

Financial Markets Conduct (Insider Trading - Livestock Improvement Corporation Limited) Exemption Notice 2019

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 (Insider Trading - Livestock Improvement Corporation Limited) Exemption Notice 2019.

2 Commencement

This notice comes into force on 1 October 2019.

3 Revocation

This notice is revoked on the close of 30 September 2024.

4 Interpretation

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

Act means the Financial Markets Conduct Act 2013

Compulsory Acquisition Powers means the rights of LIC to issue or compulsorily acquire LIC's ordinary shares on behalf of a User to meet the Shareholding Requirement, pursuant to LIC's service rules and LIC's constitution

Compulsory Disposal Powers means the rights of LIC to compulsorily dispose of LIC ordinary shares on behalf of a User pursuant to LIC's service rules and LIC's constitution

Exempted Person is a person who holds inside information obtained in their capacity as a director of LIC, employee of LIC, or as a member of the LIC Shareholder Council (whether or not the person is in that position when the trading is undertaken), and any other person (including any person acting jointly with the person holding that information) who would be considered to also hold that inside information solely by virtue of the first person holding the information

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LIC means Livestock Improvement Corporation Limited, a listed issuer on the NZX Main Board operated by NZX Limited

LIC's constitution means LIC's constitution dated 19 July 2018, as amended or replaced from time to time

LIC employee share scheme means the LIC Employee Custodial Share Scheme, which allows eligible employees to purchase and hold a beneficial interest in LIC ordinary shares

LIC ordinary shares means ordinary shares in LIC

LIC's service rules has the meaning given to it in LIC's constitution

LIC Shareholder Council means the shareholder council established by LIC's constitution

Shareholding Requirement has the meaning given to it in LIC's constitution, which requires Users to hold and maintain a specified number of LIC ordinary shares as determined by LIC's Board and set out in LIC's service rules annually. This is currently determined by reference to the aggregate amount spent by a User with LIC on qualifying products and services calculated as an average over the preceding three farming seasons

Regulations means the Financial Markets Conduct Regulations 2014

User has the meaning given to it in LIC's constitution

- (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 of certain trading from being insider conduct

- (1) The conduct described in clauses 5(2) and 5(3), to the extent that it is conduct described in section 241 of the Act, is exempted from being insider conduct for the purposes of the Act.
- (2) This exemption applies to trading in LIC's ordinary shares that –
- (a) is undertaken by an Exempted Person; and
 - (b) is undertaken in connection with enabling the Exempted Person to comply with the Shareholding Requirement or another requirement (such as compulsory disposal requirements on exit of the co-operative or an employee being no longer eligible for the LIC employee share scheme) as imposed by or under LIC's constitution, LIC's service rules or LIC's employee share scheme; and
 - (c) is not influenced by the inside information held by the Exempted Person mentioned in paragraph (a) above.
- (3) This exemption applies to trading in LIC's ordinary shares that is undertaken by LIC pursuant to its Compulsory Acquisition Powers or Compulsory Disposal Powers and is not influenced by inside information held by LIC.
- (4) This exemption is subject to the condition that the amount spent with LIC on qualifying products and services by the Exempted Person is not influenced by inside information held by the Exempted Person.

6 Certain advice and encouragement exempted from being insider conduct

- (1) The conduct described in clause 6(2), to the extent that it is conduct described in section 243 of the Act, is exempted from being insider conduct for the purposes of the Act.
- (2) This exemption applies to advice or encouragement to trade or hold LIC ordinary shares that:

- (a) is given by a person who holds inside information obtained in the person's capacity as a director of LIC, employee of LIC or a member of the Shareholder Council (whether or not the person is in that position when the advice or encouragement is given); and
- (b) is given in connection with enabling any person to comply with a shareholding requirement, or another requirement, imposed by or under LIC's constitution or LIC's service rules; and
- (c) is not influenced by the inside information referred to in paragraph (a); and
- (d) does not involve advice or encouragement influenced by the inside information referred to in paragraph (a) to purchase LIC qualifying products and services with a view to trading or holding LIC ordinary shares to comply with a shareholding requirement, or another requirement, imposed by or under LIC's constitution or LIC's service rules based on the purchase of those LIC qualifying products and services.

Dated at *Auckland* this *26th* day of *September* 2019.



~~Nick Kynoch~~
General Counsel
Financial Markets Authority

Statement of Reasons

This notice comes into force on 1 October 2019 and is revoked on the close of 30 September 2024.

This notice exempts certain conduct from being insider conduct for the purposes of sections 241 and 243 of the Financial Markets Conduct Act 2013 (Act).

