

## Securities Act (Sandspit Marina) 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

- 1 Title**  
This notice is the Securities Act (Sandspit Marina) Exemption Notice 2013.
- 2 Commencement**  
This notice comes into force on 1 October 2013.
- 3 Revocation**
  - (1) Clauses 5 to 8 of this notice are revoked on the close of 30 September 2015.
  - (2) The rest of 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

**participatory securities** means marina berth licences issued by the society under the scheme (other than reissued participatory securities)

**Regulations** means the Securities Regulations 2009

**reissued participatory securities** means marina berth licences relating to marina berths for which licences have been previously allotted under the scheme following the acceptance of offers made by means of disclosure document pursuant to clause 9

**Sandspit Marina** means the marina situated at 1287 Sandspit Road, Warkworth, and known as the Sandspit Marina

**scheme** means the scheme for ownership of rights and interests in Sandspit Marina

**society** means Sandspit Marina Society Incorporated

- (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 from sections 33(3), 37, 37A of the Act and the Regulations (except regulation 23) relating to participatory securities**

The society, and every person acting on behalf of the society, are exempted in the case of participatory securities, from —

- (a) section 33(3) of the Act; and
- (b) section 37 of the Act; and
- (c) section 37A of the Act; and
- (d) the Regulations (except regulation 23).

**6 Conditions of exemption in clause 5(a)**

The exemption in clause 5(a) is subject to the conditions that:

- (a) subscriptions for the participatory securities must be held in trust for the subscribers by a statutory supervisor who holds a licence under the Securities Trustees and Statutory Supervisors Act 2011 in a separate bank account kept specially for that purpose at a registered bank (as that term is defined in section 2(1) of the Reserve Bank of New Zealand Act 1989) and to be applied by the statutory supervisor in accordance with the registered deed of participation for the scheme and otherwise held until the construction of the Sandspit Marina is complete and the participatory securities are allotted, or until the subscriptions are repaid to the subscribers, following which the

statutory supervisor may resign and be discharged pursuant to section 48(1) of the Act; and

- (b) it is a term of the offer that the society must ensure that, within 3 months after the balance date of the scheme, audited financial statements for the scheme, that comply with the Financial Reporting Act 1993, together with a copy of the auditor's report on those financial statements are delivered to the Registrar for registration; and
- (c) it is a term of the offer that after allotment of the participatory securities within 1 month after the beginning of each financial year of the scheme, the society must send, or cause to be sent, to the holders of participatory securities a written statement containing reasonable details of the actual and budgeted contributions required to be made by those holders to the operating and other expenses of the scheme during that financial year.

**7 Conditions of exemptions in clause 5(b) to (d)**

The exemptions in clause 5(b) to (d) are subject to the conditions that —

- (a) no allotment of participatory securities shall be made if a subscriber did not receive a disclosure document relating to the participatory securities;
- (b) any disclosure document must:
  - (i) specify details of the marina facilities and the common areas available for the use by subscribers;
  - (ii) contain prominent statements to the effect that:
    - A Sandspit Marina has not been completed;
    - B in respect of each financial year of the scheme:
      - audited financial statements that comply with the Financial Reporting Act 1993 will be available for the scheme not later than 3 months after the end of each financial year of the scheme; and
      - copies of the most recent audited financial statements for the scheme may be obtained by holders of the participatory securities, free of charge, on request at the place or places specified in the disclosure document; and
  - (iii) specify the basis upon which, and by whom, the amount of any levies and contributions are determined;

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- (iv) specify whether or not the subscriber is entitled to any voting rights at meetings of the marina operator or of subscribers and, if the subscriber is entitled to exercise any voting rights:
  - A explains the circumstances in which, and matters on which, voting rights may be exercised by the subscriber;
  - B identifies, by class, the other parties entitled to exercise voting rights in such circumstances and on such matters;
  - C states whether or not the marina operator or any associate of the marina operator is or may be entitled to vote on such matters and, if so, indicates the likely aggregate proportion of votes exercisable by the marina operator and its associates on such matters;
  - D states whether or not any decision on which the subscriber is entitled to vote is binding on the marina operator;
- (v) contain or be accompanied by a copy of the licence for the marina berths granted by the scheme;
- (vi) contain a description of the rights and obligations (both actual and contingent) of a subscriber to use a marina berth and the facility (to the extent these are not set out in the licence for a marina berth) and otherwise in connection with the interest in the marina berth being offered; and
- (vii) contain all other information which would usually be required to be contained in a prospectus by Schedule 3 of the Regulations including:
  - A details of the manager and the directors of the manager;
  - B a description and, if practicable, quantification of all liabilities (including potential and contingent liabilities) that a subscriber for an interest in a participatory security will or may incur;
  - C details of any arrangements with, or entitlement to remuneration on the part of, the manager or promoter of the scheme or any associated person of either of them;
  - D details of any other material matters;



