



Financial Markets Conduct (Communal Facilities in Real Property Developments) Exemption Notice 2016

Pursuant to section 556 of the Financial Markets Conduct Act 2013, the Financial Markets Authority, being satisfied of the matters set out in section 557 of that Act, gives the following notice.

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Notice

1 Title

This notice is the Financial Markets Conduct (Communal Facilities in Real Property Developments) Exemption Notice 2016.

2 Commencement

This notice comes into force on 28 October 2016.

3 Revocation

This notice is revoked on the close of 27 October 2021.

4 Interpretation

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

Act means the Financial Markets Conduct Act 2013

effective date has the same meaning as in clause 16(1) of Schedule 4 of the Act

existing shares means allotted shares in a company that were offered in reliance on an exemption granted by a Securities Act notice

Regulations means the Financial Markets Conduct Regulations 2014

Securities Act notice means any of the following notices:

- (a) Securities Act (Stage Three/Four Limited) Exemption Notice 2003:
 - (b) Securities Act (Serenity Cove Development Limited) Exemption Notice 2007:
 - (c) Securities Act (Mt Pisa Developments) Exemption Notice 2007:
 - (d) Securities Act (Real Property Developments) Exemption Notice 2007:
 - (e) Securities Act (Waipamu Station Limited) Exemption Notice 2010.
- (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.
 - (3) Regulation 9 of the Regulations applies, with all necessary modifications, to a statement required to be provided by this notice.

5 Exemptions

- (1) An issuer of existing shares is exempted from subpart 4 of Part 3, subpart 4 of Part 4, and clause 30(1) of Schedule 4 of the Act in respect of the shares.
- (2) An issuer of existing shares is exempted from Part 7 of the Act if that issuer would be treated as an FMC reporting entity only by virtue of the existing shares being regulated products.

6 Application

An exemption granted under clause 5(2) applies to the following accounting periods of an issuer of existing shares:

- (a) an accounting period of the issuer that commences before the exemption is granted (including an accounting period that ends before the exemption is granted) if the exemption is granted before the financial statements or group financial statements for that period would, but for the exemption contained in clause 5(2), be required to be delivered to the Registrar for lodgement under section 461H of the Act; and
- (b) subsequent accounting periods.

7 Condition of exemptions

- (1) The exemptions in clause 5 are subject to the condition that the issuer of the existing shares must, no later than 3 months after the effective date, provide a notice containing the information in subclause (2) to each shareholder by delivering it or sending it to the shareholder's last known address.
- (2) The written notice must contain the following information:

- (a) the effective date for the existing shares; and
- (b) the issuer's name and address; and
- (c) a statement in the following form:

“Shares in [*name of company*] (the **company**) were offered to shareholders under the Securities Act 1978 in reliance on the [*insert name of exemption notice*] (the **Securities Act notice**).

The Securities Act notice exempted the company from the standard obligations that normally applied when shares were offered to the public (such as the requirements for there to be a registered prospectus and for investors to be given an investment statement before they invest). Conditions under the exemption notice required the company to comply with certain alternative requirements.

After the effective date, the Securities Act and the Securities Act notice will cease to apply and the shares will instead be subject to the Financial Markets Conduct Act 2013 (the **FMC Act**). However, a new exemption notice called the Financial Markets Conduct (Communal Facilities in Real Property Developments) Exemption Notice 2016 (the **FMC Act notice**) will apply. The effect of the FMC Act notice is that the company may not be required to comply with financial reporting requirements under the FMC Act. In addition, the company will not be required to comply with ongoing disclosure obligations or with obligations relating to the register of the shares and document keeping. However, financial reporting and other requirements under the Companies Act 1993 may still apply.

If you would like any further information, please contact [*insert contact details of company*].”

Dated at Auckland this 21st day of October 2016.

Nick Kynoch,
General Counsel.

Statement of reasons

This notice comes into force on 28 October 2016 and is revoked on the close of 27 October 2021. The notice applies to existing shares in companies that manage communal facilities in real property developments where the shares were offered to the public in reliance on the Securities Act (Real Property Developments) Exemption Notice 2007 or a similar notice. The notice exempts the company from complying with certain obligations under the Financial Markets Conduct Act 2013 (the **Act**) that

would otherwise apply on transition under clause 20 of Schedule 4 of the Act. A condition under the notice requires the issuer to give notice to shareholders about the exemptions and their impact.

The effect of the notice is that—

- the minimal ongoing disclosure and governance requirements that would otherwise apply to equity securities that transition under the Act will not apply to the shares:
- the company will not, by reason only of the shares being regulated products, be required to comply with financial reporting obligations under Part 7 of the Act (although financial reporting obligations may apply under other laws such as the Companies Act 1993).

This notice is related to the Financial Markets Conduct (Communal Facilities in Real Property Developments) Designation Notice 2016, which provides relief through a class designation from requirements under the Act for new shares in companies that manage communal facilities in real property developments.

The Financial Markets Authority (the **FMA**), after satisfying itself as to the matters set out in section 557 of the Act, considers it appropriate to grant the exemptions because—

- the exemptions are necessary or desirable to promote and facilitate the development of fair, efficient, and transparent financial markets because they—
 - prevent the regulation by financial markets law of activities that are not financial product investments or financial markets activities and thereby remove unnecessary compliance burdens:
 - prevent confusion for investors and developers resulting from regulation applying when they sell or purchase real property in circumstances where they do not reasonably expect it to apply:
 - avoid the potential for unfairness if interests in companies that manage communal facilities are regulated but interests in incorporated societies that perform exactly the same function are not:
 - avoid resources being diverted from regulation of core financial markets activities to the detriment of the financial markets overall:
- the exemptions are necessary or desirable to avoid unnecessary compliance costs because companies will not be required to comply with financial markets obligations (and incur the costs of doing so) when the relevant conduct is more appropriately and effectively governed by other regulatory regimes:
- the exemptions will only apply to existing equity securities in communal facilities companies offered in reliance on exemptions under the Securities Act 1978. They only provide relief from certain ongoing disclosure, governance, and financial reporting requirements that would apply on transition. Alternative financial reporting and other requirements may still apply under the Companies Act 1993. A condition will require notice to be given to existing shareholders

about the exemptions and their impact. For these reasons, the FMA considers that the extent of the exemptions is not broader than is reasonably necessary to address the matters that gave rise to them.

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 27 October 2016.

This notice is administered by the Financial Markets Authority.