

Financial Markets Conduct (Small Co-operatives) Exemption Notice 2022

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 (Small Co-operatives) Exemption Notice 2022.

2 Commencement

This notice comes into force on 23 December 2022.

3 Revocation

This notice is revoked on the close of 22 December 2027.

4 Overview

- (1) This notice exempts co-operative companies and industrial and provident societies from various requirements under the Act and the Regulations subject to certain terms and conditions.
- (2) The co-operative companies this notice applies to include irrigation companies that are registered co-operative companies. (*See also* the Financial Markets Conduct (Irrigation Companies) Exemption Notice 2022, which grants similar exemptions to other irrigation companies that operate under co-operative principles (as defined in clause 6 of that notice)).
- (3) This clause is only a guide to the general scheme and effect of this notice.

5 Interpretation

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

Act means the Financial Markets Conduct Act 2013

application, in relation to an offer of co-operative shares by an issuer to an investor, means an application for the co-operative shares that is made by the investor

co-operative shares means—

- (a) nominal value shares in a co-operative company that are offered only to persons who are, or immediately after the issue or sale will be, transacting shareholders of the co-operative company; or
- (b) shares in an industrial and provident society

Regulations means the Financial Markets Conduct Regulations 2014.

- (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.
- (3) Regulation 9 of the Regulations applies, with all necessary modifications, to a warning statement required under this notice.

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- (4) Regulations 9 to 12 and 33 of the Regulations apply, with all necessary modifications, to the information that is required to be contained in the offer document referred to in clause 8.

6 How to calculate amounts investor has paid for co-operative shares

- (1) In this notice, a reference to co-operative shares held by an investor includes all co-operative shares held by associated persons of the investor.
- (2) In this notice, a reference to amounts paid by an investor for co-operative shares—
- (a) includes amounts that any associated persons of the investor paid for co-operative shares; and
 - (b) includes amounts that the investor or any associated person must or may pay for co-operative shares at a future time (for example, if the shares are issued partly paid, the amount payable if a call is made); but
 - (c) does not include any fees or charges.

Example

The exemption in clause 7, 9, 10, or 12 does not apply if any investor has paid more than \$10,000 for co-operative shares of a company (the **issuer**).

One investor (**A**) paid \$6,000 for co-operative shares.

Another investor (**B**) is an associated person of A (see section 12 of the Act). B paid \$3,000 for co-operative shares.

In addition, the shares were issued partly paid. If the issuer makes a call, A and B will have to pay in total a further \$2,000.

Because this totals \$11,000, the issuer cannot rely on the exemption.

7 Exemption for co-operative shares from Part 3 of Act

- (1) Every issuer (**A**) is exempted from Part 3 of the Act in respect of an offer of co-operative shares of which A is the issuer.
- (2) Subclause (1) is subject to subclauses (3) and (4).
- (3) The exemption does not apply if either of the following applies:
- (a) 1 or more investors in co-operative shares of A have paid more than \$10,000 for co-operative shares of A that they hold at the time of the offer; or
 - (b) the total amount that 1 or more investors in co-operative shares of A must pay on acceptance of the offer plus the amounts that they have previously paid for co-operative shares of A that they hold at the time of the offer is more than \$10,000.
- (4) The exemption stops applying to a subsequent offer of co-operative shares of which A is the issuer if the total amount that 1 or more investors in co-operative shares of A must pay on acceptance of the offer plus the amounts that they

have previously paid for co-operative shares of A that they hold at the time of the offer is more than \$10,000.

8 Conditions of exemption in clause 7

The exemption in clause 7 is subject to the following conditions:

- (a) A must not accept an application, or issue or transfer the shares to an investor, unless,—
 - (i) before the application was made, an offer document for the offer was given to the investor; and
 - (ii) the offer document contained all the information specified in Schedule 1 in relation to the offer; and
- (b) A must ensure that the warning statement set out in Part 1 of Schedule 2 is included, in a prominent position, at the front of every document provided to the investor that contains the key terms of the offer (including the offer document referred to in paragraph (a)).

9 Exemptions for co-operative shares from certain provisions of Part 4 of Act

- (1) Every issuer (A) is exempted from sections 218 and 227 of the Act and regulation 108 of the Regulations in respect of co-operative shares offered under the Act of which A is the issuer.
- (2) Subclause (1) is subject to subclauses (3) and (4).
- (3) The exemptions do not apply if either of the following applies:
 - (a) 1 or more investors in co-operative shares of A have paid more than \$10,000 for co-operative shares of A that they hold at the time of the offer; or
 - (b) the total amount that 1 or more investors in co-operative shares of A must pay on acceptance of the offer plus the amounts that they have previously paid for co-operative shares of A that they hold at the time of the offer is more than \$10,000.
- (4) The exemptions stop applying to a subsequent offer of co-operative shares of which A is the issuer if the total amount that 1 or more investors in co-operative shares of A must pay on acceptance of the offer plus the amounts that they have previously paid for co-operative shares of A that they hold at the time of the offer is more than \$10,000.

