

**Reprint  
as at 1 April 2013**



**Securities Act (Co-operative  
Companies) Exemption Notice  
2011**

(SR 2011/59)

Securities Act (Co-operative Companies) Exemption Notice 2011: revoked,  
on 1 April 2013, by clause 15 of the Securities Act (Co-operative Companies)  
Exemption Notice 2013 (SR 2013/54).

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 section 17C of the Acts and Regulations Publication Act 1989  
have been made in this reprint.

A general outline of these changes is set out in the notes at the end of this reprint, together  
with other explanatory material about this reprint.

**This notice is administered by the Financial Markets Authority.**



- (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**

- (1) A co-operative company and every person acting on its behalf are exempted from—
- (a) section 37A(1)(a) of the Act in respect of equity securities; and
  - (b) section 37A(1)(c) of the Act in respect of equity securities and debt securities; and
  - (c) section 54 of the Act in respect of equity securities and debt securities; and
  - (d) clauses 4 to 10, 12 to 20, 22 to 24, and 26 to 28 of Schedule 1 of the Regulations in respect of equity securities; and
  - (e) clauses 5 to 12, 16 to 18, and 20 to 22 of Schedule 2 of the Regulations in respect of debt securities.
- (2) However,—
- (a) the exemption from clause 26 of Schedule 1 of the Regulations does not apply to a first offer to the public of a class of equity securities of the co-operative company; and
  - (b) the exemption from clause 20 of Schedule 2 of the Regulations does not apply to a first offer to the public of a class of debt securities of the co-operative company.

## **6 Condition that securities allotted only to transacting shareholders**

The exemptions in clause 5 are subject to the condition that the equity securities or the debt securities (as the case may be) are allotted only to persons who are, or immediately after allotment will be, transacting shareholders of the co-operative company.

**7 Conditions about investment statement relating to equity securities**

- (1) The exemption in clause 5(1)(a) is subject to the further conditions that—
  - (a) an investment statement is sent to every person who requests it within 5 working days of receipt of the request by the co-operative company; and
  - (b) an investment statement is sent to every person who applies to become a transacting shareholder within 5 working days of receipt of the application by the co-operative company; and
  - (c) in the case of a co-operative company registered under Part 3 of the Co-operative Companies Act 1996, an investment statement is sent to every person who applies to supply dairy produce to the co-operative company within 5 working days of receipt of the application by the co-operative company; and
  - (d) the investment statement is available on an Internet site maintained by or on behalf of the co-operative company (if any); and
  - (e) the investment statement contains a reasonably prominent statement that every applicant for equity securities who did not receive an investment statement before applying for the securities may, within 10 working days of the date on which the investment statement is sent to the applicant, withdraw their application by written notice to the co-operative company.
- (2) However, the conditions in subclause (1) do not apply to the issue of shares having a nominal value if the shares are, in accordance with the constitution of the co-operative company, issued to a transacting shareholder who already holds shares in the company having a nominal value.
- (3) In this clause, **investment statement** means an investment statement relating to the offer of equity securities.

**8 Condition that directors' statement must be attached to investment statement**

- (1) The exemptions in clause 5(1)(b), (d), and (e) are subject to the further condition that every copy of the investment state-

ment relating to the offer of the equity securities or the debt securities (as the case may be) that is distributed by or on behalf of the co-operative company more than 9 months after the date of the most recent statement of financial position of the co-operative company 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 director of the co-operative company (or his or her agent who has been authorised in writing).
- (2) The directors' statement must contain the following matters:
- (a) particulars of any material matters relating to the offer of the equity securities or the debt securities (as the case may be) other than—
    - (i) matters set out elsewhere in the investment statement relating to the offer, the registered prospectus relating to the offer, or the most recent financial statements of the co-operative company; and
    - (ii) contracts entered into in the ordinary course of business of the co-operative company; and
  - (b) a statement by the directors of the co-operative company 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 co-operative company's most recent statement of financial position and the date of the directors' statement referred to in this clause:
    - (i) the trading or profitability of the co-operative company or the group;
    - (ii) the value of the assets of the co-operative company or the group;
    - (iii) the ability of the co-operative company or the group to pay its liabilities due within the next 12 months.

**9 Condition about financial statements**

The exemption in clause 5(1)(b) is subject to the further condition that it is a term of the offer of the equity securities or the debt securities (as the case may be) that a copy of the most recent audited financial statements of the co-operative company or group financial statements of the co-operative company, being financial statements 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.

