

**Reprint
as at 1 December 2016**



**Securities Act (Industrial and Provident Societies)
Exemption Notice 2013
(SR 2013/64)**

Securities Act (Industrial and Provident Societies) Exemption Notice 2013: revoked, on 1 December 2016, pursuant to Schedule 1 clause 26 of the Financial Markets Conduct Regulations 2014 (LI 2014/326).

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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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.

- (b) credited to the account of the member from the earnings of the society where the total amount to be credited to all members has been determined by the members of the society in general meeting

specified participatory securities means shares issued by a society under the Industrial and Provident Societies Act 1908.

- (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

A society and every person acting on its behalf are exempted from—

- (a) section 33(3) of the Act in respect of specified participatory securities; and
- (b) section 37A(1)(c) of the Act in respect of specified participatory securities and specified debt securities; and
- (c) section 54 of the Act in respect of specified participatory securities and specified debt securities; and
- (d) regulation 5(1)(c) of the Regulations in respect of specified participatory securities; and
- (e) clauses 5 to 12, 16 to 18, and 20 to 22 of Schedule 2 of the Regulations in respect of specified debt securities.

6 Condition that securities allotted only to members

The exemptions in clause 5 are subject to the condition that the specified participatory securities or the specified debt securities (as the case may be) are allotted only to persons who are, or immediately after allotment will be, members of the society.

7 Condition about payments on account of participatory securities

The exemption in clause 5(a) is subject to the further condition that the society does not require a member to pay money to the society on account of specified participatory securities (other than specified participatory securities forming part of the member's original application) that have been, or are to be, allotted to the member unless—

- (a) the members of the society have agreed at a general meeting to the requirement to make the payments; and
- (b) adequate provision has been made for members who object to making the payments to withdraw from the society and to be paid, within 6 months of notifying the society of their intention to withdraw, the amounts they are entitled to be paid as holders of specified participatory securities or that are payable to them or that are credited to their accounts.

8 Condition requiring information about recent or proposed acquisitions in case of first public offer

- (1) This clause applies to a first offer to the public of a class of specified participatory securities or specified debt securities of a society if—
 - (a) the society acquired a business at any time in the specified period; or
 - (b) any subsidiary of the society acquired a business, or became a subsidiary of the society, at any time in the specified period; or
 - (c) as at the distribution date, the society or any subsidiary of the society has agreed to acquire a business or to acquire equity securities that will result in a body corporate becoming a subsidiary of the society.
- (2) However, this clause does not apply in respect of the acquisition or proposed acquisition of a business, subsidiary, or body corporate if the consideration paid or payable for the acquisition of the business, subsidiary, or body corporate is not more than 20% of the total tangible assets of the society shown in the latest audited statement of financial position of the society.
- (3) The exemptions in clause 5(b), (d), and (e) are subject to the further condition that every copy of the investment statement relating to the offer of the specified participatory securities or the specified debt securities (as the case may be) that is distributed by or on behalf of the society must—
 - (a) include, in relation to the acquisition or proposed acquisition referred to in subclause (1), the information required by subclause (4); or
 - (b) have attached to it a directors' statement that—
 - (i) contains, in relation to the acquisition or proposed acquisition referred to in subclause (1), the information required by subclause (4); and
 - (ii) is signed by each director of the society (or his or her agent who has been authorised in writing).
- (4) The information is as follows:
 - (a) the name of the entity that has undertaken or has agreed to undertake the acquisition;
 - (b) the consideration paid or payable for the business, subsidiary, or body corporate;
 - (c) a brief description of the business, or of the business carried on by the subsidiary or body corporate, in the course of the 5 years before the specified date;
 - (d) summary financial statements (if practicable, in tabular form) for the business, subsidiary, or body corporate in respect of the 5 accounting periods preceding the specified date that comply with clause 9(2) to (4) of Schedule 1 of the Regulations (which apply with any necessary modifications):

