

**Reprint
as at 1 December 2016**



Securities Act (Building Societies) Exemption Notice 2013 (SR 2013/56)

Securities Act (Building Societies) 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.

Schedule Designated building societies

9

Notice

1 Title

This notice is the Securities Act (Building Societies) 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

building society has the same meaning as in section 2(1) of the Building Societies Act 1965

building society share means a share issued or to be issued by a building society under section 11 of the Building Societies Act 1965

confirmation document, in relation to a security holder, means a document that properly evidences the nature and ownership of the debt securities or building society shares of the security holder issued as part of the continuous issue

continuous issue, in relation to a designated building society, means an issue of debt securities or building society shares of a kind that are continuously offered by the designated building society to the public for subscription

designated building society means a building society named in the Schedule and that has, as its principal business, the provision of any or all of the services listed in section 9A(1)(a)(i) to (x) (except subparagraph (viii)) of the Building Societies Act 1965

electronic address includes a fax number or an email address

postal address includes a post office box address or a document exchange box number

Regulations means the Securities Regulations 2009

rights prospectus means a registered prospectus issued by a designated building society that relates only to an offer of type A shares made by the society to persons who already hold type A shares or preference shares of the society, whether or not the offer is renounceable in favour of any other person

type A share means a building society share that—

- (a) carries the right to payment of a dividend from the annual surplus or accumulated reserves of the building society; and
- (b) is irredeemable or redeemable only at the option of the building society; and
- (c) entitles the holder to participate in the assets of the building society on liquidation after the payment of all its other liabilities

type B share means a building society share that is not a type A share.

- (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 from sections 33(3) and 53 to 53F of Act and regulations 5(1)(c), 19(1), and 27(2) of Regulations

- (1) Every designated building society and every person acting on its behalf are exempted from sections 33(3) and 53 to 53F of the Act and regulations 5(1)(c) and 19(1) of the Regulations in respect of—
 - (a) type A shares offered by the building society in the course of carrying on its principal business;
 - (b) type A shares offered under a rights prospectus;
 - (c) type B shares offered by the building society in the course of carrying on its principal business.
- (2) Every designated building society and every person acting on its behalf are exempted from regulation 27(2) of the Regulations in respect of type B shares offered by the building society in the course of carrying on its principal business.

6 Conditions of exemptions under clause 5(1)(a)

The exemptions in clause 5(1)(a) are subject to the conditions—

- (a) that the designated building society complies with sections 53 to 53F of the Act as if the type A shares were equity securities; and
- (b) that every registered prospectus that relates to the type A shares contains—
 - (i) all of the information, statements, certificates, and other matters specified in Schedule 1 of the Regulations that would be required if the type A shares were equity securities; and
 - (ii) a description, and (where practicable) quantification, of all liabilities (including potential and contingent liabilities) that a person will or may incur as a holder of type A shares; and
- (c) that every investment statement that relates to the type A shares contains all of the information, statements, and other matters specified in Sched-

ule 13 of the Regulations that would be required if the type A shares were equity securities.

7 Conditions of exemptions under clause 5(1)(b)

The exemptions in clause 5(1)(b) are subject to the conditions—

- (a) that the designated building society complies with sections 53 to 53F of the Act as if the type A shares were equity securities; and
- (b) that a copy of the most recent annual financial statements of the designated building society laid before the designated building society at its annual general meeting in accordance with section 91(2) of the Building Societies Act 1965, and a copy of all reports required by that Act to be annexed or attached to those financial statements,—
 - (i) have previously been given or sent to the persons who were, at the time those financial statements were given or sent, holders of type A shares or preference shares of the designated building society; or
 - (ii) are attached to every rights prospectus given or sent to any person under the Act; and
- (c) that all of the following matters are stated or contained in every rights prospectus:
 - (i) the matters specified in clauses 1, 10, 19(1), and 21 of Schedule 1 of the Regulations that would be required if the type A shares were equity securities; and
 - (ii) the date of the statement of financial position included in the financial statements referred to in paragraph (b); and
 - (iii) the place or places where copies of the financial statements and reports referred to in paragraph (b) can be obtained free of charge by any person to whom an offer of type A shares is made; and
 - (iv) a statement by the directors of the designated building society as to whether, after due enquiry by them in relation to the period between the date referred to in subparagraph (ii) and the specified date, there have, in their opinion, arisen any circumstances that materially adversely affect—
 - (A) the trading or profitability of the designated building society; or
 - (B) the value of the designated building society's assets; or
 - (C) the ability of the designated building society to pay its liabilities due within the next 12 months; and
- (d) that every investment statement that relates to the type A shares contains all of the information, statements, and other matters specified in Sched-

ule 13 of the Regulations that would be required if the type A shares were equity securities.