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- (viii) specify when it is intended that construction of Sandspit Marina will be completed;
- (ix) specify the material risks of non-completion of Sandspit Marina;
- (x) specify the minimum amount which, in the opinion of the directors of the society, must be raised by the issue of the participatory securities to enable completion of construction of Sandspit Marina;
- (xi) contain a statement that construction of Sandspit Marina will not commence and marina berth licences will not be allotted until minimum subscription is raised;
- (xii) specify the time period within which minimum subscription of the marina berth licenses must be raised;
- (xiii) contain a description of the amounts payable, the person to whom, and the manner in which, payments are to be made, the payment dates or frequency of those payments and the consequences of failing to make the payments.
- (xiv) contain a statement that not less than 20% of the minimum amount must be paid, within 6 months of the disclosure document first being distributed by the society;
- (xv) contain a statement that if the minimum amount is not subscribed for and the participatory securities cannot be allotted or if 20% of the minimum amount is not paid within such 6 month period, all subscription amounts paid will be refunded together with any interest, as soon as reasonably practicable and within 2 months of the expiry of the 6 month period;
- (xvi) if subscriptions and any interest are not repaid within 2 months as described in clause (xv) then interest shall be payable at the prescribed rate from the date on which the subscriptions were received;
- (xvii) contain or be accompanied by the most recent statement of actual and budgeted contributions required to be made by subscribers to operating and other expenses;
- (xviii) specify any rights, benefits or entitlements to which the subscriber will or may become entitled by reason of subscribing for an interest in the marina, other than the rights to use a dedicated marina berth and common facilities as provided for in the licence for a marina berth (including voting rights or rights to a share in residual

assets on a winding up of the scheme or the marina operator); and

- (xix) specify the annual levies payable by holders of the participatory securities for the first financial year of the scheme following the first date of issue of participatory securities.

**8 Condition of exemption in clause 5(b)**

- (a) The exemption in clause 5(b) is also subject to the condition that no allotment may be made of a participatory security unless, within 6 months after the date the disclosure document is first distributed by the society:
  - (i) subscribers for the participatory securities have become legally bound to pay to the society the amount stated in the disclosure document as the minimum subscription amount in accordance with clause 7(b)(x); and
  - (ii) each subscriber for participatory securities has paid, and the society has received, at least 20% of the amount that the subscriber has become legally bound to pay in respect of those securities.
- (b) For the purpose of this clause:
  - (i) a sum is deemed to have been paid to, and received by, the society if a cheque for that sum is received in good faith by the society and the officers of the society have no reason to suspect that the cheque will not be paid:
  - (ii) the amount so stated in the disclosure document must be reckoned exclusively of any amount payable otherwise than in cash.

**9 Exemptions from sections 33(3), 37 and 37A of the Act relating to reissued participatory securities**

The society and every person acting on behalf of the society, is exempted from sections 33(3), 37 and 37A of the Act in respect of offers of reissued participatory securities that are offers in the form of the reissue of those issued participatory securities.

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Dated at Wellington this 30<sup>th</sup> day of September 2013.



Simone Robbers  
Head of Primary Regulatory Operations  
Financial Markets Authority

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### Statement of Reasons

This notice comes into force on 1 October 2013. Clauses 5-8 of this notice are revoked on the close of 30 September 2015. The rest of this notice is revoked on the close of 30 November 2016.

The notice exempts Sandspit Marina Society Incorporated (**the society**), subject to conditions, from the requirement for a statutory supervisor, and registered prospectus requirements and investment statement requirements in respect of licences for marina berths at Sandspit Marina, 1287 Sandspit Road, Warkworth (**Sandspit Marina**).

The Financial Markets Authority, 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 set out in clauses 5 of the notice for the following reasons—

- the purpose of the scheme is to provide marina facilities, rather than to provide a conventional investment opportunity from which a return is expected. The subscriber is principally motivated by the ability to access and use a dedicated marina berth and associated common property at the marina facility:
- conditions of the notice require that subscription money is held in trust and applied in accordance with the registered deed of participation for the scheme and otherwise held until completion of the marina facilities and allotment of the securities or until the subscriptions are repaid to the subscribers, financial statements for the scheme must be prepared and registered on a publically accessible register within 3 months of the end of each financial year of the scheme and security holders must be sent a statement of actual and budgeted contributions required from them for the forthcoming financial year. In these circumstances the appointment of a statutory supervisor to a role usually required for the on-going supervision of participatory securities would impose costs on the scheme not matched by the benefit to subscribers:
- subscribers will receive certain information about the offer before



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subscription so they have access to key relevant information on which to base their investment decision. This document will be an advertisement under the Act and therefore prohibited from containing untrue or misleading information about a material particular:

- the marketing of this marina scheme may need to be longer than the marketing period for most securities. This is accommodated by allowing an additional 2 months beyond the usual period over which the minimum funds required to proceed with a scheme can be raised. The short extension means subscribers' funds are not committed for an excessive period, should the scheme not proceed:

The Financial Markets Authority, 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 set out in clauses 9 of the notice for the following reasons—

- section 6 of the Act provides an exemption from the statutory supervisor, prospectus and investment statement requirements for offers of previously allotted securities (unless the securities were originally allotted with a view to being offered for sale to the public and were not previously offered for sale to the public):
- offers of previously allotted marina berth licences would ordinarily be exempt from the statutory supervisor, prospectus and investment statement requirements under section 6 of the Act. However, the society cannot rely on the exemption in section 6 of the Act for the transfer of the marina berth licences because the transfer process requires the original marina berth licences to be surrendered and reissued and as such, technically, this would be considered to be an offer of new securities. The exemption is consistent with the policy of the Act for previously allotted securities and will avoid unnecessary costs of appointing a statutory supervisor, preparing a prospectus, and maintaining an up to date investment statement for these reissued marina berth licences:

In the circumstances of the nature of the securities to which the exemptions apply, and the conditions of the exemptions which impose additional protections and require appropriate information disclosure, the Financial Markets Authority considers that the exemptions granted are not broader than reasonably necessary to address the matters that gave rise to the exemptions and will not cause significant detriment to subscribers in the scheme who are members of the public in New Zealand.