



# Securities Act (Fonterra Co-operative Group Limited) Exemption Notice 2001

Pursuant to the Securities Act 1978, the Securities Commission gives the following notice.

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## Notice

### 1 Title

This notice is the Securities Act (Fonterra Co-operative Group Limited) Exemption Notice 2001.

### 2 Commencement

This notice comes into force on its notification in the *Gazette*.

### 3 Expiry

This notice expires on the close of 31 December 2003.

### 4 Interpretation

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

**Act** means the Securities Act 1978

**capital notes** has the same meaning as in section 5(1) of the Dairy Industry Restructuring Act 2001

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

**Fonterra group** means Fonterra and its subsidiaries

**FRS–24** means the financial reporting standard known as Financial Reporting Standard No 24, approved under the Financial Reporting Act 1993

**FRS–29** means the financial reporting standard known as Financial Reporting Standard No 29, approved under the Financial Reporting Act 1993

**Kiwi** means Kiwi Co-operative Dairies Limited (being the company registered under that name immediately before the merger)

**Kiwi group** means Kiwi and its subsidiaries (during the relevant accounting periods)

**merger** means the amalgamation, under Part XIII of the Companies Act 1993, under which Fonterra was the amalgamated company

**New Zealand Dairy** means The New Zealand Co-operative Dairy Company Limited (being the company registered under that name immediately before the merger)

**New Zealand Dairy group** means New Zealand Dairy and its subsidiaries (during the relevant accounting periods); but does not include the NZDB group

**NZDB** means the New Zealand Dairy Board

**NZDB group** means New Zealand Dairy Board and its subsidiaries (during the relevant accounting periods)

**Regulations** means the Securities Regulations 1983

**specified debt securities** means debt securities offered by Fonterra to supplying shareholders

**specified equity securities** means equity securities offered by Fonterra to supplying shareholders

**supplying shareholder** means any person who is or is to be a supplying shareholder of Fonterra within the meaning of Part III of the Co-operative Companies Act 1996.

- (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

Fonterra and every person acting on its behalf are exempted from—

- (a) section 37A(1)(a) of the Act in respect of the specified equity securities and specified debt securities; and
- (b) section 37A(1)(c) and (2) of the Act in respect of the specified equity securities and specified debt securities; and
- (c) section 54 of the Act in respect of the specified equity securities and specified debt securities (other than capital notes); and
- (d) clause 1(4) of the First Schedule of the Regulations in respect of the specified equity securities; and
- (e) clauses 4 to 20, 22 to 38, and 40 to 42 of the First Schedule of the Regulations in respect of the specified equity securities; and
- (f) clauses 5 to 11, 15 to 32, and 34 to 36 of the Second Schedule of the Regulations in respect of the specified debt securities.

## 6 Conditions

- (1) The exemption in clause 5(a) is subject to the conditions that—
  - (a) an investment statement is sent to every person who requests it within 5 working days of receipt by Fonterra of their request; and
  - (b) an investment statement is sent to every person who applies to become a supplying shareholder within 5 working days of receipt by Fonterra of their application; and
  - (c) the investment statement is available on Fonterra's website; and
  - (d) the investment statement contains a statement that every applicant for specified equity securities or specified debt securities who did not receive an investment statement before making his or her application may, within 10 working days of the date on which the investment statement is sent to the applicant, advise Fonterra of the withdrawal of their application.
- (2) The exemptions in clause 5(b), (e), and (f) are subject to the condition that every person who requests a copy of the registered prospectus in respect of the specified equity securities or specified debt securities under section 54B of the Act is sent, if the request is received by Fonterra before it has prepared its

first audited consolidated financial statements in accordance with the Financial Reporting Act 1993,—

