



Financial Markets Conduct (Communal Facilities in Real Property Developments) Exemption Notice 2021

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 2021.

2 Commencement

This notice comes into force on 28 October 2021.

3 Revocation

This notice is revoked on the close of 27 October 2026.

4 Interpretation

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

Act means the Financial Markets Conduct Act 2013

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

5 Exemptions

- (1) An issuer of existing shares is exempted from subpart 4 of Part 3, and subpart 4 of Part 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, be required to be delivered to the Registrar for lodgement under section 461H of the Act; and
- (b) subsequent accounting periods.

Dated at Wellington this 19th day of August 2021.

Liam Mason,
General Counsel,
Financial Markets Authority.

Statement of reasons

This notice comes into force on 28 October 2021 and is revoked on the close of 27 October 2026. 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 a company from complying with certain continuing obligations under the Financial Markets Conduct Act 2013 (the **Act**) that apply after certain shares allotted under the Securities Act 1978 transition to the Act.

The notice replaces, on substantially the same terms, the Financial Markets Conduct (Communal Facilities in Real Property Developments) Exemption Notice 2016, which is revoked on 27 October 2021. However, a condition requiring issuers to give notice to shareholders about the exemptions and their impact has been removed, and an exemption from clause 30(1) of Schedule 4 has also been removed.

The 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 issued on or after 28 October 2016 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:
 - ensure existing shares are treated in an equivalent way to new shares that are subject to the Financial Markets Conduct (Communal Facilities in Real Property Developments) Designation Notice 2016:
- 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 otherwise have applied following transition. Alternative financial reporting and other requirements may still apply under the Companies Act 1993. 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*: 24 August 2021.

This notice is administered by the Financial Markets Authority.