option**" and "**the notes option**"). Conditions of the exemption require appropriate disclosure about the

exemption and the related risks of aligning the value of all or a significant amount of an investor's retirement savings with the performance of FBL Shares and/or FBI Capital Notes in the context of also being employed by FBL. The conditions also require the manager to proactively invite scheme participants in the Plan who chose the shares option and/or notes option to either reduce the proportion of returns on their Member account determined by reference to FBL Shares and/or FBI Capital Notes or change to one or more of the other investment options offered by the Plan. A further condition requires the manager to make available to members who have 30% or more of their Member account invested by reference to the Shares option or the Notes option or a combination of the Shares option and Notes option, access, on a one off basis, to an authorised financial adviser to discuss their exposure to FBL Shares and/or FBI Capital Notes in the context of their overall investment portfolio:

- The exemption is subject to the further condition that any excess FBI Capital Notes not held by the Plan to match the express request of scheme participants in the Plan to receive returns on their Member account by reference to FBI Capital Notes are disposed of on or before their respective interest reset dates. The condition provides the manager with the flexibility to dispose of excess FBI Capital Notes in a prudent and measured way rather than conduct a forced disposal of its note holding by the statutory deadline:
- The exemption is also subject to the condition that the manager must ensure that, on or before 29 November 2022, the Plan must have disposed of the Greenlane Property, FBL Shares and FBI Capital Notes (subject to other conditions of the exemption that may require the manager to sell certain FBL Shares or FBI Capital Notes prior to this time).

The FMA is therefore satisfied that granting the exemption is necessary or desirable in order to promote one or more of the main or additional purposes of the Act, namely to promote the confident and informed participation of FBL, the manager of the Plan and investors in the financial markets. Further, the conditions to the exemption provide for timely, accurate and understandable information to be provided to existing and prospective investors in the Plan to assist them to make decisions relating to the Plan.

The FMA is further satisfied that the exemption is not broader than is reasonably necessary to address the matters that give rise to the exemption because it only applies in relation to the Permitted In-House Assets and clause 39 of Schedule 4 of the Act. It does not apply to in-house assets more generally and does not extend to section 176 of the Act.