- (a) an unaudited pro forma statement of financial position for Fonterra and for the Fonterra group as at 1 June 2001, prepared in accordance with the basis of presentation and assumptions contained in, or accompanying, that statement; and
  - (b) a financial statement in summary form for the 5 consecutive accounting periods up to and including the accounting period ended 31 May 2001 for each of the Kiwi group, the New Zealand Dairy group, and the NZDB group that includes the matters specified in clause 7(3) of the Second Schedule of the Regulations; and
  - (c) prospective statements of financial position, financial performance, and cash flows that comply with FRS-29 for Fonterra and for the Fonterra group for the period ended, and as at, 31 May 2002; and
  - (d) a copy of a report from a qualified auditor that—
    - (i) specifies whether the amounts stated in the summary financial statements have been correctly taken from the audited consolidated financial statements of each of New Zealand Dairy (excluding NZDB), Kiwi, and NZDB; and
    - (ii) includes a statement in the following form:

“In our opinion, the unaudited pro forma statements of financial position for Fonterra and for the Fonterra group as at 1 June 2001 set out on pages [*specify pages*] have been properly compiled on the basis of the presentation and assumptions adopted by the directors as set out on pages [*specify pages*].”;

and
    - (iii) includes a statement in the form required by clause 36(2) of the Second Schedule of the Regulations.
- (3) The exemptions in clause 5(b), (e), and (f) are subject to the further conditions that—
- (a) a copy of the most recent audited consolidated financial statements of Fonterra and the Fonterra group is attached to, or contained in, every copy of a registered prospectus in relation to the specified equity securities

- or specified debt securities sent to a person under section 54B of the Act if the request for a copy of the registered prospectus in respect of the specified equity securities or specified debt securities is received by Fonterra after it has prepared its first audited consolidated financial statements in accordance with the Financial Reporting Act 1993; and
- (b) a copy of the interim financial statements for the most recently completed financial half-year of the Fonterra group that comply with FRS-24 is attached to, or contained in, every copy of a registered prospectus in relation to the specified equity securities or specified debt securities sent to a person under section 54B of the Act if the specified equity securities or specified debt securities are offered—
- (i) after 28 February 2002 and before the first audited consolidated financial statements of the Fonterra group are prepared in accordance with the Financial Reporting Act 1993; or
  - (ii) more than 9 months after the date of the most recent audited consolidated financial statements of the Fonterra group.
- (4) The exemption in clause 5(c) is subject to the condition that Fonterra sends annually to each supplying shareholder a statement that sets out—
- (a) the class or classes of specified equity securities and specified debt securities (other than capital notes) held by that shareholder; and
  - (b) the number of specified equity securities and specified debt securities (other than capital notes) in each class held by that shareholder.
- (5) The exemption in clause 5(d) is subject to the conditions that—
- (a) the investment statement and the registered prospectus in relation to the specified equity securities both describe the procedures under the Dairy Industry Restructuring Act 2001 for calculating the amount of money a subscriber will be required to pay for the specified equity securities; and
  - (b) the investment statement and the registered prospectus in relation to the specified equity securities both

describe the procedures under the Dairy Industry Restructuring Act 2001 for publishing that information.

Dated at Wellington this 13th day of December 2001.

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

[L.S.]

J. Diplock,  
Chairperson.

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### Explanatory note

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

This notice comes into force on its notification in the *Gazette* and expires on the close of 31 December 2003.

This notice exempts Fonterra Co-operative Group Limited (**Fonterra**), subject to conditions, from—

- sections 37A(1)(a), (c), and (2) and 54 of the Securities Act 1978, and clauses 1(4), 4 to 20, 22 to 38, and 40 to 42 of the First Schedule of the Securities Regulations 1983 in respect of specified equity securities offered to Fonterra's supplying shareholders; and
- sections 37A(1)(a), (c), and (2) and 54 of the Securities Act 1978, and clauses 5 to 11, 15 to 32, and 34 to 36 of the Second Schedule of the Securities Regulations 1983 in respect of specified debt securities offered to Fonterra's supplying shareholders.

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

Date of notification in *Gazette*: 14 December 2001.

This notice is administered in the Securities Commission.

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