8 Conditions of exemptions under clause 5(1)(c) and (2)

- (1) The exemptions in clause 5(1)(c) and (2) are subject to the conditions—
 - (a) that the designated building society has appointed a person as a trustee in respect of the type B shares; and
 - (b) that both the designated building society and the trustee have signed a trust deed relating to the type B shares, which applies as if the type B shares were debt securities; and
 - (c) that the provisions of the Act and the Regulations relating to trust deeds are complied with; and
 - (d) that the trust deed is, at the date of allotment of the type B shares, in full force and effect; and
 - (e) that the designated building society complies with sections 53 to 53F of the Act as if the type B shares were debt securities; and
 - (f) that every registered prospectus that relates to the type B shares contains all of the information, statements, certificates, and other matters specified in Schedule 2 of the Regulations that would be required if the type B shares were debt securities; and
 - (g) that every investment statement that relates to the type B shares contains all of the information, statements, and other matters specified in Schedule 13 of the Regulations that would be required if the type B shares were debt securities.
- (2) The exemptions in clause 5(1)(c) and (2) are subject to the further condition that if, at the time that the offer of type B shares is made, the amount specified in subclause (3) is material in the context of the designated building society's overall business, no advertisement refers to the type B shares without also stating one of the following:
 - (a) that the type B shares are unsecured; or
 - (b) the nature and ranking in point of security of the type B shares.
- (3) The amount referred to in subclause (2) is the aggregate amount of any obligations of the designated building society—
 - (a) that are secured by a mortgage or charge created by the society over any of its assets; and
 - (b) that rank or will rank, after the allotment of the type B shares, before those shares.

9 Exemption from regulation 27(1) of Regulations

Every designated building society and every person acting on its behalf are exempted from regulation 27(1) of the Regulations in respect of any debt securities of which that building society is the issuer.

10 Condition of exemption under clause 9

- (1) The exemption in clause 9 is subject to the condition that the amount specified in subclause (2) is not material in the context of the designated building society's overall business.
- (2) The amount referred to in subclause (1) is the aggregate amount of any obligations of the building society—
 - (a) that are secured by a mortgage or charge created by the society over any of its assets; and
 - (b) that rank or will rank, after the allotment of the debt securities, before those securities.

11 Exemption from section 37A(1)(a) of Act

Every designated building society and every person acting on its behalf are exempted from section 37A(1)(a) of the Act in respect of any offer of debt securities or building society shares made as part of a continuous issue.

12 Conditions of exemption under clause 11

- (1) The exemption in clause 11 is subject to the condition that the designated building society must not allot a debt security or a building society share that is part of a continuous issue unless the society or any person acting on its behalf has sent an investment statement relating to the debt security or the building society share,—
 - (a) at least 3 working days before the subscriber subscribes for the debt security or the building society share, to—
 - (i) a postal address specified by the subscriber for that purpose; or
 - (ii) the last postal address of the subscriber that is known to the building society; or
 - (b) at least 2 days before the subscriber subscribes for the debt security or the building society share, to an electronic address specified by the subscriber for that purpose.
- (2) The exemption in clause 11 is subject to the further condition that, if an investment statement relating to the continuous issue is—
 - (a) sent by fax, the sender's fax machine has generated a record of the transmission of the investment statement to the fax machine of the recipient; or

- (b) sent by other electronic means, the machine used to transmit the investment statement has not generated a record that the investment statement has failed to be transmitted.

13 Exemptions from section 52(1) and (3) of Act

Every designated building society is exempted from section 52(1) and (3) of the Act in respect of building society shares registered on the register kept by that building society under section 51(1)(c) of the Act.

14 Condition of exemptions under clause 13

- (1) The exemption from section 52(1) of the Act in clause 13 is subject to the condition that the register is, except as provided in subclause (2), open to the inspection of any holder of building society shares entered on the register, or the representative of the holder, in respect of the securities of that holder, without fee.
- (2) The condition in subclause (1)—
 - (a) is subject to any reasonable restrictions that the building society may impose, provided that not less than 2 hours in each working day is allowed for inspection; and
 - (b) does not apply when the register is duly closed.
- (3) The exemption from section 52(3) of the Act in clause 13 is subject to the condition that, on payment by any holder of building society shares of the fee prescribed for the purposes of section 52(4) of the Act, the building society provides to that holder a copy of that part of the register kept under section 51(1)(c) of the Act that relates to building society shares of that holder.

15 Exemption from section 54 of Act

Every designated building society is exempted from section 54 of the Act in respect of debt securities and building society shares issued by that building society.

