



FINANCIAL MARKETS AUTHORITY
TE MANA TATAI HOKOHOKO – NEW ZEALAND

Securities Act (Fulton Hogan Limited) Exemption Notice 2013

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

- Title**
This notice is the Securities Act (Fulton Hogan Limited) Exemption Notice 2013.
- Commencement**
This notice comes into force on 22 February 2013.

3 Revocation

This notice is revoked on the close of 30 September 2017.

4 Interpretation

- (1) In this notice, unless the context otherwise requires, —
Act means the Securities Act 1978

eligible person means:

- (a) an employee or a director of Fulton Hogan or of any of its subsidiaries; or
- (b) a person who provides personal services (other than as an employee) principally to Fulton Hogan or any of its subsidiaries; or
- (c) a relative of a person described in paragraph (a) or (b); or
- (d) a trustee of a trust of which a person described in paragraph (a), (b), or (c) is a beneficiary; or
- (e) a company that is controlled by a person described in paragraph (a), (b), (c), or (d) (within the meaning of subclause (2))

employee share purchase scheme means the scheme established by Fulton Hogan and existing on the date this notice comes into force under which eligible persons may acquire specified equity securities

Fulton Hogan means Fulton Hogan Limited

Regulations means the Securities Regulations 2009

specified equity security means, an ordinary share in Fulton Hogan, or any interest in or right to an ordinary share in Fulton Hogan, that is offered under the employee share purchase scheme

- (2) For the purposes of paragraph (e) of the definition of eligible person, a company is **controlled** by a person if—
- (a) the person has the power, directly or indirectly, to exercise, or control the exercise of, the rights to vote attached to more than 50% of the voting securities of the company; or
 - (b) the person controls the composition of the board of the company (within the meaning of section 7 of the Companies Act 1993, which, for this purpose, is applied with all necessary modifications).
- (3) 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

Fulton Hogan, every subsidiary of Fulton Hogan, and every person acting on behalf of any or all of them, are exempted from the following provisions in respect of specified equity securities:

- (a) section 37A(1)(c) of the Act; and
- (b) clauses 4 to 20, 22 to 24, and 26 to 28 of Schedule 1 of the Regulations; and
- (c) clause 21 of Schedule 1 of the Regulations, to the extent that it requires the registered prospectus to contain the dates, time periods, and price terms relevant to the particular offer under the employee share purchase scheme and information personal to a person to whom the offer is made; and
- (d) clause 5(1)(c) of Schedule 13 of the Regulations; and
- (e) regulation 30 of the Regulations, in relation to advertisements containing information personal to a person to whom the advertisement is distributed.

6 Condition that equity securities allotted only to eligible persons

The exemptions in clause 5 are subject to the condition that the specified equity securities are allotted only to the following persons:

- (a) persons who are eligible persons at the time of allotment of the specified equity securities;
- (b) in the case of specified equity securities that are allotted on the exercise of rights or options to acquire shares, persons who are eligible persons at the time of allotment of those rights or options.

7 Condition that equity securities offered within 9 months

The exemptions in clause 5 are subject to the condition that the subscriber for the specified equity securities received the investment statement relating to the specified equity securities no later than 9 months after the date of the relevant financial statements that are provided under clause 8(1)(a).

8 Condition that information sent to subscribers

(1) The exemptions in clause 5 are subject to the condition that, before a person subscribes for specified equity securities, Fulton Hogan provides that person with the following:

- (a) a copy of the relevant financial statements; and
- (b) if the specified equity securities are allotted more than 10 months after the date of the relevant financial statements that



are provided under paragraph (a), a copy of the following statements for the group:

- (i) an interim statement of financial position:
 - (ii) an interim statement of financial performance:
 - (iii) an interim statement of cash flows:
 - (iv) a statement as to all material changes (if any) in matters contained in the interim financial statements from the matters contained in the relevant financial statements that are provided under paragraph (a):
 - (v) a statement as to all transactions (if any) that are material related party transactions under generally accepted accounting practice and were entered into or were being performed in the period of the interim financial statements; and
- (c) Fulton Hogan's most recent annual report, which includes or is accompanied by a statement setting out the following matters:
- (i) particulars of entries in the interests register, concerning directors of Fulton Hogan, made during the accounting period to which the report relates:
 - (ii) the date of, names of the parties to, and general nature of any material contract (excluding a contract entered into in the ordinary course of business) entered into by a member of the issuing group at any time in the 2 years preceding the relevant date:
 - (iii) a brief description of any legal proceedings or arbitrations concerning the issuing group that are pending at the relevant date and that might have a material adverse effect on the issuing group:
 - (iv) a statement by the directors of Fulton Hogan as to whether, in their opinion, after due enquiry by them any of the following has materially and adversely changed during the period between the date of the latest statement of financial position attached to, or contained in, the annual report and the relevant date:
 - A the trading or profitability of the issuing group:
 - B the value of the assets of the issuing group:
 - C the ability of the issuing group to pay its liabilities due within the next 12 months.
- (2) The interim financial statements referred to in subclause (1)(b) must be prepared—

- (a) in accordance with NZ IAS 34 (but need not be audited); and
 - (b) for the period from the date of the relevant financial statements provided under subclause (1)(a) and ending on a stated date that is no more than 9 months after the date of those financial statements.
- (3) In this clause, —

issuing group, in relation to an offer of specified equity securities, means Fulton Hogan and all subsidiaries of Fulton Hogan at the relevant date

relevant date, in relation to a statement that is included in, or accompanies, an annual report under subclause (1)(c), means a date specified in the statement, being a date that is not more than 20 working days before the date on which either—

- (a) a copy of the annual report is sent under section 209 of the Companies Act 1993; or
- (b) a notice is sent under that section in respect of the annual report

relevant financial statements means the latest financial statements for the group that comply with, and have been registered under, the Financial Reporting Act 1993.

9 Condition about sale arrangements

The exemptions in clause 5 are subject to the condition that the investment statement relating to the specified equity securities must contain a description of the arrangements under which persons who hold specified equity securities can sell those securities (before and after they cease to be eligible persons).

10 Condition that there is repurchase offer by Fulton Hogan

The exemptions in clause 5 are subject to the condition that it is a term of the offer that Fulton Hogan offers to repurchase the specified equity securities under the Companies Act 1993 from eligible persons when they cease to be eligible persons (so long as at that time Fulton Hogan satisfies the solvency test set out in section 4 of the Companies Act 1993).

11 Condition that terms of employee share purchase scheme available

The exemptions in clause 5 are subject to the condition that the investment statement relating to the specified equity securities contains, or is accompanied by, —

- (a) a brief description of the terms of the employee share purchase scheme; and

- (b) a description of how a person who is able to acquire securities under the employee share purchase scheme may, free of charge, inspect, or obtain a copy of, the terms of the employee share purchase scheme.

12 Condition of cap on specified equity securities

- (1) The exemptions in clause 5 are subject to the condition that the number of specified equity securities allotted in any 12-month period must not exceed 1% of the ordinary shares of Fulton Hogan as at the start of the 12-month period.
- (2) Calculations of the number of specified equity securities allotted in a period for the purposes of subclause (1) must exclude the specified equity securities allotted to any excluded person.
- (3) In subclause (2), **excluded person** means any of the following:
 - (a) a director of Fulton Hogan:
 - (b) a person who is, at the commencement of any year, a wealthy or experienced person as defined in section 5(2CC) to (2CE) of the Act:
 - (c) a person who would not be regarded under the Act as being a member of the public.

13 Conditions of exemption from clause 21 of Schedule 1 of Regulations

- (1) The exemption in clause 5(c) is subject to the further condition that, before a person subscribes for specified equity securities Fulton Hogan provides the person with a document containing the information that would, but for this exemption, be required by clause 21 of Schedule 1 of the Regulations to be contained in the registered prospectus.
- (2) Subclause (1) does not require the document provided to a person under subclause (1) to contain information personal to any other person.

14 Condition of exemption from clause 5(1)(c) of Schedule 13 of Regulations

The exemption in clause 5(d) is subject to the further condition that, before a person subscribes for specified equity securities, Fulton Hogan provides the person with a document containing the information required by clause 5(1)(c) of Schedule 13 of the Regulations.