- (e) one of the following:
 - (i) a reference to the latest financial statements for the business, subsidiary, or body corporate that comply with, and that have been registered under, the Financial Reporting Act 1993, the accounting period covered by those statements, and the date of registration (and, if the society so wishes, copies of those financial statements); or
 - (ii) audited financial statements for the business, subsidiary, or body corporate prepared in accordance with generally accepted accounting practice for the relevant accounting period.
- (5) For the purposes of this clause, a society or any of its subsidiaries must be treated as having agreed to make an acquisition referred to in subclause (1)(c) even though an agreement of that kind entered into by the society or subsidiary is conditional in any respect.
- (6) In this clause,—
relevant accounting period means—
 - (a) the most recently completed accounting period in respect of which the financial statements have been prepared; or
 - (b) if the business, subsidiary, or body corporate has not completed its first accounting period, the period from the date of commencement of business and ending on a stated date that is not more than 4 months before the specified date

specified period means the period between the date of the latest statement of financial position of the society and the distribution date.

9 Conditions requiring provision of information regarding other material matters in case of first public offer

- (1) This clause applies to a first offer to the public of a class of specified participatory securities or specified debt securities of a society.
- (2) The exemption in clause 5(d) and the exemption in clause 5(e) from clause 20 of Schedule 2 are subject to the further condition that the registered prospectus relating to the offer of the specified participatory securities or the specified debt securities (as the case may be) contains the information required by subclause (4).
- (3) The exemptions in clause 5(b), (d), and (e) are subject to the further condition that every copy of the investment statement relating to the offer of the specified participatory securities or the specified debt securities (as the case may be) that is distributed by or on behalf of the society must—
 - (a) include the information required by subclause (4); or
 - (b) have attached to it a directors' statement that—
 - (i) contains the information required by subclause (4); and

- (ii) is signed by each director of the society (or his or her agent who has been authorised in writing).
- (4) The information is particulars of any material matters relating to the offer of securities (other than matters elsewhere set out in the relevant document or in the most recent financial statements, and contracts entered into in the ordinary course of business of the society or of any subsidiary of the society).
- (5) In subclause (4),—
 - most recent financial statements** means the most recent audited financial statements of the society, and any group financial statements of the society, that comply with, and that have been registered under, the Financial Reporting Act 1993
 - relevant document** means,—
 - (a) in relation to subclause (2), the registered prospectus; and
 - (b) in relation to subclause (3), the investment statement.

10 Condition requiring information relating to initial flotations and minimum subscription

- (1) This clause applies to a first offer to the public of specified participatory securities of a society.
- (2) The exemptions in clause 5(b) and (d) are subject to the further condition that every copy of the investment statement relating to the offer of the specified participatory securities that is distributed by or on behalf of the society must—
 - (a) include the information and statements required by subclause (3); or
 - (b) have attached to it a directors' statement that—
 - (i) contains the information and statements required by subclause (3); and
 - (ii) is signed by each director of the society (or his or her agent who has been authorised in writing).
- (3) The information and statements are the information and statements specified in clause 11(1) to (5) of Schedule 1 of the Regulations, applied as if—
 - (a) the reference to equity securities in clause 11(1) of that Schedule were a reference to specified participatory securities; and
 - (b) the references to issuing group in clause 11(1) of that Schedule were a reference to the issuer of the specified participatory securities and all subsidiaries of the issuer at the specified date; and
 - (c) the reference to the prospectus in clause 11(3)(b) of that Schedule were a reference to the investment statement.

