



# **Securities Markets (Insider Trading Exemption—Fonterra Co-operative Group Limited) Regulations 2012**

Jerry Mateparae, Governor-General

## **Order in Council**

At Wellington this 23rd day of October 2012

Present:

His Excellency the Governor-General in Council

Pursuant to section 49D(1) of the Securities Markets Act 1988, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council and on the recommendation of the Minister of Commerce made after consulting the Financial Markets Authority, makes the following regulations.

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## Regulations

### 1 Title

These regulations are the Securities Markets (Insider Trading Exemption—Fonterra Co-operative Group Limited) Regulations 2012.

### 2 Commencement

These regulations come into force on 22 November 2012.

### 3 Interpretation

(1) In these regulations, unless the context otherwise requires,—

**Act** means the Securities Markets Act 1988

**co-operative share** has the meaning given in section 5(1) of the Dairy Industry Restructuring Act 2001

**co-operative share equivalent** means any instrument treated as the equivalent of a co-operative share for the purpose of complying with a requirement of Fonterra's constitution

**Fonterra** means Fonterra Co-operative Group Limited

**Fonterra fund security** means a new co-op fund security (as referred to in section 109D(1)(b)(i) of the Dairy Industry Restructuring Act 2001)

**Fonterra shareholders' council** means the shareholders' council established by Fonterra's constitution.

(2) Any term or expression that is defined in the Act and used, but not defined, in these regulations has the same meaning as in the Act.

### 4 Certain trading exempted from being insider conduct

(1) This regulation applies to trading in co-operative shares or Fonterra fund securities that—

(a) is undertaken by a person (the **trader**) who holds inside information obtained in the person's capacity as a director, officer, or employee of Fonterra or as a member of the Fonterra shareholders' council (whether or not the trader is in that position when the trading is undertaken); and

- (b) is undertaken in connection with enabling the trader to—
    - (i) comply with a requirement, imposed by or under Fonterra’s constitution, to hold a maximum or minimum number of co-operative shares (including co-operative share equivalents); or
    - (ii) increase the trader’s voting rights, or the price paid to the trader for milk supply, under Fonterra’s constitution (having regard to the relationship between milk supply and the number of co-operative shares held (including co-operative share equivalents)); and
  - (c) is not influenced by the inside information referred to in paragraph (a).
- (2) The conduct described in subclause (1), to the extent that it is conduct described in section 8C of the Act, is not insider conduct for the purposes of the Act.

## **5 Certain advice and encouragement exempted from being insider conduct**

- (1) This regulation applies to advice or encouragement to trade or hold co-operative shares or Fonterra fund securities that—
- (a) is given by a person (the **adviser**) who holds inside information obtained in the person’s capacity as a director, officer, or employee of Fonterra, or as a member of the Fonterra shareholders’ council (whether or not the adviser is in that position when the advice or encouragement is given); and
  - (b) is given in connection with enabling any person to—
    - (i) comply with a requirement, imposed by or under Fonterra’s constitution, to hold a maximum or minimum number of co-operative shares (including co-operative share equivalents); or
    - (ii) increase the person’s voting rights, or the price paid to the person for milk supply, under Fonterra’s constitution (having regard to the relationship between milk supply and the number of co-operative shares held (including co-operative share equivalents)); and

- (c) is not influenced by the inside information referred to in paragraph (a).
- (2) The conduct described in subclause (1), to the extent that it is conduct described in section 8E of the Act, is not insider conduct for the purposes of the Act.

Michael Webster,  
for Clerk of the Executive Council.

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### **Explanatory note**

*This note is not part of the regulations, but is intended to indicate their general effect.*

These regulations, which come into force on 22 November 2012, exempt certain conduct from being insider conduct for the purposes of sections 8C and 8E of the Securities Markets Act 1988 (the **Act**). The Dairy Industry Restructuring Act 2001 was amended in 2012 to provide for (among other things) the establishment of a new share trading system: Trading Among Farmers (**TAF**). Key components of TAF are—

- a new fund (the **Fonterra fund**) that will hold co-operative shares and issue securities (**Fonterra fund securities**) that may be traded on a registered market:
- a new market for trading, by farmers, of shares in the Fonterra Co-operative Group Limited (**co-operative shares**).

The new market (the **Fonterra Shareholders' Market**) was granted market registration on 30 August 2012 under the *Securities Markets Act (Fonterra Shareholders' Market) Notice of Market Registration 2012* (available at <http://www.fma.govt.nz/laws-we-enforce/legislation/notices/>). Farmers will be able to trade co-operative shares freely on the Fonterra Shareholders' Market. Farmers will also be able to sell the rights derived from their co-operative shares to the Fonterra fund but retain a voucher that may be treated as the equivalent of a co-operative share for the purposes of complying with a requirement of Fonterra's constitution.

If a farmer is a current or former director, officer, or employee of Fonterra, or a current or former member of the Fonterra shareholders' council (**Fonterra insider**), he or she may hold inside information obtained while he or she was an information insider. Despite having inside information, there are some circumstances in which it may be necessary or desirable for a person who is both a farmer and a Fonterra insider to trade co-operative shares or Fonterra fund securities—

- the person may hold less than the minimum number, or more than the maximum number, of co-operative shares (or their equivalent) permitted by or under Fonterra's constitution:
- the person may hold more co-operative shares (or their equivalent) than the minimum number required but less than the number that would be proportionate with the person's milk supply. Under Fonterra's constitution, the person would be entitled to, but unable to access, additional voting rights and a better price for milk supply.

*Regulation 4* exempts trading undertaken in these circumstances from being insider conduct for the purposes of the Act, provided that the trading is not influenced by the inside information.

A Fonterra insider may also have a responsibility to advise or encourage another person to acquire or dispose of co-operative shares in the circumstances described above. *Regulation 5* exempts this conduct from being insider conduct for the purposes of the Act, provided that the advice or encouragement is not influenced by the inside information.

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Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 25 October 2012.

These regulations are administered by the Ministry of Business, Innovation, and Employment.

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