16 Condition of exemption under clause 15

- (1) The exemption in clause 15 is subject to the conditions—
 - (a) that the designated building society send a confirmation document to a security holder within 5 working days after receiving a request for the document from the security holder; and
 - (b) that the designated building society send to a security holder, at least once every 6 months,—
 - (i) a confirmation document; or
 - (ii) a notice containing the statements specified in subclause (2).
- (2) The notice referred to in subclause (1)(b)(ii) must contain—

- (a) a statement to the effect that the security holder has the right to receive a confirmation document from the designated building society, without fee, if the security holder makes a request to the society to receive the document; and
 - (b) a statement to the effect that the security holder may obtain a copy of the confirmation document by electronic means; and
 - (c) a statement as to how the security holder may obtain a copy of the confirmation document by electronic means (for example, from a specified Internet site address).
- (3) The exemption in clause 15 is subject to the further condition that the designated building society does not charge a fee to send a document under subclause (1).

17 Further conditions of exemption under clause 15

If the designated building society has sent a notice to a security holder under clause 16(1)(b)(ii), the exemption in clause 15 is subject to the further conditions—

- (a) that the society, after it receives a request from the security holder for a confirmation document under clause 16(1)(a),—
 - (i) complies with the request; and
 - (ii) treats the request as a request for the society to send to the security holder, at least once every 6 months, a confirmation document under clause 16(1)(b)(i) (instead of a notice under clause 16(1)(b)(ii)); and
 - (iii) sends a confirmation document to the security holder under clause 16(1)(b)(i) at least once every 6 months until the security holder revokes the request by notice to the society; and
- (b) that the designated building society ensures that—
 - (i) a copy of the confirmation document is available in the manner described in clause 16(2)(c) (the **specified manner**) at all reasonable times during the period beginning on the date that the notice is sent to the security holder and ending on the date that the society next sends a confirmation document or notice to the security holder under clause 16(1)(b); and
 - (ii) the specified manner of obtaining the confirmation document allows the copy of the confirmation document to be printed or saved so as to be usable for subsequent reference.

18 Revocation

The Securities Act (Building Societies) Exemption Notice 2002 (SR 2002/319) is revoked.

Schedule Designated building societies

cl 4(1)

Heretaunga Building Society
The Napier Building Society (Permanent)
Nelson Building Society
Southland Building Society
Wairarapa Building Society

Dated at Wellington this 25th day of March 2013.

Sue Brown,
Head of Primary Regulatory Operations.

Statement of reasons

This notice, which come into force on 1 April 2013 and is revoked on 30 September 2017, replaces the Securities Act (Building Societies) Exemption Notice 2002 (the **2002 notice**). The broad effect of the exemption is that building society shares are treated as if they were equity securities or debt securities, rather than participatory securities, for the purposes of the Securities Act 1978. The provisions of the 2002 notice are carried forward with the following amendments:

- conditions requiring the delivery of certain documents to security holders are amended to provide for both electronic and postal delivery;
- the *Schedule*, which lists the building societies that can rely on the exemption, is updated;
- references to the Securities Regulations 1983 are replaced with equivalent references to the Securities Regulations 2009;
- some drafting changes are made to improve clarity.

The Financial Markets Authority (**FMA**), after satisfying itself as to the matters set out in section 70B(2) of the Act, considers it appropriate to grant the exemptions because—

- building society shares are substantially similar to either debt securities or equity securities. It is therefore appropriate for the disclosure and governance requirements applicable under securities law to be modified accordingly. The exemptions in this notice, which recognise this, have been in place for a number of years and the policy reasons for them remain valid and relevant. Con-

sultation with market participants by FMA demonstrates continued reliance on these exemptions:

- the exemption from the securities certificate requirements recognises the significant cost of, and unhelpful information provided by, the regular receipt of securities certificates in the case of securities issued on a continuous basis. In these circumstances, periodic statements are both more cost-effective and more informative. Amendments incorporated in this notice to enable electronic delivery of certificates recognise the increased use of electronic communications by investors and market participants:
- the exemption from the requirement to ensure that a subscriber receives an investment statement before subscription recognises that this obligation would impose a disproportionate burden on building societies that are continuous debt issuers. The conditions require the investment statement to be sent. Reducing the period of delay between sending the investment statement and allotment of securities again recognises the increased use by investors and market participants of electronic communications that enable information to be delivered at greater speed:
- amendments are also appropriate to record changes to the list of designated building societies in the *Schedule* notified to FMA and to update the notice in light of legislative and other industry changes:
- given the continuing validity and relevance of the exemptions, the continued reliance on the exemptions, and the appropriateness of the amendments for the reasons explained above, FMA considers that the exemptions will not cause significant detriment to subscribers and that they are not broader than is reasonably necessary to address the matters that gave rise to the exemptions.

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 (Building Societies) 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