



FINANCIAL MARKETS AUTHORITY
TE MANA TATAI HOKOHOKO - NEW ZEALAND

Securities Act (Fonterra Co-operative Group Limited) Exemption Notice (No 2) 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 2) 2012.
- Commencement**
This notice comes into force on 24 March 2012.
- Expiry**
This notice expires on the close of 31 December 2013.
- Interpretation**
 - (1) In this notice, unless the context otherwise requires, —
Act means the Securities Act 1978
Fonterra means Fonterra Co-operative Group Limited

Fund means the proposed Fonterra Shareholders' Fund which will acquire interests in specified equity securities and issue specified units

Market means the proposed Fonterra Shareholders' Market on which specified equity securities can be traded amongst Fonterra shareholders

Regulations means the Securities Regulations 2009

specified equity securities means equity securities in Fonterra

specified units means units 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 Exemption from section 33(1) of Act

- (1) Fonterra, and the manager of the Fund, and every person acting on behalf of either or both of them, are exempted from section 33(1) of the Act in respect of any statement made by or on behalf of Fonterra or the manager of the Fund to the effect that Fonterra or the manager of the Fund intends to make an offer to the public of specified equity securities or specified units.

6 Conditions of exemption in clause 5

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

- (a) must state to the effect that Fonterra is considering the introduction of "Trading Among Farmers" which would involve the establishment of a Fonterra Shareholders' Market and a Fonterra Shareholders' Fund, and which would include making offers to the public of shares in Fonterra and units in the Fonterra Shareholders' Fund; and
- (b) must state to the effect that no money is currently being sought, and that no applications for shares in Fonterra or units in the Fonterra Shareholders' Fund will be accepted or money received except in compliance with the Securities Act 1978, including after offer documents are available to provide information about the shares or units; and
- (c) may state to the effect that Fonterra or the Fonterra Shareholders' Fund is seeking preliminary indications of interest, and in that case must also state—
- (i) how indications of interest may be made; and
- (ii) that no indication of interest will involve an obligation or commitment of any kind; and

- (d) may state to the effect that the statements above do not affect the issue and surrender by Fonterra of shares in Fonterra in accordance with Fonterra's constitution and its registered prospectus dated 14 December 2001 (as amended by various memoranda of amendments); and
- (e) must not contain any other information, except any or all of the following:
 - (i) the full name of Fonterra:
 - (ii) a brief description of Fonterra:
 - (iii) the nature of the business of Fonterra:
 - (iv) an image of the brands, trade marks, and logos that Fonterra owns, manages, or uses:
 - (v) a description of the specified equity securities or the specified units, including a brief description of any rights or privileges to be attached:
 - (vi) the total number of the specified equity securities or the specified units intended to be offered:
 - (vii) a statement of the intended use of the subscriptions received for the specified equity securities or the specified units:
 - (viii) the terms of the intended offer of the specified equity securities or the specified units:
 - (ix) a description of the class of persons to whom it is intended the offer of the specified equity securities or the specified units will be made:
 - (x) the date on which Fonterra expects that the offer of the specified equity securities or the specified units will be made:
 - (xi) information about the Fund as a mechanism for investing, or its design (including design proposals), or how it operates or will operate (including worked examples or computer programs simulating hypothetical transactions by Fonterra shareholders) or its inter-relationship with the Market:
 - (xii) information about the Market as a mechanism for investing, or the regulatory framework in which the Market operates or will operate, or its design (including design proposals), or how it operates or will operate (including worked examples or computer programs simulating hypothetical transactions by

Fonterra shareholders) or its inter-relationship with the Fund; and

- (f) must be dated and must not be distributed to any person later than 6 months after that date.

7 Exemption from regulation 30(2) of Regulations

Fonterra, the manager of the Fund, and every person acting on behalf of either or both of them, are exempted from regulation 30(2) of the Regulations in respect of any advertisement which includes the statement referred to in clause 5, to the extent that regulation 30(2) requires a certificate for the purposes of regulation 30(1) of the Regulations to be completed in the form set out in Schedule 14 of the Regulations.

8 Condition of exemption in clause 7

The exemption in clause 7 is subject to the condition that a certificate for the purposes of regulation 30(1) of the Regulations must be in the form set out in the Schedule.

9 Exemption from regulation 39 of Regulations

Fonterra, the manager of the Fund, and every person acting on behalf of either or both of them, are exempted from regulation 39 of the Regulations in respect of any advertisement which includes the statement referred to in clause 5.

