

# Financial Markets Conduct (Insider Trading - Livestock Improvement Corporation Limited) Exemption Notice 2021

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 2021.

### 2 Commencement

This notice comes into force on 24 February 2021.

### 3 Revocation

This notice is revoked on the close of 23 February 2026.

### 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

**Exempt Adviser** is a person who holds inside information obtained in the person's capacity as a director, officer, or employee of LIC or as a member of the LIC Shareholder Reference Group (whether or not the person is in that position when the advice or encouragement is given)

**Exempt Trader** is a person who holds inside information obtained in their capacity as a director, officer, or employee of LIC, or as a member of the LIC Shareholder Reference Group (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

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

**LIC's constitution** means LIC's constitution dated 1 January 2021, 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 Reference Group** means the shareholder group established by LIC's constitution

**NZX Main Board** means the main equities market operated by NZX Limited as a licensed market

**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 Certain trading exempted from insider conduct prohibitions

- (1) An Exempt Trader who undertakes a trade described in clause 5(2) is exempt from —
- (a) section 241 of the Act; and
  - (b) section 240 of the Act to the extent that it applies in relation to section 241.
- (2) This exemption applies to trading in LIC's ordinary shares that —
- (a) is undertaken in connection with enabling the Exempt Trader 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
  - (b) is not influenced by the inside information held by the Exempt Trader.
- (3) The exemptions described in clause 5(1) also apply 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 Exempt Trader is not influenced by inside information held by the Exempt Trader.

## **6 Certain advice and encouragement exempted from insider conduct prohibitions**

- (1) An Exempt Adviser who gives advice or encouragement described in clause 6(2) is exempted from —
- (a) section 243 of the Act; and
  - (b) section 240 of the Act to the extent that it applies in relation to section 243.
- (2) This exemption applies to advice or encouragement to trade or hold LIC ordinary shares that:
- (a) is given by an Exempt Adviser 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
  - (b) is not influenced by the inside information held by the Exempt Adviser; and
  - (c) 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 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.

## **7 Existing notice revoked**

The Financial Markets Conduct (Insider Trading - Livestock Improvement Corporation Limited) Exemption Notice 2019 is revoked on the commencement of this notice.

Dated at *Auckland* this *18<sup>th</sup>* day of *February* 2021.

  
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Nick Kynoch  
General Counsel  
Financial Markets Authority

## **Statement of Reasons**

This notice comes into force on 24 February 2021 and is revoked on the close of 23 February 2026.

This notice exempts certain persons from certain prohibitions imposed under sections 240, 241 and 243 of the Financial Markets Conduct Act 2013 (**Act**). The notice replaces the Financial Markets Conduct (Insider Trading - Livestock Improvement Corporation Limited) Exemption Notice 2019, which will be revoked on the commencement of this notice.

Background –

- Livestock Improvement Corporation Limited (**LIC**) is a New Zealand registered co-operative company formed under the Dairy Industry Restructuring Act 2001;

- LIC's 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 Reference Group are Users of LIC products;
- Users are required to meet and maintain a shareholding requirement which is currently 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**). Users must acquire LIC ordinary shares when they are below the Shareholding Requirement;
- there are also circumstances where the Shareholding Requirement and LIC's constitution require shareholders are required to sell their shares, for example when a shareholder ceases to be a User;
- additionally, 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. For example, if a User does not hold the required number of shares by a specified date, LIC's constitution provides the ability for LIC to issue or compulsorily acquire shares on behalf of the User to meet the Shareholding Requirement (**Compulsory Acquisition Power**). 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;
- similarly, where Users do not sell their shares when they are required to do so under LIC's service rules and LIC's constitution, LIC can dispose of the shares on the User's behalf (**Compulsory Disposal Power**);

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 –

- if a User is a director, employee of LIC, or a member of the LIC Shareholder Reference Group (**member**) (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 (**LIC Insider**). 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 giving advice by sections 240, 241 and 243 of the Act. Despite having inside information, there are some circumstances in which it may be necessary or desirable for these directors, employees, members and other persons who are both Users and LIC Insiders to —
  - acquire additional LIC ordinary shares, such as when they hold less than the minimum number required by the Shareholding Requirement;
  - dispose of LIC ordinary shares when they no longer spend the mandated amounts set out under the Shareholding Requirement (and exit the co-operative);

- similarly, 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 acquire or dispose of LIC ordinary shares in accordance with its Compulsory Acquisition Powers or Compulsory Disposal Powers under LIC's constitution, notwithstanding LIC having inside information;
- clause 5 of this exemption notice exempts an LIC Insider from prohibitions imposed under the Act on trading undertaken in these circumstances, provided that the trading is not influenced by the 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 LIC Insider;
- LIC is obligated to advise a User of their Shareholding Requirement each year under LIC's service rules. An LIC Insider may in these circumstances have the responsibility to advise or encourage another person to acquire or dispose of LIC shares in the circumstances (on behalf of LIC), where the User does not meet their Shareholding Requirement. Clause 6 of this exemption notice exempts an LIC Insider from prohibitions imposed under the Act, 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;
- in the absence of this exemption notice, persons who are potential LIC Insiders, in the circumstances described within this notice, would not be able to trade in accordance with constitutional and contractual obligations (or to provide advice or encouragement about requirements) under LIC's constitution and LIC's service rules respectively. Preventing trading (or providing advice or encouragement to another person) in these circumstances would frustrate the purpose of the Dairy Industry Restructuring Act 2001 and restrict innovation and flexibility in the financial markets;
- any person relying on this notice will be subject to a number of conditions and limitations, in particular, that the person cannot rely on the exemption if the trading or advice is influenced by any inside information held by them. The FMA considers that the limitations uphold the policy and intent in Part 5 of the Act to prohibit insider conduct;

As such, the FMA is satisfied that –

- the exemptions are necessary or desirable in order to promote the purposes of the Act, namely to promote confident and informed participation of Users and LIC in the financial markets by resolving inconsistencies between a User's obligations and the insider trading prohibitions under the Act. Resolving these inconsistencies allows LIC Insiders to trade in accordance with LIC's service rules and LIC's constitution. Without the exemptions, there would be significant uncertainty about potential liability arising from participation in the co-operative structure;
- the exemptions, and the equivalent exemptions in the predecessor notices, promote innovation and flexibility in the financial markets by facilitating the continued operation of LIC in accordance with its service rules and constitution;
- the exemptions, and the equivalent exemptions in the predecessor notices, also avoid unnecessary compliance costs. Without the exemptions, the insider trading prohibitions in the

Act would inhibit the continued operation of LIC in accordance with its service rules and constitution. However, that cost can in the FMA's view be avoided through the exemptions with appropriate conditions, without compromising the policy and intent of the Act or its other purposes. As such, the FMA considers that compliance cost to be unnecessary;

- the exemptions, in the context of the associated conditions, are not broader than is reasonably necessary to address the matters that gave rise to the exemptions. The exemptions address technicalities that are specific to the co-operative structure and the conditions assist in facilitating such a structure to work within the policy and intent of the Act, including with regard to the general prohibition for insider trading. The conditions address the mischief of utilising inside information, as the exemptions are not available where the trading is influenced by the inside information held by the person.