**10 Condition about statement of shareholding in lieu of certificate evidencing securities**

- (1) The exemption in clause 5(1)(c) is subject to the further condition that the co-operative company sends, without fee, to each transacting shareholder annually, and within 5 working days of receiving a request from a transacting shareholder, a written statement that sets out—
  - (a) the class or classes of equity securities or debt securities (as the case may be) held by that shareholder; and
  - (b) the number of equity securities or debt securities (as the case may be) in each class held by that shareholder.
- (2) However, this condition does not require a co-operative company to send an annual statement to a transacting shareholder if the total number of securities in each class held by the shareholder has not changed since the most recent of the following dates:
  - (a) the date on which a written statement was sent to the shareholder under this clause;
  - (b) the date on which a certificate was sent to the shareholder under section 54 of the Act.

**11 Securities Act (Co-operative Companies) Exemption Notice 2002 revoked**

The Securities Act (Co-operative Companies) Exemption Notice 2002 (SR 2002/403) is revoked on the close of 31 March 2011.

**12 Transitional provisions**

- (1) The exemption in clause 5(1)(b) from section 37A(1)(c) of the Act does not apply to a prospectus that was registered before the commencement of this notice.
- (2) If, before 1 July 2010, a co-operative company offered equity securities or debt securities in reliance on the Securities Act (Co-operative Companies) Exemption Notice 2002 under a prospectus that was registered before that date, the co-operative company 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 co-operative company offered equity securities or debt securities in reliance on the Securities Act (Co-operative Companies) 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 co-operative company 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) However, subclauses (2) and (3)—
  - (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 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.

Dated at Wellington this 22nd day of March 2011.

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

[Seal]

J Diplock,  
Chairperson.

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### **Statement of reasons**

**Note: The following statement of reasons should be read in conjunction with the statement(s) of reasons appended to the:**

- **Securities Act (Extension of Term, Amendment, and Transitional Provision) Exemption Notice 2012**

This notice, which comes into force on the day after the date of its notification in the *Gazette* and expires on 30 September 2012, replaces the Securities Act (Co-operative Companies) Exemption Notice 2002 (the **2002 notice**).

This notice is on substantially the same terms as the 2002 notice. However, the notice relates to the Securities Regulations 2009 (rather than the Securities Regulations 1983).

The exemptions granted by the notice apply only in respect of securities allotted to transacting shareholders of co-operative companies. The notice includes exemptions from the following provisions of the Securities Act 1978 (the **Act**) and the Securities Regulations 2009 (the **2009 regulations**):

- section 37A(1)(a) of the Act in respect of equity securities (which requires subscribers to receive an investment statement before subscription):
- 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 2009 regulations relating to the content of a registered prospectus.

The notice, in effect, entitles co-operative companies to use an ever-green short form prospectus.

The Securities Commission considers that it is appropriate to grant the exemptions because—

- co-operative companies have traditionally been accorded different legal status and treatment from ordinary companies. Co-operative companies are subject to a statutory regime applying to their equity securities that other companies are not subject to. Further, co-operative companies are owned or substantially owned by suppliers (or members) using the company's services and their principal business is the provision of services to members. It is often compulsory for suppliers to apply for shares. Accordingly, shareholders generally have significant knowledge about the business and tend to treat shareholding as an incident of doing business with the co-operative, or the means by which they can access the benefits of membership. Co-operative shares are often issued at nominal value, which precludes the possibility of capital gain:
- there is still, however, an investment decision to be made and securities law 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 co-operative companies to meet the requirements of the law in a cost-effective manner that is appropriate to the nature of their business:
- the notice continues exemptions provided from the Act previously provided in the 2002 notice, and provides for existing exemptions from provisions of the Securities Regulations 1983 to be provided in respect of equivalent provisions of the 2009 regulations (with the effect that co-operative companies will be able to continue to rely on those exemptions in respect of offers of securities under the 2009 regulations). While the changes in the 2009 regulations will reduce costs for issuers and improve information for investors, they do not attempt to tailor disclosure requirements specifically for all of the circumstances to which securities law requirements apply. Accordingly, exemptions from the equivalent provisions continue to be required and remain appropriate in light of the policy of exemptions for co-operative companies:

- the transitional provisions reduce the compliance costs resulting from the regulatory changes for issuers that have previously relied on the 2002 notice. These issuers may continue to rely on the 2002 notice in respect of securities offered under an existing registered prospectus 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 after 31 October 2011 only if the prospectus contains (if applicable) the information specified in clause 4 of Schedule 2 of the 2009 regulations (which relates to guarantors and requires more information than the equivalent provision in the Securities Regulations 1983).

