

## Financial Markets Conduct (Alliance Group) Exemption Notice 2025

This exemption is granted by the Financial Markets Authority under section 556 of the Financial Markets Conduct Act 2013 after being satisfied of the matters set out in section 557 of that Act.

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### Notice

#### 1 Title

This notice is the Financial Markets Conduct (Alliance Group) Exemption Notice 2025.

#### 2 Commencement

This notice comes into force on 30 July 2025.

#### 3 Revocation

This notice is revoked on the close of 29 July 2026.

#### 4 Interpretation

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

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

**approval meeting** means the meeting of Alliance shareholders that is to be held to consider and vote on whether to approve the scheme

**Companies Act** means the Companies Act 1993

**Alliance** means Alliance Group Limited

**Alliance shares** means fully paid ordinary shares in Alliance

**Alliance shareholders** means registered holders of Alliance shares existing prior to the Transaction taking place

**Alliance Group** means, before the implementation of the scheme, Alliance and all of its subsidiaries, and, immediately after the implementation of the scheme, Top Hat Co and all of its subsidiaries

**external investor** means the third-party investor which is proposed to acquire a majority interest (approximately 65%) in Alliance through the Transaction

**High Court** means the High Court of New Zealand

**offer** means the offer for the issue of Top Hat Co shares to Alliance shareholders under Part 3 of the Act in accordance with the scheme

**OIA consent** means the consent required in accordance with the Overseas Investment Act 2005 in respect of investments by overseas investors

**proposal** means the proposed implementation of the scheme, in order to facilitate a broader investment by the external investor into the capital of Alliance following implementation of the scheme by way of the Transaction

**notice eligibility date** means the date of entitlement for Alliance shareholders to receive notice of the approval meeting, determined in accordance with section 125(3) of the Companies Act

**Regulations** means the Financial Markets Conduct Regulations 2014

**scheme** means the scheme of arrangement involving Alliance shareholders transferring their shares in Alliance to Top Hat Co in exchange for Top Hat Co issuing Top Hat Co shares to Alliance shareholders as consideration, on terms which will be approved by the High Court under Part 15 of the Companies Act and to be voted on at the approval meeting

**scheme booklet** means the scheme booklet prepared by Alliance in respect of the scheme and containing the information prescribed in clause 6(i) and (j)

**Takeovers Panel** means the Takeovers Panel established pursuant to the Takeovers Act 1993

**Top Hat Co** means Mount Olympus NZ Limited (company number 9357917)

**Top Hat Co shares** means fully paid ordinary shares in Top Hat Co

**Transaction** means the sale of shares in Alliance to the external investor under the terms of a subscription agreement entered into between the external investor, Top Hat Co, and Alliance.

- (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

Alliance and Top Hat Co are exempt from Part 3 of the Act in respect of the offer of Top Hat Co shares to Alliance shareholders in accordance with the scheme.

## 6 Conditions

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

- (a) the proposal proceeds by way of the scheme approved by the High Court under Part 15 of the Companies Act; and

- (b) the Alliance shareholders vote on the proposal at the approval meeting; and
- (c) it is a term of the offer that, as at the time immediately after the implementation of the scheme, only Alliance shareholders will be holders of Top Hat Co shares; and
- (d) it is a term of the offer that, immediately after the implementation of the scheme, Alliance shareholders will receive shares in Top Hat Co in the same number as their respective shareholding in Alliance immediately preceding the implementation of the scheme; and
- (e) it is a term of the offer that, immediately after the implementation of the scheme, Alliance would be a wholly owned subsidiary of Top Hat Co; and
- (f) it is a term of the offer that, immediately after the implementation of the scheme, the assets and business of the Alliance Group are materially the same as the assets and business of the Alliance Group immediately prior to the implementation of the scheme; and
- (g) the scheme booklet is sent to all Alliance shareholders as at the notice eligibility date, together with the notice of meeting for the approval meeting; and
- (h) the scheme becomes effective in accordance with its terms; and
- (i) the scheme booklet includes particulars of all matters that, to the knowledge of the directors of Alliance after making all inquiries that are reasonable in the circumstances, are material to an Alliance shareholder making a decision on whether to approve the proposal; and
- (j) without limiting (i) above, the scheme booklet includes the following:
  - (i) a description of the respective rights and liability attaching to Top Hat Co shares;
  - (ii) the purpose and effect of the proposal;
  - (iii) the steps necessary to bring the proposal into effect;
  - (iv) a statement as to whether (together with the reasons why) the directors of Alliance recommend that Alliance shareholders vote in favour of the proposal;
  - (v) a summary of the impact of the proposal, including the impact on Alliance shareholders and any material advantages and disadvantages of the proposal;
  - (vi) a summary of the costs of the proposal;
  - (vii) a statement of the material differences (if any) between the constitution of Alliance and the constitution of Top Hat Co, including the rights of Alliance shareholders immediately prior to the implementation of the proposal and the rights of shareholders under the constitution of Top Hat Co immediately following the implementation of the proposal;
  - (viii) a summary of the material provisions of the shareholders' agreement between Top Hat Co and the external investor that will be in place following investment into Alliance by the external investor, relevant to the control of Alliance as between Top Hat Co and the external investor;
  - (ix) the name and address of every person who will be a director of Top Hat Co immediately after implementation of the proposal, and the name and address of every person who will be a director of Alliance immediately after the Transaction;
  - (x) particulars of any material New Zealand taxation liabilities of Alliance

