

**Reprint
as at 1 April 2013**



**Securities Act (Industrial and
Provident Societies) Exemption
Notice 2011**

(SR 2011/60)

Securities Act (Industrial and Provident Societies) Exemption Notice 2011:
revoked, on 1 April 2013, by clause 16 of the Securities Act (Industrial and
Provident Societies) Exemption Notice 2013 (SR 2013/64).

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.

- (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

- (1) 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.
- (2) However, 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 specified debt securities of the society.

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(1)(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 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 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 the following matters:
 - (a) particulars of any material matters relating to the offer of the specified participatory securities or the specified 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 society; and

- (ii) contracts entered into in the ordinary course of business of the society; and
- (b) 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 referred to in this clause:
 - (i) the trading or profitability of the society;
 - (ii) the value of the assets of the society;
 - (iii) the ability of the society 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 specified participatory securities or the specified debt securities (as the case may be) that a copy of the most recent audited financial statements of the society, 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 society sends, without fee, to each member annually, and within 5 working days of 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 most recent of the following dates:

- (a) the date on which a written statement was sent to the member under this clause:
- (b) the date on which a certificate was sent to the member under section 54 of the Act.

11 Condition about information in prospectus

The exemption in clause 5(1)(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.

12 Securities Act (Industrial and Provident Societies) Exemption Notice 2002 revoked

The Securities Act (Industrial and Provident Societies) Exemption Notice 2002 (SR 2002/404) is revoked on the close of 31 March 2011.

13 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 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) 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 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
Combined Rural Traders Society Limited
Composite Retail Society Limited
Farmlands Trading Society Limited
Foodstuffs (Wellington) Co-operative Society Limited
Rural Couriers Society Limited

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.

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 (Industrial and Provident Societies) 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 members of the industrial and provident societies specified in the *Schedule*. The notice includes exemptions from the following provisions of the Securities Act 1978 (the **Act**) and the Securities Regulations 2009 (the **2009 regulations**):

- section 33(3) of the Act (which requires a statutory supervisor to be appointed for participatory securities):
- 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 the industrial and provident societies to use an evergreen short form prospectus.

The Securities Commission considers that it is 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 the societies use their collective purchas-

ing 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:

- 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 that is usually required for equity securities. 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 members receive appropriate and sufficient information:
- this notice continues exemptions from provisions of 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 the named industrial and provident societies 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 for exemptions for co-operative organisations such as industrial and provident societies:
- 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 Oc-

tober 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**

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

Securities Act (Industrial and Provident Societies) Exemption Notice 2013

(SR 2013/64)

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).

Notice

1 Title

This notice is the Securities Act (Industrial and Provident Societies) Exemption Notice 2013.

2 Commencement

This notice comes into force on 1 April 2013.

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.

Dated at Wellington this 26th day of March 2013.

Sue Brown,
Head of Primary Regulatory Operations.

Date of notification in *Gazette*: 28 March 2013.

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Notes**1 General**

This is a reprint of the Securities Act (Industrial and Provident Societies) 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 (Industrial and Provident Societies) Exemption Notice 2013 (SR 2013/64): clause 16

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