

Reprint
as at 1 May 2016



**Securities Act (Pyne Gould Corporation Limited and
Building Society Holdings Limited) Exemption Notice
2011**

(SR 2011/113)

Securities Act (Pyne Gould Corporation Limited and Building Society Holdings Limited) Exemption Notice 2011: expired, on the close of 30 April 2016, by clause 3.

Pursuant to the Securities Act 1978, the Securities Commission gives the following notice (to which is appended a statement of reasons of the Securities Commission).

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Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.
Note 4 at the end of this reprint provides a list of the amendments incorporated.

This notice is administered by the Financial Markets Authority.

Notice

1 Title

This notice is the Securities Act (Pyne Gould Corporation Limited and Building Society Holdings Limited) Exemption Notice 2011.

2 Commencement

This notice comes into force on the day after the date of its notification in the *Gazette*.

3 Expiry

This notice expires on the close of 30 April 2016.

4 Interpretation

(1) In this notice, unless the context otherwise requires,—

Act means the Securities Act 1978

agreement means the Management Agreement between MARAC Finance Limited and Real Estate Credit Limited dated 5 January 2011

approval meeting means the meeting of PGC's shareholders that is to be held to consider and vote on whether to approve the scheme of arrangement

BSHL means Building Society Holdings Limited

BSHL group means BSHL and each of its subsidiaries

distribution means the transfer by PGC of part or all of the equity securities held by the PGC group in BSHL to PGC's shareholders in consideration for the cancellation of some of the shares that they hold in PGC in accordance with the scheme of arrangement

excluded provisions means the information in the columns headed Account No., Client, and Security Held in Schedule 1 of the agreement

PGC means Pyne Gould Corporation Limited

PGC group means PGC and each of its subsidiaries

pro forma statement of financial position means the condensed unaudited pro forma statement of financial position of the PGC group as at 31 December 2010 that—

- (a) comprises a balance sheet that contains the line items required in a summary balance sheet prepared in the format required by FRS-43; and
- (b) is based on the unaudited consolidated interim statement of financial position of the PGC group as at 31 December 2010; and
- (c) is prepared as if the distribution had been effected as at 31 December 2010

Regulations means the Securities Regulations 2009

scheme of arrangement means the scheme of arrangement approved by the High Court for the distribution

specified offer means an offer by PGC or BSHL of equity securities in BSHL to PGC's shareholders in accordance with the scheme of arrangement.

- (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 37A(1)(a) of Act

PGC, BSHL, and every person acting on behalf of either or both of them are exempted from section 37A(1)(a) of the Act in respect of the distribution.

6 Condition of exemption in clause 5

The exemption in clause 5 is subject to the condition that PGC or BSHL must send a copy of the investment statement for the specified offer—

- (a) to each PGC shareholder, at the mailing or other address recorded in PGC's share register, whose name is recorded in PGC's share register at the record date for receiving a notice of meeting for the approval meeting; and
- (b) to a person free of charge if—
 - (i) that person's name is recorded in PGC's share register after the record date for receiving a notice of meeting for the approval meeting; and
 - (ii) that person requests the investment statement before the distribution.

7 Exemption from regulation 18(1)(a) of Regulations

PGC, BSHL, and every person acting on behalf of either or both of them are exempted from regulation 18(1)(a) of the Regulations in respect of the specified offer in so far as that regulation requires the prospectus for the specified offer that is delivered to the Registrar for registration to have attached to it or be accompanied by a copy of the agreement.

8 Condition of exemption in clause 7

The exemption in clause 7 is subject to the condition that the prospectus must—

- (a) have attached to it or be accompanied by a copy of the agreement without the excluded provisions; and
- (b) state that the excluded provisions have been excluded from the copy of the agreement delivered to the Registrar; and
- (c) state why the excluded provisions have been excluded; and
- (d) contain a statement of the general nature of the excluded provisions; and

- (e) contain a prominent statement to the effect that the directors of PGC and BSHL warrant that the exclusion of the excluded provisions from the agreement does not make the prospectus misleading in any material particular by a failure to refer, or give proper emphasis, to any adverse circumstances.

9 Exemption from regulation 18(1)(a) of Regulations

The PGC group, the BSHL group, and every person acting on behalf of any member of the PGC group or the BSHL group are exempted from regulation 18(1)(a) of the Regulations in respect of any offer of securities in so far as that regulation requires a prospectus delivered to the Registrar for registration for an offer of securities by any member of the PGC group or the BSHL group to have attached to it or be accompanied by a copy of the agreement.

