

Securities Act (Fonterra Co-operative Group Limited) Exemption Notice 2014

Pursuant to section 70B of the Securities Act 1978, the Financial Markets Authority gives the following notice (to which is appended a statement of reasons of the Financial Markets Authority).

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Notice

- 1 Title**
This notice is the Securities Act (Fonterra Co-operative Group Limited) Exemption 2014.
- 2 Commencement**
This notice comes into force on 7 May 2014.
- 3 Revocation**
This notice is revoked on the close of 30 November 2016.
- 4 Interpretation**
 - (1) In this notice, unless the context otherwise requires, —
Act means the Securities Act 1978

Allotment Date means the date the Manager allots Units pursuant to the first offer of Units to the public



Custodian means Fonterra Farmer Custodian Limited or any other person that Fonterra may require or permit to hold interests in Shares on behalf of the Fund or the Market Maker

Fonterra means Fonterra Co-operative Group Limited

Fund means a unit trust established under the Unit Trusts Act 1960 with the name the 'Fonterra Shareholders' Fund'

Manager means the manager of the Fund

Market Maker has the same meaning as that given to 'market maker in co-operative shares' in section 5(1) of the Dairy Industry Restructuring Act 2001

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

Regulations means the Securities Regulations 2009

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 unit in the Fund.

- (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 Exemptions in relation to Shares offered by the Manager

Fonterra, the Manager, and every person acting on behalf of either or both of them, are exempted from sections 33(1), 37 and 37A of the Act and the Regulations (except regulation 23) in respect of Shares that have been previously allotted by Fonterra to the Custodian on the Allotment Date and are subsequently offered to Shareholders by the Manager.

6 Exemptions in relation to Shares offered by the Market Maker

Fonterra, any Market Maker, and every person acting on behalf of either or both of them, are exempted from sections 33(1), 37 and 37A of the Act and the Regulations (except regulation 23) in respect of Shares that have been previously allotted by Fonterra to the Custodian on the Allotment Date and are subsequently offered to Shareholders by the Market Maker.

7 Condition of exemptions in clauses 5 and 6

The exemptions in clauses 5 and 6 are subject to the condition that at the time of the allotment of the Shares to the Custodian there is a registered prospectus for the Units.

8 Exemptions in relation to Units

The Manager and every person acting on its behalf are exempted from sections 33(1), 37 and 37A of the Act and the Regulations (except regulation 23) in relation to the Units offered and allotted to a Shareholder as consideration for the transfer of Shares by that Shareholder if those Units are used to settle a sale contract previously entered into on the NZX Main Board or the Australian Securities Exchange in relation to the sale of Units.

9 Revocation of earlier notice

The Securities Act (Fonterra Co-operative Group Limited) Exemption Notice (No 4) 2012 is revoked on the close of 6 May 2014.

Dated at Wellington this 5th day of May 2014.



Sue Brown
Head of Primary Regulatory Operations
Financial Markets Authority

Statement of reasons

This notice comes into force on 7 May 2014, and is revoked on 30 November 2016.

This notice replaces the Securities Act (Fonterra Co-operative Group Limited) Exemption Notice (No 4) 2012 (**existing notice**). This notice is on substantially the same terms as the existing notice but removes the condition set out in clause 7(2) of the existing notice as it is not appropriate given the current structure and operation of the Fonterra Shareholders' Market (**FSM**) and the Fonterra Shareholders' Fund (**Fund**).

This notice provides exemptions from certain requirements of the Securities Act 1978 (**Act**) and from the Securities Regulations 2009 (except regulation 23) in relation to the arrangements for the implementation and operation of the FSM and the Fund.

The Financial Markets Authority (**FMA**), after satisfying itself as to the matters set out in section 70B(2) of the Act, considers it appropriate to grant the exemptions in clauses 5 and 6 in relation to the previously allotted shares because:

- The manager of the Fund (**Manager**) and the Market Maker are separate legal persons from Fonterra and are not controlled by Fonterra:
- At the time Fonterra allotted Shares to the Custodian on behalf of the Fund and the Market Maker (as the case may be), there was a registered prospectus in respect of the Units in the Fund and that prospectus contained information about Fonterra. Fonterra allotted the Shares to the Custodian contemporaneously with the Manager issuing the Units pursuant to the prospectus:
- The exemption contained in clause 5 relates to offers of Shares by the Manager in connection with the redemption of Units held by or on behalf of those Shareholders (as is a requirement of the trust deed establishing the Fund and the Dairy Industry Restructuring Act 2001). The Manager is not entitled to any form of compensation for the offer of the Shares (otherwise than as a result of the redemption of Units by the Shareholders who are to receive the Shares). As a result, a Shareholder to whom the Shares are offered does not stand to suffer any detriment as a result of any information asymmetry that may exist between the Manager and such Shareholder in respect of the Shares being offered:
- The exemption contained in clause 6 permits the Market Maker to perform its role as a price setter in respect of Shares and Units, through continuously trading in Shares and Units on-market:
- Given this, FMA considers that the exemptions will not cause significant detriment to Shareholders:
- Further, the exemptions are only in relation to the Shares which are previously allotted to the Custodian for holding on behalf of the Manager of the Fund or the Market Maker, for the implementation of the Fund and the FSM:
- In these circumstances FMA considers that the exemptions are not broader than reasonably necessary to address the matters that gave rise to the exemptions.

Further FMA, after satisfying itself as to the matters set out in section 70B(2) of the Act, considers it appropriate to grant the exemptions in clause 8 in relation to the Units because:

- Shareholders are technically being offered Units. However, this offer is only in order to facilitate the sale of the Shareholder's Shares. The

Units must be issued to a FSM Participant on behalf of the Shareholder, who is required to transfer the Units to settle a sale contract already entered into (on their behalf) on the NZX Main Board or the Australian Securities Exchange in relation to the sale of the Units:

- The Shareholder's intention is to sell the Shares for cash. The Shareholder does not at any point hold (and cannot elect to retain) the Units. The offer and allotment of the Units arises as an incidental part of the Share sale process:
 - Given the exemptions only applies to Units that the Shareholders are technically offered but will not receive FMA considers that the exemptions will not cause significant detriment to Shareholders, and that they are not broader than reasonably necessary to address the matters than gave rise to the exemptions.
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