



FINANCIAL MARKETS AUTHORITY  
TE MANA TATAI HOKOHOKO - NEW ZEALAND

## Securities Act (Fonterra Co-operative Group Limited) Exemption Notice (No 4) 2012

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 (Fonterra Co-operative Group Limited) Exemption Notice (No 4) 2012.
- Commencement**  
This notice comes into force on 19 October 2012.
- Expiry**  
This notice expires on the close of 30 September 2017.
- 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 to be 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

**NZSX** 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 Marker, 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 Conditions of exemptions in clauses 5 and 6**

- (1) The exemptions in clauses 5 and 6 are subject to the conditions that:
- (a) at the time of the allotment of the Shares to the Custodian there is a registered prospectus for the Units; and
  - (b) it is an implied term of every offer of the Shares to Shareholders to which clause 5 or clause 6 relate that, except to the extent disclosed for the purposes of the offer of the Shares, the offeror has no information in relation to Fonterra that is not publicly available and that would, or would be likely to, affect materially the price of the Shares if it were so disclosed; and
- (2) For the purposes of subclause 7(1)(b), an offeror is not to be taken to have information in relation to Fonterra if:
- (a) arrangements existed to ensure that no individual who took part in the decision to offer the Shares to the public received, or had access to, that information or was influenced, in relation to that decision, by an individual who had that information; and
  - (b) no individual who took part in the decision to offer the Shares to the public received, or had access to, that information or was influenced, in relation to that decision, by an individual who had that information.

**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 NZSX or the Australian Securities Exchange in relation to the sale of Units.

Dated at Wellington this 15<sup>th</sup> day of October 2012



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Sue Brown  
Head of Primary Regulatory Operations  
Financial Markets Authority

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## Statement of reasons

This notice comes into force on 19 October 2012, and expires on 30 September 2017.

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 Fonterra Shareholders' Market (**FSM**) and the Fonterra Shareholders' Fund (**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 and the Market Maker are separate legal persons from Fonterra and are not controlled by Fonterra:
- At the time Fonterra allots Shares to the Custodian on behalf of the Fund or the Market Maker (as the case may be), there will be a registered prospectus in respect of the Units in the Fund and that prospectus will contain information about Fonterra. Fonterra will allot the Shares to the Custodian contemporaneously with the Manager issuing the Units pursuant to the prospectus:
- Shareholders to whom the Shares can be offered will have access to the same information about Fonterra that is available to the offerors. This includes the information publicly available about the Shares through the FSM and the information in the Unit prospectus. A condition of the exemption provides that it is an implied term of the offer of Shares to the Shareholders that the offeror has no information in relation to Fonterra that is not publicly available that would, or would be likely to, affect materially the price of the Shares:
- In these circumstances the asymmetry of information that can exist when a person to whom securities have been previously allotted by a related person subsequently offers those securities to the public is not present:
- Given this access to information, and the lack of asymmetry of information, FMA considers that the exemptions will not cause significant detriment to Shareholders:

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- Further, the exemptions are only in relation to the Shares which are previously allotted to the Custodian for holding on behalf of Manager of the Fund or to the Market Maker, for the implementation of the Fund and the FSM, and so FMA does not consider they are broader than reasonably necessary to address the matters than 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 NZSX 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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