10 Exemptions for co-operative shares offered under Securities Act 1978

- (1) Every issuer (A) is exempted from the following provisions of the Act and the Regulations in respect of co-operative shares offered under the Securities Act 1978 of which A is the issuer:
 - (a) subpart 4 of Part 3 of the Act:

- (b) sections 218 and 227 of the Act;
- (c) regulation 108 of the Regulations.
- (2) Subclause (1) is subject to subclauses (3) and (4).
- (3) The exemptions do not apply if 1 or more investors in co-operative shares of A have paid more than \$10,000 for co-operative shares of A that they held on 23 December 2022.
- (4) The exemptions stop applying to a subsequent offer of co-operative shares of which A is the issuer if the total amount that 1 or more investors in co-operative shares of A must pay on acceptance of the offer plus the amounts that they have previously paid for co-operative shares of A that they hold at the time of the offer is more than \$10,000.

11 Application of exemptions in clauses 12 and 14

The exemptions in clauses 12 and 14 apply to the following accounting periods of an issuer that relies on the exemption:

- (a) an accounting period of the issuer that commenced before the exemption is granted (including an accounting period that ended before the exemption is granted) if the exemption is granted before the financial statements or group financial statements for that period would, but for the exemption, be required to be delivered to the Registrar for lodgement under section 461H of the Act; and
- (b) subsequent accounting periods.

12 Exemption from financial reporting if individual investor investment does not exceed \$10,000

- (1) Every issuer (A) is exempted from Part 7 of the Act with respect to a particular accounting period if A is an FMC reporting entity only because co-operative shares issued by A are regulated products.
- (2) However, the exemption does not apply if 1 or more investors hold, at any time during the accounting period, co-operative shares of A for which they paid an amount of more than \$10,000 in total.

13 Condition of exemption in clause 12

The exemption in clause 12 is subject to the condition that A must ensure that the warning statement set out in Part 2 of Schedule 2 is included, in a prominent position, at the front of every document provided to an investor that contains A's financial statements, group financial statements, or summary financial statements for that accounting period.

14 Exemption from financial reporting if revenue does not exceed \$5 million

Every issuer (A) is exempted from Part 7 of the Act with respect to a particular accounting period if—

- (a) A is an FMC reporting entity only because co-operative shares issued by A are regulated products; and
- (b) the total revenue of A and its subsidiaries (if any) for that accounting period (as determined in accordance with generally accepted accounting practice) does not exceed \$5 million.

15 Condition of exemption in clause 14

The exemption in clause 14 is subject to the condition that A must ensure that the warning statement set out in Part 2 of Schedule 2 is included, in a prominent position, at the front of every document provided to an investor that contains A's financial statements, group financial statements, or summary financial statements for that accounting period.

Schedule 1

Contents of offer document

cl 8(a)(ii)

Offer document summary

The offer document must have sections, each of which is headed up, is ordered, and contains information as follows:

1 What is this?

The offer document must contain a statement in the following form:

“This is an offer of [*name of financial products (for example, co-operative shares of ABC Limited)*]. [*Name of financial products*] give you a stake in the ownership of [*name of issuer*].

You could receive a return reflecting the performance of [*name of issuer*] through [*specify mechanism for receiving returns (for example, rebates)*].

If [*name of issuer*] runs into financial difficulties and is wound up, you will be paid only after all creditors and holders of preference shares* have been paid. You may lose some or all of your investment.”

*Omit the words “and holders of preference shares” if those words are inapplicable or may be false, misleading, deceptive, or confusing.

2 About [*name of issuing group*]

The offer document must contain a brief description of the issuing group’s business.

Example

ABC Limited is a co-operative company providing fruit packaging and cool storage services to fruit growers in the XYZ region.

3 Purpose of this offer

The offer document must contain a brief description of the purpose of the offer (including what the money raised under the offer is to be used for).

