

**Reprint  
as at 1 December 2016**



**Securities Act (Co-operative Companies) Exemption  
Notice 2013  
(SR 2013/54)**

Securities Act (Co-operative Companies) 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.**

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## Notice

### 1 Title

This notice is the Securities Act (Co-operative Companies) Exemption Notice 2013.

### 2 Commencement

This notice comes into force on 1 April 2013.

### 3 Revocation

This notice is revoked on the close of 30 September 2017.

### 4 Interpretation

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

**Act** means the Securities Act 1978

**co-operative company** means a co-operative company registered under Part 2 or 3 of the Co-operative Companies Act 1996

**debt securities** means debt securities issued by a co-operative company

**distribution date**, in relation to an investment statement that is distributed to a person by or on behalf of a co-operative company, means the date on which the investment statement was distributed to the person

**equity securities** means equity securities issued by a co-operative company

**major transaction** has the same meaning as in section 129(2) of the Companies Act 1993

**Regulations** means the Securities Regulations 2009

**transacting shareholder**—

- (a) has the same meaning as in section 4 of the Co-operative Companies Act 1996; and
- (b) includes a supplying shareholder within the meaning of section 34 of that Act.
- (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 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 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.

## **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(a) is subject to the further conditions that—
  - (a) an investment statement is sent to every person who requests it within 5 working days after 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 after 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 after receipt of the application by the co-operative company; and
  - (d) the investment statement is available on an Internet site (if any) that is maintained by or on behalf of the co-operative company; 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 after 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 that have a nominal value.

- (3) In this clause, **investment statement** means an investment statement relating to the offer of equity securities.

## **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 equity securities or debt securities of a co-operative company if—
- (a) the co-operative company acquired a business at any time in the specified period; or
  - (b) any subsidiary of the co-operative company acquired a business, or became a subsidiary of the co-operative company, at any time in the specified period; or
  - (c) as at the distribution date, the co-operative company or any subsidiary of the co-operative company has agreed to acquire a business or to acquire equity securities that will result in a body corporate becoming a subsidiary of the co-operative company.
- (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 co-operative company shown in the latest audited statement of financial position of the co-operative company.
- (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 equity securities or the debt securities (as the case may be) that is distributed by or on behalf of the co-operative company 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 co-operative company (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 co-operative company 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 co-operative company or any of its subsidiaries must be treated as having agreed to make an acquisition referred to in sub-clause (1)(c) even though an agreement of that kind entered into by the co-operative company 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 co-operative company and the distribution date.

## **9 Condition 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 equity securities or debt securities of a co-operative company.
- (2) The exemption in clause 5(d) from clause 26 of Schedule 1 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 equity securities or the

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 equity securities or the debt securities (as the case may be) that is distributed by or on behalf of the co-operative company 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 co-operative company (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 co-operative company or of any subsidiary of the co-operative company).
- (5) In subclause (4),—

**most recent financial statements** means the most recent audited financial statements of the co-operative company, and any group financial statements of the co-operative company, 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 equity securities of a co-operative company.
- (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 equity securities that is distributed by or on behalf of the co-operative company 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 co-operative company (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 the reference

to the prospectus in clause 11(3)(b) 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 co-operative company 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 co-operative company, or assets to be held by the co-operative company, that would change the essential nature of the business of the co-operative company; or
  - (b) any subsidiary of the co-operative company 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 co-operative company; 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 co-operative company 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 equity securities or the debt securities (as the case may be) that is distributed by or on behalf of the co-operative company must—
  - (a) include, in relation to the transaction or series of transactions referred to in subclause (1), the information required by subclause (3); or
  - (b) have 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 co-operative company (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 co-operative company 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 co-operative company and its shareholders.
- (4) For the purposes of this clause, a co-operative company or any of its subsidiaries must be treated as having agreed to enter into a transaction or series of transactions referred to in subclause (1) even though the agreement or agreements of that kind entered into by the co-operative company 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 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 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:
- (a) the trading or profitability of the co-operative company or the group;
  - (b) the value of the assets of the co-operative company or the group;
  - (c) the ability of the co-operative company or the group 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 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 that comply with, and that 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 co-operative company sends, without fee, to each transacting shareholder annually, and within 5 working days after receiving a request from a transacting shareholder, a written statement that sets out—
  - (a) the class or classes of debt securities held by that shareholder; and
  - (b) the number of debt securities 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—
  - (a) the transacting shareholder does not hold any debt securities and has not held any debt securities at any time during the 12-month period before the date on which the annual statement would otherwise be sent; or
  - (b) the total number of securities in each class held by the shareholder has not changed since the more recent of the following dates:
    - (i) the date on which a written statement was sent to the shareholder under this clause or clause 10 of the Securities Act (Co-operative Companies) Exemption Notice 2011;
    - (ii) the date on which a certificate was sent to the shareholder under section 54 of the Act.

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

The Securities Act (Co-operative Companies) Exemption Notice 2011 (SR 2011/59) is revoked.

**16 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 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) If, on or before 31 March 2013, a co-operative company offered equity securities or debt securities in reliance on the Securities Act (Co-operative Companies) Exemption Notice 2011 under a prospectus that is registered on or 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 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 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 25th 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 (Co-operative Companies) Exemption Notice 2011 (the **2011 notice**).

The exemptions granted by the notice apply only in respect of securities allotted to transacting shareholders of co-operative companies. 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 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 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 co-operative companies to use an evergreen short-form prospectus. However,

additional disclosure is required by a co-operative company in its investment statement or an accompanying directors' statement if—

- the offer is an initial public offering of equity securities or debt securities and acquisitions have been undertaken by the co-operative company or any of its subsidiaries since the last balance date or agreed to be undertaken by it or any of its subsidiaries, being acquisitions where the consideration exceeds 20% of the co-operative company'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 co-operative company (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 co-operative company's business.

If the offer is an initial public offer of equity securities, the investment statement or an accompanying directors' statement will also be required to disclose information regarding 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—

- co-operative companies have traditionally been accorded different legal status and treatment from ordinary companies. 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 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 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 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 corresponding 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 co-operative company'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 shares of a co-operative company offered to persons who are, or immediately after allotment will be, transacting with the co-operative company 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 (Co-operative Companies) 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