



## Securities Act (Tairua Marina) Exemption Notice 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).

### Contents

	Page
1 Title	1
2 Commencement	1
3 Expiry	1
4 Interpretation	1
5 Exemptions from sections 33(3), 37(2), 37A(1)(c) of the Act and clauses 7(2) to 7(7), 8 and 25 of Schedule 3 of the Regulations relating to participatory securities	2
6 Conditions of exemption in clause 5(a)	2
7 Conditions of exemptions in clause 5(b) to (d)	3
8 Condition of exemption in clause 5(b)	4
9 Condition of exemption in clause 5(c)	4
10 Exemptions from sections 33(3), 37 and 37A of the Act relating to reissued participatory securities	5

---

### Notice

- Title**  
This notice is the Securities Act (Tairua Marina) Exemption Notice 2012.
- Commencement**  
This notice comes into force on 6 October 2012.
- Expiry**
  - (1) Clauses 5 to 9 of this notice expire on the close of 5 October 2014.
  - (2) The rest of this notice expires on the close of 5 October 2017.
- Interpretation**
  - (1) In this notice, unless the context otherwise requires:  
**Act** means the Securities Act 1978

**company** means Tairua Marine Limited

**participatory securities** means marina berth licences issued by the company under the scheme

**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 an investment statement or registered prospectus

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

**Tairua Marina** means the marina situated at Paku Drive, Tairua, and known as the Tairua Marina

**trust** means Tairua Marine Charitable Trust Board.

- (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(2), 37A(1)(c) of the Act and clauses 7(2) to 7(7), 8 and 25 of Schedule 3 of the Regulations relating to participatory securities**

The company and the trust, and every person acting on behalf of either or both of them, are exempted in the case of participatory securities, from—

- (a) section 33(3) of the Act; and
- (b) section 37(2) of the Act; and
- (c) section 37A(1)(c) of the Act; and
- (d) clauses 7(2) to 7(7), 8, and 25 of Schedule 3 of the Regulations.

**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 person 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) until the construction of the Tairua Marina is complete and the participatory securities are allotted, or until the subscriptions are repaid to the subscribers; and

- (b) it is a term of the offer that the trust 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 trust 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 the investment statement —

- (a) contains prominent statements to the effect that, in respect of each financial year of the scheme:
  - (i) 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
  - (ii) 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 investment statement; and
- (b) specifies 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; and
- (c) specifies the minimum subscription amount of participatory securities required to enable the scheme to commence; and
- (d) explains the effect of the condition in clause 8; and
- (e) specifies that, if participatory securities cannot be allotted as provided in clause 8, then the company, or all the directors of the company, will repay the subscriptions, together with interest at the prescribed rate, within 2 months of the expiry of the time period referred to in clause 8; and



- (f) is accompanied by a copy of the most recent financial statements for the scheme that comply with, and have been registered under, the Financial Reporting Act 1993 (if any); and
- (g) is accompanied by a copy of the most recent written statement prepared under clause 6(c) (if any); and
- (h) contains, or has attached to it, or is accompanied by, a copy of the licence for marina berths granted under the scheme.

**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 of the registered prospectus:
  - (i) subscribers for the participatory securities have become legally bound to pay to the company the amount stated in the investment statement as the minimum subscription amount in accordance with clause 7(c); and
  - (ii) each subscriber for participatory securities has paid, and the company 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 company if a cheque for that sum is received in good faith by the company and the directors of the company have no reason to suspect that the cheque will not be paid:
  - (ii) the amount so stated in the investment statement must be reckoned exclusively of any amount payable otherwise than in cash.

**9 Condition of exemption in clause 5(c)**

The exemption in clause 5(c) is also subject to the condition that the company, during the period that the offer of the participatory securities remains open for subscription, lodges with the Registrar certificates that:

- (a) relate to the registered prospectus for the participatory securities; and

- (b) refer to the most recent financial statements for the company, being financial statements that comply with the Financial Reporting Act 1993; and
- (c) are signed on behalf of the company by its directors; and
- (d) are dated not later than 3 months after the date of the financial statements referred to in paragraph (b); and
- (e) state that, in the opinion of the directors of the company after due enquiry by them, the registered prospectus is not, at the date of the certificate, false or misleading in a material particular by reason of failing to refer or give proper emphasis to adverse circumstances; and
- (f) state that, except to the extent permitted by this notice, the information contained in the registered prospectus complies with Schedule 3 of the Regulations.

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

The company, and the trust, and every person acting on behalf of either or both of them, are 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 reissued participatory securities.

Dated at Wellington this 5<sup>th</sup> day of October 2012



---

Sue Brown  
Head of Primary Regulatory Operations  
Financial Markets Authority

---

**Statement of reasons**

This notice comes into force on 6 October 2012. Clauses 5 to 9 expire on the close of 5 October 2014. The rest of this notice expires on 5 October 2017.

The notice exempts Tairua Marine Limited and Tairua Marine Charitable Trust Board, subject to conditions, from certain statutory supervisor,

Securities Act (Tairua Marina)  
Exemption Notice 2012

---

prospectus requirements and investment statement requirements in respect of licences for marina berths at Tairua Marina, Paku Drive, Tairua.

The effect of the notice is to enable Tairua Marine Limited and Tairua Marine Charitable Trust Board to —

- offer participatory securities without the appointment of a statutory supervisor in respect of the participatory securities:
- extend the time within which subscriptions are required to be raised:
- extend the life of the prospectus in respect of the participatory securities so that allotments made during the extended period are valid:
- enable the prospectus to be issued without inclusion of prospective financial information or an auditor's report:
- enable the transfer of marina berth licences previously allotted under the scheme without appointment of a statutory supervisor, registration of a prospectus, and provision of an investment statement notwithstanding that this requires the marina berth licences to be surrendered and reissued.

The Financial Markets Authority (**FMA**), 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 in clause 5 because—

- the purpose of the scheme is to provide marina facilities, rather than to provide a conventional investment opportunity from which a return is expected. Further, conditions of the notice require that subscription money is held in trust until completion of the marina facilities and allotment of the securities, financial statements for the scheme must be prepared and registered on a publicly 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 supervision of participatory securities would impose costs on the scheme not matched by the benefit to subscribers:
- 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:

- additionally, the period within which the marina can be constructed, and so the securities allotted, is also anticipated as being longer than the usual life of a prospectus. This is accommodated by allowing an evergreen prospectus. Annual certificates relating to the ongoing validity of the prospectus provide additional reassurance to subscribers about the currency of the information in the prospectus:
- as the scheme is a new scheme that has no history prior to the registration of the prospectus there are no financial statements relating to the scheme required to be referred to, or provided in, the prospectus. Additionally, in the circumstances that the scheme is not a conventional investment opportunity from which a return is expected prospective financial information about the scheme would be of limited use to subscribers. Further in these circumstances an auditor's report would additionally impose costs on the scheme not matched by the benefit to subscribers.

The Financial Markets Authority (**FMA**), 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 in clause 10 because—

- 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 company and the trust 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:

Securities Act (Tairua Marina)  
Exemption Notice 2012

---

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, we consider that the exemptions granted are not broader than is 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.

---