11 Condition requiring information about material transactions

- (1) This clause applies if, as at the distribution date,—

- (a) a society has agreed to enter into—
 - (i) a major transaction or any related series of transactions that would have the effect of a major transaction; or
 - (ii) a transaction or any related series of transactions to acquire, sell, lease, exchange, or otherwise dispose of (otherwise than by way of charge) assets of the society, or assets to be held by the society, that would change the essential nature of the business of the society; or
- (b) any subsidiary of the society has agreed to enter into—
 - (i) a transaction that would be a major transaction, or any related series of transactions that would have the effect of a major transaction, if undertaken by the society; or
 - (ii) a transaction or any related series of transactions to acquire, sell, lease, exchange, or otherwise dispose of (otherwise than by way of charge) assets of the subsidiary, or assets to be held by the subsidiary, that would change the essential nature of the business of the society and its subsidiaries (taken as a whole).
- (2) The exemptions in clause 5(b), (d) and (e) are subject to the further condition that every copy of the investment statement relating to the offer of the specified participatory securities or the specified debt securities (as the case may be) that is distributed by or on behalf of the society—
 - (a) includes, in relation to the transaction or series of transactions referred to in subclause (1), the information required by subclause (3); or
 - (b) has attached to it a directors' statement that—
 - (i) contains, in relation to the transaction or series of transactions referred to in subclause (1), the information required by subclause (3); and
 - (ii) is signed by each director of the society (or his or her agent who has been authorised in writing).
- (3) The information is as follows:
 - (a) the names of the parties to the transaction or series of transactions;
 - (b) the key terms of the transaction or series of transactions (including details of the consideration payable by or to the society or the subsidiary (as the case may be));
 - (c) a brief description of—
 - (i) the general nature of the transaction or series of transactions; and
 - (ii) any material implications for the society and its shareholders.
- (4) For the purposes of this clause, a society or any of its subsidiaries must be treated as having agreed to enter into a transaction or series of transactions re-

ferred to in subclause (1) even though the agreement or agreements of that kind entered into by the society or subsidiary are conditional in any respect.

12 Condition that directors' statement must be attached to investment statement

- (1) The exemptions in clause 5(b), (d), and (e) are subject to the further condition that every copy of the investment statement relating to the offer of the specified participatory securities or the specified debt securities (as the case may be) that is distributed by or on behalf of the society more than 9 months after the date of the most recent statement of financial position of the society registered under the Financial Reporting Act 1993 has attached to it, or contained in it, a directors' statement that—
 - (a) complies with subclause (2); and
 - (b) is dated no earlier than 8 months after the date of that statement of financial position; and
 - (c) is signed by each of the directors of the society (or his or her agent who has been authorised in writing).
- (2) The directors' statement must contain a statement by the directors of the society as to whether, in their opinion, after due enquiry by them, any of the following has materially and adversely changed during the period between the date of the society's most recent statement of financial position and the date of the directors' statement:
 - (a) the trading or profitability of the society;
 - (b) the value of the assets of the society;
 - (c) the ability of the society to pay its liabilities due within the next 12 months.

13 Condition about financial statements

The exemption in clause 5(b) is subject to the further condition that it is a term of the offer of the specified participatory securities or the specified debt securities (as the case may be) that a copy of the most recent audited financial statements or group financial statements of the society that comply with, and have been registered under, the Financial Reporting Act 1993 will be attached to, or contained in, every copy of the registered prospectus for the offer that is sent to a person under section 54B of the Act.

14 Condition about statement of shareholding in lieu of certificate evidencing securities

- (1) The exemption in clause 5(c) is subject to the further condition that the society sends, without fee, to each member annually, and within 5 working days after receiving a request from a member, a written statement that sets out—

- (a) the class or classes of specified participatory securities or specified debt securities (as the case may be) held by that member; and
 - (b) the number of specified participatory securities or specified debt securities (as the case may be) in each class held by that member.
- (2) However, this condition does not require a society to send an annual statement to a member if the total number of securities in each class held by the member has not changed since the more recent of the following dates:
- (a) the date on which a written statement was sent to the member under this clause or clause 10 of the Securities Act (Industrial and Provident Societies) Exemption Notice 2011;
 - (b) the date on which a certificate was sent to the member under section 54 of the Act.

15 Condition about information in prospectus

The exemption in clause 5(d) is subject to the further condition that the registered prospectus for the offer of specified participatory securities contains the information specified in clauses 1 to 3, 11, 21, and 25 of Schedule 1 of the Regulations, and (in the case of the first offer to the public of a class of specified participatory securities) clause 26 of Schedule 1 of the Regulations, in all respects as if the specified participatory securities were equity securities.

