

Financial Markets Conduct (Fonterra Shareholders' Fund) Exemption Notice 2016

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 (Fonterra Shareholders' Fund) Exemption Notice 2016.

2 Commencement

This notice comes into force on 1 November 2016.

3 Revocation

This notice is revoked on the close of 31 October 2021.

4 Interpretation

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

Act means the Financial Markets Conduct Act 2013

ASX means the Australian Securities Exchange

Custodian means Fonterra Farmer Custodian Limited

Fonterra means Fonterra Co-operative Group Limited

Fund means the Fonterra Shareholders' Fund, a managed investment scheme under the Act

Manager means the manager (as defined in the Act) of the Fund, which is FSF Management Company Limited as at the date of this notice

NZX Main Board means the main board equity securities market operated by NZX Limited

Offer of Units for Issue means an offer of Units for issue by the Manager to a Shareholder as consideration for the transfer of Shares by that Shareholder to the Custodian if the Units issued are used to settle a sale contract previously entered into by or on behalf of the Shareholder on the NZX Main Board or the ASX in relation to the sale of Units

Offer of Units for Sale means an offer of Units for sale by a Shareholder on the NZX Main Board or the ASX where the Units are issued to the Shareholder pursuant to an Offer for Units for Issue

Share means a co-operative share in Fonterra

Shareholder means either of the following:

- (a) a person whose name is entered in the Share register maintained by Fonterra as the holder of a Share;
- (b) a person whose application to become a holder of a Share has been accepted in writing by Fonterra

Unit means a managed investment product in the Fund.

- (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.

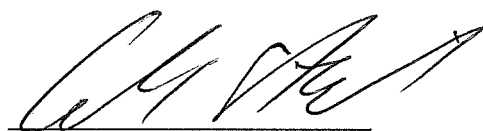
5 Exemption in relation to Offer of Units for Issue

- (1) The Manager is exempted from Part 3 of the Act in relation to every Offer of Units for Issue.
- (2) An Offer of Units for Issue made in reliance on this exemption notice is not a regulated offer.

6 Exemption in relation to Offer of Units for Sale

- (1) Every Shareholder is exempted from Part 3 of the Act in relation to every Offer of Units for Sale made by that Shareholder.
- (2) An Offer of Units for Sale made in reliance on this exemption notice is not a regulated offer.

Dated at Wellington this 25th day of October 2016.



Garth Stanish
Director of Capital Markets
Financial Markets Authority

Statement of reasons

This notice comes into force on 1 November 2016, and is revoked on 31 October 2021.

This notice provides exemptions from Part 3 of the Financial Markets Conduct Act 2013 (**Act**) in relation to the arrangements for the ongoing operation of the Fonterra Shareholders' Fund (**Fund**). The manager of the Fund is FSF Management Company Limited (**Manager**) as at the date of this notice. Units in the Fund (**Units**) represent the economic rights of shares (**Shares**) in Fonterra Cooperative Group Limited (**Fonterra**). Only Fonterra's farmer shareholders (**Shareholders**), Fonterra and the market maker can buy and sell Shares on the Fonterra Shareholders' Market. Other investors cannot buy Shares but can buy or sell Units on the main board equity securities market

operated by NZX Limited (**NZX Main Board**) or the Australian Securities Exchange (**ASX**). A Shareholder can transfer Shares to the Fund's custodian (**Custodian**) and will receive an equivalent number of Units which they must use to settle a sale contract previously entered into on the NZX Main Board or the ASX in relation to the sale of Units.

This notice grants an exemption to the Manager from Part 3 of the Act in relation to an offer of Units for issue by the Manager to a Shareholder as consideration for the transfer of Shares by that Shareholder to the Custodian, where the Units issued by the Manager are used to settle a sale contract previously entered into by or on behalf of the Shareholder on the NZX Main Board or the ASX (an **Offer of Units for Issue**). It also states that an Offer of Units for Issue made in reliance on this notice is not a regulated offer. This notice also grants an exemption to every Shareholder from Part 3 of the Act in relation to an offer of Units for sale by the Shareholder on the NZX Main Board or the ASX where the Units are issued to the Shareholder pursuant to an Offer for Units for Issue (an **Offer of Units for Sale**).

The Financial Markets Authority (**FMA**), being satisfied of the matters set out in section 557 of the Act, considers it appropriate to grant the exemptions in this notice because:—

- Units offered and issued to Shareholders under an Offer of Units for Issue are only offered and issued in order to facilitate the sale of the Shareholder's Shares. The Shareholder does not at any point hold (and cannot elect to retain) the Units. The Units are immediately transferred to settle a sale contract already entered into by, or on behalf of, the Shareholder on the NZX Main Board or the ASX for the sale of Units:
- the offer and issue of the Units under an Offer of Units for Issue arises as an incidental part of the Share sale process and is simply a mechanism for Shareholders to sell Shares by exchanging them for Units. Therefore in these circumstances it is not appropriate that an Offer of Units for Issue should be subject to the disclosure obligations in Part 3 of the Act or the other requirements for regulated offers under the Act:
- an Offer of Units for Sale is received by purchasers as a secondary market trade. A purchaser of Units on the NZX Main Board or the ASX does not know (nor is it relevant for them to know) whether the Units being offered for sale are newly issued, or are simply being traded by a holder of existing Units. The purchaser of the Units is in the same position whether the offeror settles their sale contract with newly-issued Units or with Units previously purchased on the NZX Main Board or ASX. Disclosure under Part 3 of the Act for an Offer of Units for Sale is not necessary because the purchaser has sufficient information available to them by reference to the listed price and other information available through the NZX Main Board and the ASX pursuant to the Manager's continuous disclosure obligations:
- the FMA is satisfied that the extent of the exemptions is not broader than is reasonably necessary to address the matters that gave rise to the exemptions because the offers to which the exemptions apply are limited to offers which are made to facilitate the efficient operation of the Fonterra Shareholders' Market and to persons who can reasonably be expected to have sufficient information to understand the offer:
- in summary, the FMA is satisfied that granting the exemptions is desirable in order to promote two of the purposes of the Act, specifically to avoid unnecessary compliance costs and to promote innovation and flexibility in the financial markets.