shareholders; and

- (xi) a report from an independent adviser approved by the Takeovers Panel on the merits of the scheme for Alliance shareholders and a statement of the relevant qualifications of the independent adviser giving the report; and
- (xii) in respect of the subscription agreement with the external investor:
  - A. a summary of the purpose of the scheme and the potential impact of the share purchase by the external investor, if it goes ahead including the dilution in ownership over Alliance as a whole;
  - B. an explanation that the subscription agreement is subject to OIA consent and what it means should approval not be granted;
  - C. an explanation of how any tax loss may be carried forward and maintained, which includes:
    - (I) a summary of the tax losses for Alliance derived from the latest audited financial statements;
    - (II) the requirements that must be satisfied in order for the tax losses to be carried forward and maintained;
    - (III) Alliance's understanding as to the external investor's intentions/plans to continue the Alliance business as is after the implementation of the Transaction (insofar as is relevant to the business continuity test);
    - (IV) the potential consequences and impact to shareholders if the tax loss cannot carry forward after the implementation of the Transaction; and
    - (V) a statement that notifies the shareholders that the tax loss being carried forward from this financial year are not guaranteed and may be lost if the business continuity test cannot be satisfied under the control of the external investor after the completion of the Transaction.

## **7 Offer not regulated offer**

An offer of equity securities made in reliance on this notice is not a regulated offer.

Dated at Auckland on this 29th of July 2025.



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Louise Unger

Executive Director, Response and Enforcement

Financial Markets Authority

## Statement of Reasons

This notice comes into force on 30 July 2025 and is revoked on 29 July 2026.

The notice exempts Alliance Group Limited (company number 154786) (**Alliance**), and Mount Olympus NZ Limited (company number 9357917) (**Top Hat Co**), from the requirements of Part 3 of the Financial Markets Conduct Act 2013 (**Act**) in relation to offers for the issue of shares in Top Hat Co to shareholders of Alliance under a proposed scheme of arrangement pursuant to Part 15 of the Companies Act 1993 (**Companies Act**).

The notice also provides that offers exempted by this notice are not regulated offers under the Act. This means that other requirements of the Act, or other Acts, that apply in connection with regulated offers (such as the financial reporting requirements) will not apply. Any other financial markets conduct obligations Alliance and Top Hat Co may have, including obligations under Part 2 of the Act, are not affected. Additionally, financial reporting requirements under the Companies Act will continue to apply.

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

- the offer is made in connection with the proposal (as defined in clause 4 of this notice). The scheme will include the issue of Top Hat Co shares to Alliance shareholders as consideration for the transfer of shares in Alliance held by those Alliance shareholders to Top Hat Co. Immediately following implementation of the scheme, Alliance will be a wholly owned subsidiary of Top Hat Co and Top Hat Co will replace Alliance as the new parent of the Alliance Group. The external investor will then invest into the capital of Alliance pursuant to the terms of a subscription agreement entered into between the external investor, Top Hat Co, and Alliance. Accordingly, the offer is limited to shareholders of Alliance who were shareholders at the time the notice comes into force and therefore to persons expected to already be familiar with the assets and business of the Alliance Group. Conditions of the exemption require that the offer can only be made if, immediately following implementation of the scheme, Alliance becomes a wholly owned subsidiary of Top Hat Co, and the underlying assets and business of the Alliance Group are the same after the implementation of the scheme as before it:
- the disclosure requirements of Part 3 of the Act and Financial Market Conduct Regulations 2014 (**Regulations**) focus on providing information about the financial products being offered, so would require information about Top Hat Co and the shares being offered by Top Hat Co. However, in the circumstances of what is essentially a share exchange scheme as part of a broader external investment in a subsidiary of Top Hat Co, the Alliance shareholders to whom the offer to exchange shares will be made, must decide whether to approve the share exchange and the consequential external investment. Therefore, the nature of the information shareholders require to make that assessment is different from that prescribed by the Act and Regulations. As such, the exemption, which includes conditions requiring shareholders to be provided with information about the effect, advantages and disadvantages of the scheme, supports the provision of timely, accurate and understandable information to persons to assist those persons to make decisions relating to financial products:
- the offer is made in accordance with the laws of New Zealand and pursuant to a court approved scheme of arrangement under Part 15 of the Companies Act. In order to comply with these requirements, Alliance shareholders are provided with a scheme booklet containing information relevant to evaluating the proposal which must be approved by the High Court. The conditions of the exemption also require the scheme booklet to contain or be accompanied by an independent adviser's report on the merits of the scheme and contain all matters that

are material to Alliance shareholders to enable them to make an informed decision on the proposal and the proposed subsequent transaction that will facilitate the circa 65% investment in Alliance by the external investor:

- Alliance and Top Hat Co each remain subject to the fair dealing provisions in Part 2 of the Act and therefore Alliance's shareholders will have protection against misleading or deceptive information being included in the scheme booklet:
- the scheme will be overseen by the High Court. The High Court will need to be satisfied that the scheme documents (including the scheme booklet) include sufficient information for an Alliance shareholder to make an informed decision as to how to vote on the scheme.

As such, the FMA is satisfied that –

- the exemption is desirable in order to promote the purposes of the Act, namely to provide for timely, accurate and understandable information to be provided to Alliance shareholders to assist them to make a confident and informed decision on the proposed transaction, and
- to avoid unnecessary compliance costs caused by the other requirements of the Act, or other Acts, that apply in connection with regulated offers (such as the financial reporting requirements), and by Top Hat Co having to produce a product disclosure statement and register entry under the Act and Regulations, in addition to the scheme booklet and other documents relating to the proposal.

Given the circumstances that the exemption is limited to the offer of financial products to existing Alliance shareholders made in the context of the proposal, and the key impact of the exemption is to provide relief from the requirement to provide information that is not material to those existing Alliance shareholders' decision on whether to approve the proposal, the FMA is satisfied that the exemption is not broader than reasonably necessary to address the matters that gave rise to the exemption.