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# Financial Markets Conduct (Heinz-Wattie Limited Pension 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.

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## Notice

### 1 Title

This notice is the Financial Markets Conduct (Heinz-Wattie Limited Pension Plan) Exemption Notice 2017.

### 2 Commencement

This notice comes into force on 30 June 2017.

### 3 Revocation

This notice is revoked on the close 29 June 2022.

### 4 Interpretation

(1) In this notice, unless the context otherwise requires,—

**Act** means the Financial Markets Conduct Act 2013

**Permitted In-House Asset** means the property at 243-267 Dunns Crossing Road, Rolleston, Canterbury (Lots 3 & 4, Deposited Plan 20007) which is leased to Tegel Foods Limited

**Plan** means the Heinz-Wattie Limited Pension Plan.

(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 Exemptions

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

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## 6 Conditions

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

(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 Asset, and the considerations which the manager must take into account to monitor and manage any governance, investment concentration or other risks that this presents;

(b) the manager of the Plan must send all scheme participants in the Plan a written notice within 3 months after this notice takes effect 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 Asset (as at the Plan's most recent balance date) as a percentage of the Plan's total net asset value; and

(c) the Plan continues to be closed to new members.

Dated at Wellington this 27th day of June 2017.

Nick Kynoch
General Counsel
Financial Markets Authority

## Statement of reasons

This notice comes into force on 30 June 2017 and is revoked on the close of 29 June 2022.

The notice exempts the manager of the Heinz-Wattie Limited Pension 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 scheme participant (as determined in accordance with section 176 of the Act). The exemption is in relation to the property at 243-267 Dunns Crossing Road, Rolleston, Canterbury (**Permitted In-House Asset**) leased to Tegel Foods Limited (**Tegel**))

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 Permitted In-House Asset is an 'in-house asset' in terms of the Act by reason of Tegel being an employer contributor to the Plan. Tegel has not been a related body corporate of the Plan's principal sponsor Heinz Wattie's Limited (**Heinz**) since 2006 and has been permitted to remain an employer contributor solely to facilitate the provision of continued defined benefit retirement savings arrangements to a small group of its employees. As such, Tegel has limited influence over decisions of the Manager in relation to the Permitted In-House Asset:

- The Permitted In-House Asset was acquired by the Plan in 1996 and is leased to Tegel on arms' length terms and is held as a long-term investment. It is the Plan's sole in-house asset and its current value only marginally exceeds the 5% threshold in clause 39 of Schedule 4 to the Act:
- The value of the Permitted In-House Asset, both in dollar terms and as a proportion of Plan assets, is disclosed to scheme participants in the manager's annual reports and the value attributed to the Permitted In-House Asset is specifically addressed in the Plan's annual financial statements:
- The value of the Permitted In-House Asset is primarily determined by the value of the land and is only in part affected by the lease to Tegel in the short term (because the land can be leased to someone else or put to another use). There is therefore only a limited alignment between 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 Asset, 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 Asset to be made to all scheme participants in the Plan:
- If relief is not provided, the manager will be required either to dispose of the Permitted In-House Asset or to exit Tegel before 1 December 2017 as an employer participant in the Plan (which would trigger a partial wind up of the Plan and be adverse both for Tegel and for Tegel employee members):
- For these reasons the FMA is 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 confident and informed participation of Heinz, Tegel and the manager of the Plan in the financial markets, to avoid unnecessary compliance costs and promote flexibility in the financial markets:
- 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 a specific property leased to Tegel rather than in relation to in-house assets more generally.