16 Revocation

The Securities Act (Industrial and Provident Societies) Exemption Notice 2011 (SR 2011/60) is revoked.

17 Transitional provisions

- (1) The exemption in clause 5(b) from section 37A(1)(c) of the Act does not apply to a prospectus that was registered before 25 March 2011.
- (2) If, before 1 July 2010, a society offered specified participatory securities or specified debt securities in reliance on the Securities Act (Industrial and Provident Societies) Exemption Notice 2002 under a prospectus that was registered before that date, the society may continue to rely on that notice in respect of securities offered under that prospectus (as if that notice continued in force after 31 March 2011).
- (3) If, on or before 31 March 2011, a society offered specified participatory securities or specified debt securities in reliance on the Securities Act (Industrial and Provident Societies) Exemption Notice 2002 and the Securities Act (Transition to Securities Regulations 2009) Exemption Notice 2010 under a prospectus that is registered on or before that date, the society may continue to rely on those notices in respect of securities offered under that prospectus (as if both of those notices continued in force after 31 March 2011).

- (4) If, on or before 31 March 2013, a society offered specified participatory securities or specified debt securities in reliance on the Securities Act (Industrial and Provident Societies) Exemption Notice 2011 under a prospectus that is registered on or before that date, the society may continue to rely on that notice in respect of securities offered under that prospectus (as if that notice continued in force after 31 March 2013).
- (5) However, subclauses (2) to (4)—
- (a) cease to apply to a prospectus on an amendment being made to the prospectus for the purpose of preventing it from being false or misleading in a material particular by reason of failing to refer, or give proper emphasis, to adverse circumstances; and
 - (b) apply after 31 October 2011 to a prospectus that relates to specified debt securities only if the prospectus contains all of the information and other matters specified in clause 4 of Schedule 2 of the Regulations that are applicable.

Schedule

Industrial and provident societies to which notice applies

cl 4(1)

Ashburton Trading Society Limited
Canterbury Education Services Society Limited
Composite Retail Society Limited
Farmlands Co-operative Society Limited
Foodstuffs (Wellington) Co-operative Society Limited
Rural Couriers Society Limited

Dated at Wellington this 26th day of March 2013.

Sue Brown,
Head of Primary Regulatory Operations.

Statement of reasons

This notice, which comes into force on 1 April 2013 and is revoked on 30 September 2017, replaces the Securities Act (Industrial and Provident Societies) Exemption Notice 2011 (the **2011 notice**).

The exemptions granted by the notice apply only in respect of securities allotted to members of those industrial and provident societies named in the *Schedule* of the no-

tice. The notice continues exemptions from the Securities Act 1978 (the **Act**) and the Securities Regulations 2009 (the **Regulations**) previously provided in the 2011 notice and includes exemptions from the following provisions of the Act and the Regulations:

- section 33(3) of the Act (which requires the appointment of a statutory supervisor):
- section 37A(1)(c) of the Act (which restricts the time of allotment):
- section 54 of the Act (which relates to the issue of certificates evidencing securities):
- various requirements of the Regulations relating to the content of a registered prospectus.

This notice is on substantially the same terms as the 2011 notice and, in effect, entitles the industrial and provident societies to which the notice applies to use an ever-green short-form prospectus.

However, additional disclosure is required by an industrial and provident society in its investment statement or an accompanying directors' statement if—

- the offer is an initial public offering of participatory securities or debt securities and acquisitions have been undertaken by the society or any of its subsidiaries since the last balance date or have been agreed to be undertaken by it or any of its subsidiaries, being acquisitions where the consideration exceeds 20% of the society's total tangible assets. In addition, the investment statement or an accompanying directors' statement will now be required to disclose particulars of material matters relating to the offer that are not otherwise set out in the investment statement:
- the society (or any of its subsidiaries) has agreed to enter into a major transaction (as defined in the Companies Act 1993) or a transaction or series of related transactions that would change the essential nature of the society's business.