10 Conditions of exemption in clause 9

The exemption in clause 9 is subject to the conditions that—

- (a) a copy of the agreement without the excluded provisions must have already been registered by, or filed with, the Registrar; and
- (b) the prospectus must—
 - (i) state that the excluded provisions have been excluded from the copy of the agreement delivered to the Registrar; and
 - (ii) state why the excluded provisions have been excluded; and
 - (iii) contain a statement of the general nature of the excluded provisions; and
 - (iv) contain a prominent statement to the effect that the directors of the issuer of the securities to which the prospectus relates warrant that the exclusion of the excluded provisions from the agreement does not make the prospectus misleading in any material particular by a failure to refer, or give proper emphasis, to any adverse circumstances.

11 Exemption from clause 25(c) of Schedule 1 of Regulations

PGC, BSHL, and every person acting on behalf of either or both of them are exempted from clause 25(c) of Schedule 1 of the Regulations in respect of the specified offer in so far as that clause applies to the agreement.

12 Condition of exemption in clause 11

The exemption in clause 11 is subject to the condition that the prospectus for the specified offer that is delivered to the Registrar for registration must state—

- (a) that a copy of the agreement without the excluded provisions may be inspected during the currency of the prospectus on request and without any fee by any person; and

- (b) the times and places in New Zealand where that copy may be inspected.

13 Exemption from clause 25(c) of Schedule 1 and clause 19(c) of Schedule 2 of Regulations

The PGC group, the BSHL group, and every person acting on behalf of any member of the PGC group or the BSHL group are exempted from clause 25(c) of Schedule 1 and clause 19(c) of Schedule 2 of the Regulations in respect of an offer of securities by any member of the PGC group or the BSHL group in so far as either or both of those clauses apply to the agreement.

14 Condition of exemptions in clause 13

The exemptions in clause 13 are subject to the condition that a prospectus that is delivered to the Registrar for registration for an offer of securities by any member of the PGC group or the BSHL group must state—

- (a) that a copy of the agreement without the excluded provisions may be inspected during the currency of the prospectus on request and without any fee by any person; and
- (b) the times and places in New Zealand where that copy may be inspected.

15 Exemption from regulation 26 of Regulations

PGC, BSHL, and every person acting on behalf of either or both of them are exempted from regulation 26 of the Regulations with respect to advertisements relating to the specified offer in so far as that regulation applies to the disclosure of—

- (a) financial information contained in the pro forma statement of financial position; or
- (b) any information required to be included in an advertisement in compliance with this exemption from regulation 26.

16 Conditions of exemption in clause 15

(1) The exemption in clause 15 is subject to the conditions that—

- (a) an advertisement that includes the pro forma statement of financial position must—
 - (i) include an explanation to the effect that the pro forma statement—
 - (A) is not a statement of the assets of the PGC group or the issuing group; and
 - (B) has not been audited; and
 - (C) has been prepared in accordance with New Zealand generally accepted accounting practice as it applies to financial statements; and
 - (D) has been prepared as if the distribution had been effected as at 31 December 2010; and

- (ii) include the unaudited consolidated interim statement of financial position for the PGC group as at 31 December 2010; and
 - (iii) refer to this exemption notice and include a statement to the effect that more information on the exemptions in this notice is set out in the prospectus for the specified offer; and
- (b) an advertisement must not—
 - (i) state the amount of the total assets set out in the pro forma statement of financial position without also stating with equal prominence the amount of the total liabilities set out in the pro forma statement of financial position; or
 - (ii) state the amount of the net assets, or state the amounts of the total assets and total liabilities in accordance with subparagraph (i), set out in the pro forma statement of financial position except as provided in subclause (2).
- (2) An advertisement may state the amounts referred to in subclause (1)(b)(ii) if—
 - (a) the amounts shown appear in the pro forma statement of financial position; and
 - (b) the advertisement states that the amounts have been taken from the pro forma statement of financial position, states the date of the pro forma statement of financial position, and states that the amounts have been calculated as at that date.
- (3) Subclause (1)(b) does not prevent an advertisement from containing or referring to the pro forma statement of financial position.
- (4) The exemption in clause 15 is subject to the further condition that an auditor's report to be contained in or to accompany the prospectus for the specified offer must contain a statement in the following form:

In our opinion, the pro forma statement of financial position on page [*insert page references to the pro forma statement of financial position*] of the [*insert name given to the document that comprises the investment statement*], so far as the accounting policies and calculations are concerned, has been properly compiled based upon the unaudited consolidated statement of financial position for the PGC group as at 31 December 2010 adjusted for the assumptions made by the issuer set out on page [*insert page references to the notes to the pro forma statement of financial position*] of the [*insert name given to the document that comprises the investment statement*], and is presented on a basis consistent with the accounting policies normally adopted by the PGC group.