15 Condition of exemption from regulation 30 of Regulations

The exemption in clause 5(e) is subject to the further condition that Fulton Hogan has complied with regulation 30 of the Regulations in relation to another advertisement and the only difference between the 2 advertisements is information personal to a person to whom the advertisement is distributed.

Dated at Wellington this 14th day of February 2013



Sue Brown
Head of Primary Regulatory Operations
Financial Markets Authority

Statement of reasons

This notice, which comes into force on 22 February 2013 and is revoked on 30 September 2017, replaces the Securities Act (Fulton Hogan Limited) Exemption Notice 2007 (the **2007 notice**).

This notice is on substantially the same terms as the Securities Act (Employee Share Purchase Schemes—Unlisted Companies) Exemption Notice 2011 (the **class notice**). However, this notice relates to the specific offer of shares under the Fulton Hogan Limited (**Fulton Hogan**) employee share purchase scheme.

This notice exempts Fulton Hogan and its subsidiaries (subject to conditions) in respect of equity securities issued by Fulton Hogan that are offered under its employee share purchase scheme from section 37A(1)(c) of the Securities Act 1978 (the **Act**) and various prospectus and investment statement content requirements in the Securities Regulations 2009 (the **2009 Regulations**). The effect is to allow Fulton Hogan to use an evergreen short form prospectus.

The Financial Markets Authority (**FMA**), after satisfying itself as to the matters set out in section 70B(2) of the Act, considers that it is appropriate to grant the exemptions because—

- FMA recognises the desirability of encouraging employee participation in a company that an employee works for through share ownership. The compliance costs involved in registering a full prospectus every year could be prohibitive for Fulton Hogan operating an ongoing employee share purchase scheme. The exemptions in this notice strike a balance between lowering compliance costs for Fulton Hogan offering securities under its employee share purchase scheme and providing sufficient information for employees to make informed decisions about participation in the scheme. Compliance costs are reduced because some disclosures can be made in the financial statements and by additional information in the annual report. This saves the need to prepare a new disclosure document, but provides investors with relevant information:
- The class notice exempts unlisted companies (subject to conditions) in respect of equity securities issued by those companies that are offered under employee share purchase schemes from section 37A(1)(c) of the Act and from various prospectus content requirements in Schedule 1 of the Regulations. The effect is to allow unlisted companies to use an evergreen short form prospectus:
- The class notice requires the securities to be allotted within 9 months of the most recent financial statements. This notice requires the securities to be offered within 9 months of the date of the financial statements and allotted within 10 months of the date of the financial statements. There is no exemption from the requirements in 37A(1)(b) of the Act which provides that no allotment shall be made if, at the time of allotment, the investment statement and prospectus are known to be false or misleading in a material particular by failing to refer, or give proper emphasis, to adverse circumstances. This notice provides Fulton Hogan with the flexibility they require to offer and allot the securities in a timeframe that works with their employee share purchase offering programme while ensuring that the information provided remains accurate:
- Fulton Hogan has operated its employee share purchase scheme since the 1980s, before the establishment of the policy and terms in the class notice, which restricts the raising of significant amounts of capital under employee share purchase schemes using limited disclosure. This policy objective is achieved under the class notice by providing caps on the total and annual amount of securities that can be issued under employee share purchase schemes. Given the long history of Fulton Hogan's employee share purchase scheme and the quantum of shares issued under the scheme, Fulton Hogan does not comply with the total cap provision in the class notice. Given the degree of contribution by Fulton Hogan and the small percentage of



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issues under Fulton Hogan's employee share purchase scheme in recent years, FMA is satisfied that Fulton Hogan's scheme is not a mechanism to raise significant funds. The restriction on the percentage of shares Fulton Hogan can issue in any 12-month period will mean that on-going capital raising is also limited:

- Given the limitation on the securities permitted to be issued under the employee share purchase scheme in reliance on the exemption and the conditions requiring the provision of relevant information in an appropriate alternative manner, FMA is satisfied that the extent of the exemptions is not broader than what is reasonably necessary to address the matters that gave rise to the exemptions and that the exemption will not cause significant detriment to the prospective investors.
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