

Securities Markets Act (Fonterra Co-operative Group Limited Supply Offer) Exemption Notice 2013

Pursuant to section 48(1)(c) of the Securities Markets Act 1988, 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 Markets Act (Fonterra Co-operative Group Limited Supply Offer) Exemption Notice 2013.
- 2 Commencement**
This notice comes into force on 26 April 2013.
- 3 Revocation**
This notice is revoked on the close of 31 March 2018.
- 4 Interpretation**
 - (1) In this notice, unless the context otherwise requires, —
Act means the Securities Markets Act 1988
date of the invitation means the later of:
 - (a) the date specified in the disclosure documents as being the first date on which farmer shareholders can offer to sell some of their shares under the supply offer transactions; and

- (b) the date on which farmer shareholders are notified (including, without limitation, by electronic means) of the terms and conditions of the disclosure documents

disclosure documents means the one or more documents that together set out all of the terms and conditions of the supply offer transactions

farmer shareholder means a holder of shares who is supplying milk to Fonterra

FFCL means Fonterra Farmer Custodian Limited

Fonterra means Fonterra Co-operative Group Limited

fund means the Fonterra Shareholders' Fund established by trust deed dated 26 October 2012

invitation means an invitation, by Fonterra to farmer shareholders, to make an offer to FFCL to sell some of their shares in consideration for the provision of units and vouchers, and to make an offer to Fonterra to sell those units

Regulations means the Securities Markets (Unsolicited Offers) Regulations 2012

shares means co-operative shares in Fonterra

supply offer transactions means the transactions pursuant to which farmer shareholders sell some of their shares in return for cash and vouchers, including:

- (a) the invitation;
- (b) the offer by farmer shareholders in response to the invitation to sell their shares to FFCL and acquisition of the shares by FFCL; and
- (c) the sale of units to Fonterra in consideration for a cash payment from Fonterra

unit means a unit in the fund that is provided to a farmer shareholder, or a person acting on their behalf, in consideration for the acquisition of a share by FFCL pursuant to the supply offer transactions

voucher means the certificate referred to in clause 3.4 of Fonterra's constitution that is provided to farmer shareholders upon the acquisition of a share by FFCL pursuant to the supply offer transactions.

- (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, and every person acting on behalf of Fonterra, is exempted from regulation 19(1)(a) of the Regulations in respect of an invitation.

6 Application of exemption in clause 5

The exemption in clause 5 only applies if the following conditions are met:

- (a) it is a term of the supply offer transactions that, in consideration for the acquisition of each share from a farmer shareholder, one unit and one voucher is provided to the farmer shareholder, or a person acting on the farmer shareholder's behalf;
- (b) it is a term of the supply offer transactions that the participating farmer shareholders must promptly sell to Fonterra all of the units and that Fonterra must acquire all of those units for cash; and
- (c) Fonterra complies with section 161B of the Dairy Industry Restructuring Act 2001 when acquiring units pursuant to the supply offer transactions.

7 Conditions of exemption in clause 5 relating to the invitation period

The exemption in clause 5 is subject to the further conditions that:

- (a) the invitation period must commence not earlier than the date of the invitation and must not be shorter than 10 working days, provided that Fonterra may withdraw an invitation at any time;
- (b) it is a term of the invitation that the invitation will remain open for at least 5 working days after any material variation to the terms and conditions of the supply offer transactions is notified to farmer shareholders, provided that Fonterra may withdraw an invitation at any time; and
- (c) a specified person must not, in relation to an invitation, make a representation to a farmer shareholder (whether in the disclosure documents or otherwise) to the effect that a farmer shareholder has less than the period referred to in subclause (a) within which to make a decision on the invitation, provided that a specified person may make a representation to the effect that Fonterra retains the right to withdraw an invitation at any time. In this notice a specified person means Fonterra, an associated person of Fonterra, or a person acting on behalf of Fonterra or an associated person of Fonterra.

8 Conditions of exemption in clause 5 relating to contents of disclosure documents

The exemption in clause 5 is subject to the further conditions that:

- (a) the information and statements required by this notice to be contained in the disclosure documents must be worded and presented in a clear, concise, and effective manner;

- (b) Fonterra:
 - (i) must ensure that the disclosure documents are not false, misleading, or confusing or likely to mislead or confuse; and
 - (ii) must not, in connection with the supply offer transactions, engage in conduct that is misleading or deceptive or likely to mislead or deceive;
- (c) each document that comprises the disclosure documents must include, in a prominent place:
 - (i) the invitation; and
 - (ii) where the disclosure documents comprise more than one document, a reference to all other documents that comprise the disclosure documents;
- (d) the disclosure documents for each farmer shareholder must contain, in a prominent place:
 - (i) the number of shares registered in the name of that farmer shareholder as at a date no more than 20 working days prior to the date of the invitation:
 - (ii) the number of shares to be acquired, or the maximum number of shares that can be acquired, from that farmer shareholder pursuant to the supply offer transactions:
 - (iii) if the number of shares to be acquired from a farmer shareholder is known prior to the date of the invitation, the total consideration payable to the farmer shareholder:
 - (iv) if the number of shares to be acquired will be or may be subject to scaling, how the number of shares to be acquired from each participating farmer shareholder will be determined;
- (e) the disclosure documents provided to farmer shareholders must contain, in a prominent place, the following information or statements to the effect:
 - (i) the period for which the invitation will remain open:
 - (ii) subject to subclause (f), the consideration to be provided to farmer shareholders for the acquisition of their shares:
 - (iii) the key attributes of, and key risks associated with, vouchers:
 - (iv) if the value of any part of the consideration is not known prior to the date of the invitation, how and when that consideration will be determined:

- (v) that farmer shareholders may check the current market price for units on NZX Limited's website at www.nzx.com or in newspapers and that the stock code for the fund is FSF:
- (vi) that, if any part of the consideration is to be determined by reference to a formula or a methodology, farmer shareholders may check data used to calculate the consideration, and the consideration payable based on that formula or methodology, at a website specified in the disclosure documents:
- (vii) that farmer shareholders should consider obtaining financial advice in connection with the supply offer transactions:
- (viii) the terms of payment of the consideration that is offered under the supply offer transactions, including-
 - A. how payments will be made:
 - B. when payments will be made or the date by which the consideration will be paid in full:
 - C. if payment of the consideration is to be made in instalments, the information and statement referred to in subclause (e)(ix);
- (ix) the information and statement for the purposes of subclause (e)(viii) are as follows -
 - A. how and when payments will be made:
 - B. the amount of each instalment:
 - C. when each instalment will be paid:
 - D. how many instalments will be paid:
 - E. how each instalment will be paid;
- (f) if the value of any part of the consideration is not known prior to the date of the invitation, that value must be notified to farmer shareholders not later than 5 working days prior to the closing date of the invitation;
- (g) Fonterra must maintain a website that:
 - (i) contains information sufficient to enable farmer shareholders to verify how the consideration referred to in subclause (e)(vi) is determined; and
 - (ii) is available at all times until provision of the consideration under the supply offer transactions has been made or the invitation is withdrawn by Fonterra, except where unavailable for reasons beyond Fonterra's reasonable control.

Dated at Wellington this 26th day of April 2013.



Elaine Campbell
Head of Compliance Monitoring
Financial Markets Authority

Statement of reasons

This notice, which comes into force on 26 April 2013 and is revoked on the close of 31 March 2018, exempts Fonterra Co-operative Group Limited (Fonterra), and every person acting on behalf of Fonterra, from the prohibition in regulation 19(1)(a) of the Securities Markets (Unsolicited Offers) Regulations 2012 (Regulations) from inviting another person to make an offer to sell a security in circumstances in which, if the invitation were an offer to acquire the security, it would be an unsolicited offer to which the Regulations applied.

The Financial Markets Authority, after satisfying itself as to the matter set out in section 48(2) of the Securities Markets Act 1988 (Act), considers that it is appropriate to grant the exemption because-

- an invitation to Fonterra shareholders to make an offer to sell their Fonterra shares has been used previously for the acquisition of economic rights in Fonterra shares by the Fonterra Shareholders' Fund. When that invitation was made Fonterra notified shareholders that similar invitations may be made in the future. Holding shares in Fonterra is a requirement for the supply of milk to Fonterra, and the supply of milk is a key business of many Fonterra shareholders, so it is reasonable to assume that Fonterra shareholders are likely to carefully consider such invitations and to seek appropriate advice if they consider it necessary. Accordingly, it is appropriate to exempt Fonterra from the prohibition on making invitations to make offers to acquire securities, subject to conditions that set procedural and disclosure requirements:
- the exempted invitation will not be subject to the Regulations. However, if the invitation was instead an offer to acquire Fonterra shares it would be an unsolicited offer subject to the Regulations. Therefore, certain conditions, consistent with those that would apply if the invitation was instead an offer, are imposed with respect to the invitation period and disclosure of key information:

- the exemption will only apply if the exemption meets certain conditions, being that one unit and one voucher is provided for each share acquired by Fonterra Farmer Custodian Limited, that participating shareholders sell to Fonterra, and that Fonterra acquire, all units provided in consideration for the shares, and that Fonterra complies with section 161B of the Dairy Industry Restructuring Act 2001 (which includes a requirement for the board of Fonterra to resolve that the terms of the offer to acquire the units and the consideration offered for the units are fair and reasonable to Fonterra shareholders) when acquiring units pursuant to the supply offer transactions:
- the conditions impose requirements regarding the invitation period, including that the invitations remain open for at least 10 working days and that a specified person (including Fonterra) must not make a representation to the effect that a shareholder has less than 10 working days to make a decision on an invitation, subject to Fonterra's right to withdraw an invitation:
- the conditions impose requirements regarding disclosure of key information in the disclosure documents, including disclosure of details of the invitation, the invitation period, the number of shares registered in the name of the shareholder, the number of shares to be acquired or the maximum number of shares that can be acquired, the consideration payable, how and when consideration will be determined (if not known prior to the date of the invitation), how and when payments will be made, and details of each instalment payment (if payment is to be made in instalments).

In these circumstances the Financial Markets Authority considers that the exemption is not broader than is reasonably necessary to address the matters that gave rise to the exemption.