Dated at Wellington this 21st day of April 2011.

The Common Seal of the Securities Commission was affixed in the presence of:

[Seal]

D W Mayhew,
Member.

Statement of reasons

This notice comes into force on the day after its notification in the *Gazette* and expires on 30 April 2016.

Under a court-approved scheme of arrangement, Pyne Gould Corporation Limited (**PGC**) will transfer part or all of the equity securities held by the PGC group in Building Society Holdings Limited (**BSHL**) to PGC's shareholders in return for the cancellation of some of the shares in PGC held by the shareholders (the **distribution**). This notice contains 3 sets of exemptions that apply to this.

First, this notice exempts PGC and BSHL and every person acting on their behalf, subject to 2 conditions, from section 37A(1)(a) of the Securities Act 1978 in respect of the distribution.

The Securities Commission (the **Commission**) considers that it is appropriate to grant the exemption because the exemption and conditions recognise that while it is a key requirement of the Securities Act 1978 that investors receive information prior to subscription, PGC and BSHL have no way to verify that an investment statement has been received by an offeree because there is no application form that needs to be returned to approve the distribution. Instead, shareholders are entitled to attend and vote at a special meeting to approve the distribution. Further, because PGC shares are transferable, the shareholders in PGC may change leading up to the record date for the distribution. Recognising these practical issues, the conditions to the exemption require that information be provided to investors by requiring that an investment statement be sent to all PGC shareholders with the notice of meeting for the special meeting and on request.

Secondly, this notice exempts PGC and BSHL, their subsidiaries, and every person acting on their behalf from regulation 18(1)(a), clause 25(c) of Schedule 1, and clause 19(c) of Schedule 2 of the Securities Regulations 2009, subject to conditions, in respect of a material contract.

The exemptions entitle the PGC group and the BSHL group to exclude some commercially sensitive information from the copy of a material contract that is attached to a registered prospectus. The contract is a Management Agreement between MARAC Finance Limited and Real Estate Credit Limited and the excluded information is personal information relating to third parties.

The Commission considers that it is appropriate to grant the exemptions relating to this material contract because—

- the exemptions meet the criteria stated in the Commission’s Exemption Policy Note for Applications to Exclude Commercially Sensitive Information from Material Contracts (the Exemption Policy Note can be viewed on the Commission’s Internet site at <http://www.sec-com.govt.nz/exemptions/exemption-policy.shtml>); and
- the detriment to the commercial interests of PGC, BSHL, MARAC Finance Limited, Real Estate Credit Limited, and the borrowers named in the material contract by the disclosure of the excluded provisions would outweigh any benefit to prospective investors from their disclosure; and
- directors of PGC and BSHL will warrant that the non-disclosure of the excluded provisions does not make the registered prospectus misleading in any material particular by a failure to refer, or give proper emphasis, to any adverse circumstances; and
- the prospectus for the distribution will state that information has been excluded from the agreement in question, the reasons why that information has been excluded, and the general nature of the material information that has been excluded.

Finally, this notice exempts PGC and BSHL from regulation 26 of the Securities Regulations 2009, subject to conditions, so that PGC and BSHL may include, and refer to information contained in, a pro forma statement of financial position in any advertisement for the distribution.

The Commission considers that it is appropriate to grant the exemption to regulation 26 because—

- the distribution will have a significant impact on the financial position of PGC. The exemption from regulation 26 of the Securities Regulations 2009 allows information about the financial impact of the distribution to be included in the advertisements; and
- the pro forma statement provides PGC shareholders with information comparing the financial position of the PGC group in the interim statement of financial position as at 31 December 2010 with the financial position of the PGC group if the distribution is approved. This will provide investors with useful information about the effect of the distribution.

Reprints notes

1 *General*

This is a reprint of the Securities Act (Pyne Gould Corporation Limited and Building Society Holdings Limited) Exemption Notice 2011 that incorporates all the amendments to that notice as at the date of the last amendment to it.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Securities Act (Pyne Gould Corporation Limited and Building Society Holdings Limited) Exemption Notice 2011 (SR 2011/113): clause 3