If the offer is an initial public offer of participatory securities, the investment statement or an accompanying directors' statement will also be required to disclose plans of the directors for the year following registration of the prospectus, the purpose for which the proceeds of the offer may be used, and the minimum amount that must be raised by the offer to meet the purchase price of property, to pay preliminary expenses and commissions, to meet working capital requirements, and to repay any borrowings. This must be accompanied by prospective financial statements for the year following registration of the prospectus.

The Financial Markets Authority, after satisfying itself as to the matters set out in section 70B(2) of the Act, considers it appropriate to grant the exemptions because—

- industrial and provident societies are registered under the Industrial and Provident Societies Act 1908. They are required to be either bona fide co-operative societies or to conduct business for charitable-type purposes:

- like co-operative companies, industrial and provident societies are structured to allow the co-operation of subscribers with similar interests under a single corporate entity. The main advantage is that societies use their collective purchasing power to negotiate discounts for members from suppliers. Similarly to co-operative companies, prospective shareholders subscribe for shares primarily to gain access to preferential prices rather than to obtain a return on funds invested:
- there is still, however, an investment decision to be made and securities law policy requires that investors receive material information in a timely manner. The reduced-content prospectus, flexibility relating to the provision of the investment statement, and the securities certificate exemption allow industrial and provident societies to meet the requirements of the law in a cost-effective manner that is appropriate to the nature of their business:
- although the shares in an industrial and provident society are technically participatory securities, in practice they are virtually indistinguishable from equity securities issued by a co-operative company. It is therefore appropriate that the information provided to subscribers is the information usually required for equity securities in a co-operative company. It is also appropriate to provide for other exemptions similar to those granted to co-operative companies, including allowing for the use of a short-form prospectus. By doing this, the exemptions recognise the special nature of these societies and create a balance by reducing compliance costs while ensuring that members receive appropriate and sufficient information:
- the transitional provisions reduce the compliance costs resulting from the regulatory changes for issuers that have previously relied on the 2011 notice or earlier corresponding exemption notices. These issuers may continue to rely on the 2011 notice or an earlier notice in respect of securities offered under an existing registered prospectus in reliance on that notice unless the prospectus needs to be amended to prevent it from being false or misleading in a material particular (*see* section 37A(1)(b) of the Act). In addition, the transitional provisions can be relied on in the case of an offer of debt securities only if the prospectus contains (if applicable) the information specified in clause 4 of Schedule 2 of the Regulations (which relates to guarantors and requires more information than the equivalent provision in the Securities Regulations 1983):
- the conditions of the exemptions provide for alternative supplementary information to be made available to investors, including directors' statements about any material adverse changes to trading and profitability, asset value, and ability to pay liabilities, information regarding proposed major transactions or proposed changes to the essential nature of the society's business, and, in the case of an initial public offering of securities, information regarding any recent or proposed significant acquisitions and other material information:
- the reduced-content evergreen prospectus, with provision for that alternative supplementary information, and the provision of updated financial statements

with any prospectus requested provide sufficient information disclosure in a cost-effective manner that is appropriate for the prospective investors. The Financial Markets Authority is satisfied that this information is sufficient to avoid any significant detriment to those prospective investors:

- the Financial Markets Authority is also satisfied that the extent of the exemptions is not broader than what is reasonably necessary to address the matters that gave rise to the exemptions, because the exemptions only apply to securities offered to persons who are, or immediately after allotment will be, members of the industrial and provident society and only provide exemptions to the extent appropriate to reduce regulatory compliance costs while requiring the provision of relevant information in an appropriate alternative manner.

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*: 28 March 2013.

Reprints notes

1 *General*

This is a reprint of the Securities Act (Industrial and Provident Societies) Exemption Notice 2013 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*

Financial Markets Conduct Regulations 2014 (LI 2014/326): Schedule 1 clause 26