**Note: The preceding statement of reasons should be read in conjunction with the statement(s) of reasons appended to the:**

- **Securities Act (Extension of Term, Amendment, and Transitional Provision) Exemption Notice 2012**

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Issued under the authority of the Acts and Regulations Publication Act 1989.  
Date of notification in *Gazette*: 24 March 2011.

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## **Notes**

### **1 *General***

This is a reprint of the Securities Act (Co-operative Companies) Exemption Notice 2011. The reprint incorporates all the amendments to the notice as at 1 April 2013, as specified in the list of amendments at the end of these notes.

Relevant provisions of any amending enactments that contain transitional, savings, or application provisions that cannot be compiled in the reprint are also included, after the principal enactment, in chronological order. For more information, *see* <http://www.pco.parliament.govt.nz/reprints/>.

### **2 *Status of reprints***

Under section 16D of the Acts and Regulations Publication Act 1989, reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by the amendments to that enactment. This presumption applies even though editorial changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in the reprint.

This presumption may be rebutted by producing the official volumes of statutes or statutory regulations in which the principal enactment and its amendments are contained.

### **3 *How reprints are prepared***

A number of editorial conventions are followed in the preparation of reprints. For example, the enacting words are not included in Acts, and provisions that are repealed or revoked

are omitted. For a detailed list of the editorial conventions, see <http://www.pco.parliament.govt.nz/editorial-conventions/> or Part 8 of the *Tables of New Zealand Acts and Ordinances and Statutory Regulations and Deemed Regulations in Force*.

#### **4 Changes made under section 17C of the Acts and Regulations Publication Act 1989**

Section 17C of the Acts and Regulations Publication Act 1989 authorises the making of editorial changes in a reprint as set out in sections 17D and 17E of that Act so that, to the extent permitted, the format and style of the reprinted enactment is consistent with current legislative drafting practice. Changes that would alter the effect of the legislation are not permitted. A new format of legislation was introduced on 1 January 2000. Changes to legislative drafting style have also been made since 1997, and are ongoing. To the extent permitted by section 17C of the Acts and Regulations Publication Act 1989, all legislation reprinted after 1 January 2000 is in the new format for legislation and reflects current drafting practice at the time of the reprint.

In outline, the editorial changes made in reprints under the authority of section 17C of the Acts and Regulations Publication Act 1989 are set out below, and they have been applied, where relevant, in the preparation of this reprint:

- omission of unnecessary referential words (such as “of this section” and “of this Act”)
- typeface and type size (Times Roman, generally in 11.5 point)
- layout of provisions, including:
  - indentation
  - position of section headings (eg, the number and heading now appear above the section)
- format of definitions (eg, the defined term now appears in bold type, without quotation marks)
- format of dates (eg, a date formerly expressed as “the 1st day of January 1999” is now expressed as “1 January 1999”)

- position of the date of assent (it now appears on the front page of each Act)
- punctuation (eg, colons are not used after definitions)
- Parts numbered with roman numerals are replaced with arabic numerals, and all cross-references are changed accordingly
- case and appearance of letters and words, including:
  - format of headings (eg, headings where each word formerly appeared with an initial capital letter followed by small capital letters are amended so that the heading appears in bold, with only the first word (and any proper nouns) appearing with an initial capital letter)
  - small capital letters in section and subsection references are now capital letters
- schedules are renumbered (eg, Schedule 1 replaces First Schedule), and all cross-references are changed accordingly
- running heads (the information that appears at the top of each page)
- format of two-column schedules of consequential amendments, and schedules of repeals (eg, they are rearranged into alphabetical order, rather than chronological).

**5 *List of amendments incorporated in this reprint  
(most recent first)***

Securities Act (Co-operative Companies) Exemption Notice 2013 (SR 2013/54): clause 15

Securities Act (Extension of Term, Amendment, and Transitional Provision) Exemption Notice 2012 (SR 2012/294): clause 3