4 Key terms of the offer

(1) The offer document must contain the key terms of the offer briefly summarised in a table, including—

- (a) a brief description of the co-operative shares being offered (for example, “This is an offer of co-operative shares in ABC Limited”); and
- (b) the fixed price of, or other fixed consideration for, the co-operative shares (if any) or the (fixed or indicative) range within which that price or consideration may be fixed (if any); and
- (c) the intended dates on which the offer opens and closes; and

- (d) the number or amount of the co-operative shares being offered and the percentage of the total co-operative shares of the same class on issue that that number or amount will represent immediately after the issue or sale; and
 - (e) if a holder of the co-operative shares will or may be liable to make further payments or to pay fees or charges relating to those securities, a brief description of the nature of the liability, fees, or charges.
- (2) Subclause (3) applies if either or both of the following apply:
 - (a) the co-operative shares will not be issued or transferred unless applications for a minimum number of those securities are received (*see* section 77(1)(a) of the Act) (the **minimum number**):
 - (b) there is a maximum number of co-operative share securities being offered (the **maximum number**).
 - (3) The information under subclause (1)(d) must be disclosed on the basis of the minimum number or the maximum number (or both), as the case may be.
 - (4) Subclause (1)(d) does not apply to a continuous issue offer document.
 - (5) In subclause (4), **continuous issue offer document** means an offer document that relates to co-operative shares that an issuer, in the ordinary course of its business, continuously offers.

5 How you can get your money out

- (1) The offer document must include whichever of the following statements best applies:
 - (a) “[*Name of issuer*] does not intend to quote these [*name of financial products*] on a licensed market in New Zealand but they will be able to be traded on the [*describe established market for trading*]. This means you may be able to sell them on [*name of established market*] if there are interested buyers. You may get less than you invested. The price will depend on the demand for the [*name of financial products*].”
 - (b) “[*Name of issuer*] does not intend to quote these [*name of financial products*] on a market licensed in New Zealand, and there is no other established market for trading them. This means that you may not be able to sell your [*name of financial products*].”
 - (c) “These [*name of financial products*] cannot be sold or transferred.”
- (2) The offer document must contain a description of the ability to redeem the co-operative shares (if any).

6 Key drivers of returns

The offer document must give a brief summary of what the issuer considers to be—

- (a) the current and future aspects of the issuing group's business that have, or may have, the most impact on the financial performance of the business; and
- (b) the key strategies and plans for those aspects of the business.

7 Key risks affecting this investment

- (1) The offer document must include a statement in the following form:

“*[Name of issuer]* considers that the most significant risk factors that could affect the returns received from holding these *[name of financial products]* are *[brief summary of the most significant risk factors that the issuer considers may affect the returns]*.”

This summary does not cover all the risks of investing in *[name of financial products]*.”

- (2) The brief summary under subclause (1) must include particulars that make it clear why each circumstance is of particular significance in relation to the particular issuer or the particular co-operative shares (as compared to other issuers or co-operative shares).

8 *[Name of issuing group's]* financial information

The offer document must include a statement in the following form:

“Under the terms of the Financial Markets Conduct (Small Co-operatives) Exemption Notice 2022, on which this offer relies, no financial information regarding *[name of issuer]* is required to be provided in this document.”

Schedule 2

Warning statements

cls 8(b), 13, 15

Part 1

Warning

Under the Financial Markets Conduct Act 2013, co-operative companies and industrial and provident societies making an offer of co-operative shares have to give information about themselves and the shares to investors. They also have to provide shareholders with ongoing financial information about the shares and the company or industrial and provident society. In most cases, this information must meet legal requirements under that Act for financial reporting and the auditing of financial statements. This is to help investors make informed decisions.

In this case, these rules do not apply because there is an exemption where the total amount to be invested by individual investors in co-operative shares of a co-operative company or an industrial and provident society is \$10,000 or less (including any shares already held). This exemption recognises that, for the shareholders, these co-operative shares are more like a membership than an investment.

As a result, you may not be given all the information usually required.

Part 2

Warning

Under the Financial Markets Conduct Act 2013, co-operative companies and industrial and provident societies that have issued co-operative shares usually have to make available to investors ongoing financial information about themselves and the shares. This is to help investors make informed decisions. In most cases, this information must meet legal requirements under that Act for financial reporting and the auditing of financial statements.

The usual rules do not apply to [*name of issuer*] for [*relevant accounting period*] because there is an exemption where the total amount invested by each investor in shares of a co-operative company or an industrial and provident society is \$10,000 or less/an exemption for issuers of co-operative shares where the issuer's annual revenue is \$5 million or less*.

*Select one or both. If both apply, make any changes to ensure that the statement is grammatically correct.

As a result, these shares may be subject to the financial reporting and audit requirements of the Companies Act 1993 or the Industrial and Provident Societies Act 1908 and the information provided in this document may not contain all the financial information usually required to be provided to shareholders for [*relevant accounting period*].

