

Financial Markets Conduct (Fonterra Co-operative Group Limited – Share Subdivision) Exemption Notice 2023

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 (Fonterra Co-operative Group Limited – Share Subdivision) Exemption Notice 2023.

2 Commencement

This notice comes into force on the close of 2 June 2023.

3 Revocation

This notice is revoked on the close of 31 December 2023.

4 Interpretation

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

Act means the Financial Markets Conduct Act 2013

approval meeting means the meeting of Fonterra shareholders that is to be held to consider and vote on whether to approve the scheme

Fonterra means Fonterra Co-operative Group Limited, a co-operative company incorporated in New Zealand with the company number 1166320

Fonterra shareholder means a registered holder of Fonterra shares

Fonterra share means a fully paid co-operative share in Fonterra

Fonterra Shareholders' Fund means Fonterra Shareholders' Fund, a registered managed investment scheme under the Act with the scheme number SCH11126

Fonterra unit means a unit issued by the Fonterra Shareholders' Fund

notice of meeting means the notice of meeting for the approval meeting

notice time means the initial date and time identified by Fonterra to determine those persons entitled to receive the notice of meeting

proposal means the return of capital to Fonterra shareholders by way of the repurchase and subdivision of Fonterra shares in accordance with the scheme

record date means the date identified by Fonterra to determine those shareholders whose Fonterra shares will be the subject of the subdivision in accordance with the scheme

Regulations means the Financial Markets Conduct Regulations 2014

relevant licensed markets means the licensed markets on which Fonterra shares and Fonterra units are quoted

scheme means the scheme of arrangement relating to the proposal, to be ordered by the High Court of New Zealand under Part 15 of the Companies Act 1993 and to be voted on at the approval meeting

scheme booklet means the booklet prepared by Fonterra in respect of the scheme and containing the information prescribed in clauses 6(h) and (i) of this notice

voting eligibility date means the date identified as such by Fonterra and announced to the relevant licensed markets.

- (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

Fonterra is exempted from Part 3 of the Act in respect of offers of Fonterra shares made to Fonterra shareholders in accordance with the scheme.

6 Conditions

The exemption in clause 5 is subject to the conditions that—

- (a) the offer of Fonterra shares is made only to persons who are Fonterra shareholders at the notice time or who become Fonterra shareholders after that time but on or prior to the record date; and
- (b) it is a term of the offer that, immediately after implementation of the scheme, each Fonterra shareholder will hold the same number and class of Fonterra shares as they held immediately prior to implementation of the scheme; and
- (c) the scheme booklet includes particulars of all matters that, to the knowledge of the directors of Fonterra after making all inquiries that are reasonable in the circumstances, may be material to a Fonterra shareholder making a decision on whether to approve the scheme; and
- (d) without limiting paragraph (c), the scheme booklet includes the following:
 - (i) a description of the purpose, effect and potential impacts of the scheme and proposal, including the rationale for the proposal and any material advantages, disadvantages and risks of the proposal; and
 - (ii) the steps necessary to bring the proposal into effect; and

- (iii) a statement as to why the directors of Fonterra believe that the proposal is in the best interests of shareholders, and recommend that Fonterra shareholders vote in favour of the scheme; and
 - (iv) a summary of the costs of the proposal; and
 - (v) a general description of the New Zealand tax implications for Fonterra shareholders of the proposal or resulting from implementation of the proposal; and
- (e) the scheme booklet and notice of meeting are distributed to—
- (i) all persons entitled to receive the notice of meeting as at the notice time; and
 - (ii) all persons who become Fonterra shareholders after the notice time but before the voting eligibility date.
- (f) the Fonterra shareholders approve the scheme at the approval meeting; and
- (g) the proposal proceeds by way of the scheme; and
- (h) the scheme becomes effective in accordance with its terms.

Dated at Wellington this 2nd day of June 2023.



Liam Mason
Executive Director – Evaluation & Oversight
Financial Markets Authority

Statement of reasons

This notice comes into force on 2 June 2023 and is revoked on 31 December 2023.

This notice exempts Fonterra Co-operative Group Limited (Fonterra) subject to conditions, from Part 3 (Disclosure of offers of financial products) of the Financial Markets Conduct Act 2013 (Act) in relation to an offer of shares in Fonterra to Fonterra shareholders under a proposed scheme of arrangement pursuant to Part 15 of the Companies Act 1993.

The Financial Markets Authority (FMA), after satisfying itself as to the matters set out in section 556 of the Act, considers it appropriate to grant this exemption because –

- the offer is made in connection with a proposal to make a capital return to Fonterra shareholders by way of a share repurchase and a contemporaneous share subdivision (proposal). Each Fonterra shareholder will sell a number of Fonterra shares to Fonterra and contemporaneously, through a share subdivision, will receive Fonterra shares so as to continue to hold the same number of Fonterra Shares as immediately prior to the repurchase. This means that the offer (by way of subdivision) is limited to Fonterra shareholders and therefore to persons who may be expected to already be familiar with the assets and business of Fonterra and sees them continuing with the same level of shareholding, with each share being fully paid and of the same class as the shares repurchased from them:
- the disclosure requirements of the Act and the Financial Market Conduct Regulations 2014 (Regulations) focus on providing information about the financial products being offered so would require information to be provided about Fonterra and the shares being offered. However, in the circumstances all the shareholders are doing is voting to receive a capital return from Fonterra:
- the offer is made pursuant to a court approved scheme of arrangement under Part 15 of the Companies Act 1993. In order to comply with these requirements, Fonterra shareholders must be provided with a scheme booklet containing information relevant to evaluating the proposal and which must be approved by the High Court. The conditions of the exemption also require the scheme booklet to contain all matters that are material to Fonterra shareholders enabling them to make an informed decision on the proposal:
- the scheme of arrangement will be overseen by the High Court. The High Court will need to be satisfied that the scheme documents (including the scheme booklet) include sufficient information for a Fonterra shareholder to make an informed decision as to how to vote on the scheme:
- Fonterra remains subject to the fair dealing provisions in Part 2 of the Act and therefore Fonterra shareholders will have protection against misleading or deceptive information being included in the scheme booklet:
- as such, the FMA is satisfied that the exemption is necessary and desirable in order to promote the purposes of the Act, namely to provide for timely, accurate and understandable information to be provided to Fonterra shareholders to assist them to make decisions relating to the proposal. The exemption recognises that Fonterra shareholders will already receive information specifically tailored to the context of the proposal under the purview of the High Court, such that additional disclosure (in accordance with Part 3 of the Act or any available exclusion in Schedule 1 of the Act) is not necessary:
- as the exemption is limited to the offer of financial products to existing Fonterra shareholders pursuant to the proposal, and the key impact of the exemption is to provide relief from the requirement to provide information that is not material to Fonterra shareholders' decision on whether to approve the proposal, the FMA is satisfied that the exemption is not broader than is reasonably necessary to address the matters that gave rise to the exemption.