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 –

- Livestock Improvement Corporation Limited (LIC) is a New Zealand registered co-operative company whose ordinary shares are listed on the NZX Main board. LIC transacts with its shareholders who become part of the co-operative (Users) when they meet the expenditure requirements set out under LIC's service rules and LIC's constitution. The co-operative nature means that all directors (other than certain appointed external directors), certain employees and members of the LIC Shareholder Council are Users of LIC products;
- Users are required to meet and maintain a shareholding requirement which is determined by reference to the aggregate amount spent with LIC on qualifying products and services calculated as an average over the preceding three farming seasons (Shareholding Requirement);
- the User must acquire LIC ordinary shares when they are below the Shareholding Requirement. LIC may also acquire shares, or encourage or advise Users to acquire or dispose of shares to ensure all relevant persons meet the Shareholding Requirement. The Shareholding Requirement and LIC's constitution also apply to situations where shareholders are required to sell their shares, including where:

- (a) the shareholder ceases to be a User (e.g., cease to spend the "Minimum Purchases Amount" with LIC);
 - (b) the Board of LIC determines that a shareholder should sell its shares as a result of the shareholder's failure to comply, in a material respect, with the terms of any services contract, including LIC's service rules;
 - (c) the Board of LIC resolves that the disposal is in the best interest of the company as a result of the shareholder bringing the company into disrepute, or the shareholder causing significant loss or disruption to the company; and
 - (d) the shareholder is holding shares in breach of LIC's constitution;
- eligible employees under the LIC employee share scheme must redeem their beneficial interest in their LIC ordinary shares acquired under the scheme within six months of being no longer eligible (e.g., when a person leaves their employment with LIC);
 - when Users become LIC shareholders, they accept under LIC's constitution and LIC's service rules that in certain circumstances LIC may act on their behalf to deal with their shares. This ensures that LIC's Shareholding Requirement is maintained to meet an underlying principle of being a co-operative company, where the company transacts with its shareholders on a day-to-day basis;
 - if a User is a director, employee of LIC, or a member of the LIC Shareholder Council (whether or not he or she is in that position when the trading is undertaken), he or she may from time to time have inside information relating to the company. A person (or persons acting jointly) may also be considered to hold the inside information held by the director, employee, or a member solely by virtue of the director, employee or member holding the information (for example, in circumstances where the LIC ordinary shares are held by the director, employee or member jointly with another person, in a trust or company, etc.). These directors, employees, members and other persons would ordinarily be prevented from trading or otherwise would be in contravention of the insider trading provisions. Despite having inside information, it may be necessary for these directors, employees, members and other persons to acquire additional ordinary shares of LIC, such as when they hold less than the minimum number required by the Shareholding Requirement, or dispose of LIC ordinary shares when they no longer spend the mandated amounts set out under the Shareholding Requirement (and exit the co-operative);
 - LIC employees who leave the company but hold LIC ordinary shares through the LIC employee share scheme may still have inside information at the time of them being required to sell their shares;
 - LIC may also need to trade its shares in accordance with its Compulsory Acquisition Powers or Compulsory Disposal Powers under LIC's constitution;
 - clause 5 exempts trading undertaken in these circumstances from being insider conduct for the purposes of the Act, provided that the trading is not influenced by inside information and is undertaken in connection with enabling the person to comply with the Shareholding Requirement and provided that the amount spent with LIC on qualifying products and services is not influenced by inside information held by the Exempted Person;
 - LIC is obligated to advise a User of their Shareholding Requirement each year under LIC's service rules. LIC (via a director, employee or a member of the Shareholder Council) will advise or encourage another person to acquire or dispose of LIC shares in the circumstances, where the User does not meet their Shareholding Requirement. LIC may be in possession of inside information at the time of giving advice or encouragement to the User;

- **clause 6 exempts advice or encouragement given to another person to acquire shares on behalf of a User, provided that the advice or encouragement is not influenced by the inside information and is given in connection with enabling the person to comply with the Shareholding Requirement or as required under LIC's constitution (such as when a shareholder is exiting the co-operative) and provided that it does not involve advice or encouragement influenced by the inside information to purchase LIC qualifying products and services with a view to trading or holding LIC ordinary shares to comply with the Shareholding Requirement based on the purchase of those LIC qualifying products and services;**
- **the exemption is necessary in order for all LIC shareholders to meet the constitutional and contractual obligations under LIC's constitution and LIC's service rules respectively, and to facilitate trading. Preventing trading in these circumstances is unnecessarily restrictive and would therefore result in unnecessary compliance costs. The exemption is not broader than is reasonably necessary to address the matter that gave rise to the exemption.**