If you would like any further information, please contact [*contact details of co-operative company or industrial and provident society*].

Dated at Wellington this 7th day of December 2022.

 General Counsel.

Statement of reasons

This notice, which comes into force on 23 December 2022 and is revoked on the close of 22 December 2027, grants exemptions to small co-operative companies and industrial and provident societies.

This notice replaces, on substantially the same terms, the Financial Markets Conduct (Small Co-operatives) Exemption Notice 2021, which is revoked on the close of 22 December 2022. However, this notice—

- increases the investment and revenue caps that allow issuers to qualify for various exemptions under the Financial Markets Conduct Act 2013 (the **Act**) and the Financial Markets Conduct Regulations 2014. The investment cap increases from \$5,000 to \$10,000. The revenue cap increases from \$2 million to \$5 million;
- includes a new clause that sets out how to calculate amounts that investors have paid for co-operative shares (*see clause 6*).

This notice exempts issuers of co-operative shares (including shares in an industrial and provident society) from—

- disclosure requirements under Part 3 and some limited register and record-keeping requirements under Part 4 of the Act in respect of any co-operative shares where the aggregate per shareholder capital investment in the co-operative shares of that issuer is \$10,000 or less;
- ongoing disclosure and some limited register and record-keeping requirements under Parts 3 and 4 of the Act in respect of any co-operative shares where the co-operative shares were offered under the Securities Act 1978 and the aggregate per shareholder capital investment in the co-operative shares of that issuer is \$10,000 or less;
- financial reporting and auditing requirements under Part 7 of the Act in relation to an accounting period where the aggregate per shareholder capital investment in the co-operative shares of that issuer held at any one time during that period is \$10,000 or less;

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Statement of reasons

- financial reporting and auditing requirements under Part 7 of the Act in relation to an accounting period where the revenue of the issuer (plus the revenue of any subsidiaries) is \$5 million or less for that accounting period.

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

- the exemptions apply only to co-operative shares and issuers of co-operative shares. As holders of co-operative shares, members obtain goods, services, or rights from the company or industrial and provident society that has issued those shares. Those shareholders will generally have significant knowledge regarding the issuer because the issuer's principal business is the provision of those goods, services, or rights to its members; and
- in cases where an issuer's total investment per shareholder is \$10,000 or less, the financial risk to shareholders is low. Like a membership, shareholders obtain transacting benefits during the lifetime of their investment that are not in the nature of usual equity returns and are irrespective of any profits made by the issuer. The exemptions enable the issuer to provide information to investors in a cost-effective way that is appropriate to the nature of its business and the type and level of investment made by its transacting shareholders, while still maintaining appropriate investor protections; and
- in cases where an issuer's revenue (plus the revenue of any wholly owned subsidiaries) for a particular accounting period is \$5 million or less, the financial risk to shareholders is more limited and the costs of complying with Part 7 of the Act are disproportionately high. There is a risk that those compliance costs might affect such an issuer's delivery of key partner benefits to its transacting shareholders. The limited benefit those investors would receive if the issuer were required to comply with the financial reporting and auditing requirements in Part 7 of the Act for that accounting period is outweighed by those costs and that risk; and
- the increased investment and revenue caps for these exemptions recognise the effect (and expected future effect) of inflation and rising operational costs over the 5-year period of this exemption. The changes to the investment and revenue caps are intended to generally maintain a scope that is consistent with the entities and investors to whom these exemptions are targeted towards; and
- those co-operative companies and industrial and provident societies remain subject to the financial reporting and auditing requirements of the Companies Act 1993 and the Industrial and Provident Societies Act 1908, respectively, which may require them to prepare financial statements in accordance with generally accepted accounting practice and have those statements audited unless shareholders agree otherwise. In this way, those entities continue to be subject to financial reporting and auditing requirements that are more cost-effective to issuers and are appropriate to the nature of the business and the amount of revenue obtained during the relevant financial reporting period; and

- for these reasons, the FMA is satisfied that the exemptions are desirable in order to promote the purposes of the Act, specifically avoiding unnecessary compliance costs while continuing to ensure the provision of timely, accurate, and understandable financial information to assist decision making by members, and promoting the confident and informed participation of businesses, investors, and consumers in the financial markets; and
- the FMA is also satisfied that the exemptions are not broader than reasonably necessary to address the matters that gave rise to them, given that the exemptions are limited to issuers of co-operative shares that have—
 - an aggregate per shareholder capital investment of \$10,000 or less; or
 - revenue for the relevant financial reporting period of \$5 million or less.

Issued under the authority of the Legislation Act 2019.

Date of notification in *Gazette*:

This notice is administered by the Financial Markets Authority.