10 Condition of exemption in clause 9

The exemption in clause 9 is subject to the condition that any advertisement that states or implies:

- (a) the securities to which it relates are or will be tradeable on a securities market; or
- (b) an application has been or will be made to enable the securities to be traded on a securities market; or
- (c) a securities market is regulated under New Zealand law, unless that securities market is a registered market;



must contain a statement to the effect that the Fonterra Shareholders' Market, if approved, will be a registered market and the Fonterra Shareholders' Fund will be listed on a registered market and accordingly both the Fonterra Shareholders' Market and the Fonterra Shareholders' Fund will be subject to oversight by a registered exchange and the Financial Markets Authority.

SCHEDULE

CERTIFICATE IN RESPECT OF ADVERTISEMENTS

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I/We* certify that—

- (a) I/We* have—
- †(i) read:
 - †(ii) seen:
 - †(iii) listened to—
the advertisement described in the Schedule of this certificate:
- (b) the advertisement complies with the Securities Act 1978 and the Securities Regulations 2009 as modified by the Securities Act (Fonterra Co-operative Group Limited) Exemption Notice (No 2) 2012:
- (c) the advertisement does not contain any matter that is likely to deceive, mislead, or confuse with regard to any particular that is material to the offer of securities.

* Select one.

† Omit if inapplicable.

Date:

Signature of director/authorised signatory*:

Date:

Signature of director/authorised signatory*:

* Select one.

Schedule

Description of advertisement

(The description must be sufficient to enable the advertisement to be identified.)



Dated at Wellington this 23rd day of March 2012



Sue Brown
Head of Primary Regulatory Operations
Financial Markets Authority

Statement of reasons

This notice comes into force on 24 March 2012, and expires on 31 December 2013.

This notice provides an exemption in respect of the pre-prospectus advertising requirements of the Securities Act 1978 (**Act**) in relation to shares in Fonterra Co-operative Group Limited (**Fonterra**) held and traded by farmers that supply milk to Fonterra (supplying shareholders), and units in a fund which is proposed to be established as a vehicle for investment by members of the public that do not supply milk to Fonterra.

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 because—

- Fonterra is currently proposing changes to share ownership and transfer obligations of supplying shareholders. These changes propose the creation of a new market to allow supplying shareholders to trade shares amongst themselves, or with a market maker required to provide constant liquidity for the shares. It is further proposed that a fund to which the farmers will be able to transfer their shares will also be created. This Fund will be listed on the NZSX. Supplying shareholders will be able to transfer their shares to the custodian of the Fund in exchange for units. The supplying shareholders can sell the units on the NZSX. Fonterra seeks to be able to provide information on these proposals, and the Fund and the new market, prior to the registration of a prospectus. Many communications including this information will be advertisements for the purpose of the Act because they will contain or refer to offers of securities that will arise:

- Without an exemption, prior to the registration of a prospectus, the statutory requirements of section 5(2CA) of the Act limit the information that can be provided to members of the public about any proposed offer of securities to information about indications of interest, the name of the issuer, basic details about the securities, terms of the offer, the class of persons to whom the offer will be made, and the date the issuers expect to make the offer. The purpose of the restrictions are to control the information that investors receive (and may be influenced by) before the availability of offer documents containing all material information about the proposed offer of securities:
- FMA considers that in the circumstances of the proposed changes it is appropriate that supplying shareholders and other stakeholders are able to be educated and kept informed about Fonterra's proposals so that they can be consulted on the proposals more effectively, and so that if the proposals proceed they will understand the new requirements. The exemptions in this notice enable this, whilst retaining the restriction on pre-offer document marketing of the securities because the exemptions do not permit the publication of more general information about the business. Further requirements prohibiting any advertisements being deceiving, misleading or confusing, and requiring director oversight of the advertising are retained. In particular the directors of Fonterra (or an authorised signatory) must certify that the advertisements contain required explanatory statements, for example explaining that indications of interest will not impose any obligations, and also that the advertisements are not broader than permitted by the usual legislative requirements as extended by the exemption:
- as the communications will include information about the design of the market and the Fund to which supplying shareholders will be able to sell their shares it is likely many of the communications will include statements about trading on the new market, as well as trading units in the Fund on the NZSX. This would usually trigger a requirement that the market operator approve the statements. Given the number of statements that will be made, it is impractical to have NZX approve each of these statements. Instead a standard statement, which has been approved by NZX and FMA, will be required to be inserted in every advertisement which includes statements about trading on a market. This standard statement provides information about the status of the market:

- given the limited scope of information additionally permitted by this exemption to be contained in any advertisements beyond that usually permitted in pre-offer document advertising, the explanatory statements that must be included in the advertisements, and the retention of requirements around director certification of advertisements, FMA considers that the extent of the exemptions are not broader than reasonably necessary to address the matters that gave rise to the exemptions, and will not cause significant detriment to the supplying shareholders.
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