

# Financial Markets Conduct (Southern Pastures) 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.

## Contents

	Page
1 Title	1
2 Commencement	1
3 Revocation	1
4 Interpretation	1
5 Exemptions	2
6 Conditions	2

## Notice

### 1 Title

This notice is the Financial Markets Conduct (Southern Pastures) 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

**eligible person** means a person who is, at the time of the offer or at the time when the specified financial products are acquired, 1 or more of the following:

- (a) an employee of the Subsidiary LP of which the specified financial products are a partnership interest; or
- (b) a person who provides personal services (other than as an employee) principally to the Subsidiary LP of which the specified financial products are a partnership interest; or
- (c) a trustee of a trust of which a person described in (a) or (b) is a beneficiary; or
- (d) a company that is controlled by a person described in (a) or (b) above (within the meaning of clause 48 of Schedule 1 of the Act)

**farm** means a dairy farm owned by a Subsidiary LP

**Regulations** means the Financial Markets Conduct Regulations 2014

**Southern Pastures** means SPLP and SPML

**specified financial products** means partnership interests (as that term is defined in the Limited Partnerships Act 2008) in the Subsidiary LP that employs or engages the eligible person or the trustee or controlling person, referred to in (c) and (d) respectively, in the definition of eligible person

**SPLP** means Southern Pastures Limited Partnership

**SPML** means Southern Pastures Management Limited

**Subsidiary LP** means a limited partnership registered under the Limited Partnerships Act 2008, which owns and manages a farm, and in which:

- (a) SPML is the general partner; and
  - (b) SPLP is the holder of more than 50% of the partnership interests of that Subsidiary LP.
- (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.
- (3) Regulation 9 of the Regulations applies, with all necessary modifications, to a warning statement required to be provided by this notice.

## 5 Exemptions

Southern Pastures are exempted from Parts 3, 4 and 7 of the Act in respect of an offer of specified financial products that is made only to eligible persons.

## 6 Conditions

- (1) The exemptions in clause 5 are subject to the following conditions:
- (a) the offer is made as part of the remuneration arrangements for, or is otherwise made in connection with the employment or engagement of:
    - (i) an employee of the Subsidiary LP; or
    - (ii) a person who provides personal services (other than as an employee) principally to the Subsidiary LP; and
  - (b) raising funds for the Subsidiary LP is not the primary purpose of the offer; and
  - (c) the proportion of specified financial products in a Subsidiary LP issued or transferred to eligible persons in any 12-month period does not exceed 10% of the specified financial products of that Subsidiary LP that are of the same class as those specified financial products as at the start of the 12-month period; and
  - (d) Southern Pastures must not accept an application for specified financial products, or issue or transfer specified financial products to, an eligible person if the following were not provided to that eligible person (or to the person referred to in (a) whose relationship with the eligible person causes that person to be an eligible person), before the application was made:
    - (i) a document that contains, in a prominent position, the warning statement referred to in the Schedule to this notice in respect of the Subsidiary LP; and

ASV

- (ii) a document that contains a description of the specified financial products that are being issued and the applicable terms and conditions; and
    - (iii) the document or documents described in clause 6(2).
  - (e) if an eligible person (or another person referred to in paragraph (d)) requests a document referred to in (d) above or clause 6(2), Southern Pastures must provide that document to that person within 5 working days after receipt of the request.
- (2) For the purposes of clause 6(1)(d)(iii), the document or documents are-
- (a) each of the following:
    - (i) a copy of Subsidiary LP's latest annual report (if any); and
    - (ii) a copy of the Subsidiary LP's Limited Partnership Agreement; and
    - (iii) a copy of the relevant financial statements (within the meaning of clause 2 of Schedule 8 of the Regulations) of the Subsidiary LP and, if those statements are not audited or reviewed by an auditor, a statement to that effect; and
    - (iv) a copy of the auditor's report on those financial statements (if any); and
    - (v) an independent valuation by a registered valuer of the farm which is owned by the relevant Subsidiary LP, and which is dated not more than 12-months prior to the date of application by the eligible person for the specified financial products; or
  - (b) a notice that contains:
    - (i) a statement to the effect that the eligible person has a right to receive from Southern Pastures, free of charge, a copy of the documents referred to in clause 6(2)(a) if the eligible person makes such a request; and
    - (ii) a statement to the effect that the eligible person may obtain a copy of those documents by electronic means; and
    - (iii) a statement as to how the eligible person may obtain a copy of those documents by electronic means (for example, from a specified Internet site address).
- (3) One or more of the documents specified in clauses 6(1)(d) and 6(2) above may be combined in a single document.
- (4) In calculating the total proportion of specified financial products in a Subsidiary LP issued or transferred to eligible persons for the purposes of clause 6(1)(c):
- (a) an issue or sale to a person must be disregarded if the issue or sale results from an offer that—
    - (i) does not require disclosure under Part 3 of the Act for any reason other than because of reliance on this notice; or
    - (ii) is not received in New Zealand; or
    - (iii) is a regulated offer that is separate from the offer made in reliance on this notice; and
  - (b) if an offer of an option to acquire specified financial products is made—
    - (i) the offer must be treated as being an offer of those specified financial products (with the offer of the option itself being disregarded in the calculation); and

- (ii) the underlying specified financial products must be treated as being issued when the option is issued (regardless of whether or when the option is actually exercised); and
  - (iii) in a case where the number of underlying specified financial products to be acquired will be determined under a formula or other calculation, Southern Pastures must apply the formula or make the calculation as at the time that the option is offered or issued using any assumptions that Southern Pastures consider are reasonable.
- (5) For the purposes of clause 6(1)(d) and 6(2):
- (a) The financial statements of the Subsidiary LP need not be provided to eligible persons if, at the date on which the application by the eligible person is received, the Subsidiary LP has not completed its first accounting period or has not prepared its financial statements for that first accounting period; and
  - (b) the documents specified must be provided by giving them to the eligible person or delivering or sending them to the eligible person's address.

Dated at Wellington this 26<sup>th</sup> day of October 2021.



---

Sarah Vrede  
Director of Capital Markets  
Financial Markets Authority

## Schedule

### Warning Statement

#### "Warning

This is an offer of a partnership interest in [*insert name of subsidiary limited partnership*] (**Subsidiary LP**). A partnership interest gives you a stake in the ownership of the Subsidiary LP. You may receive a return if a distribution is paid while you hold a partnership interest.

If the Subsidiary LP runs into financial difficulties or is wound up, you will be paid only after all creditors have been paid. You may lose some or all of your investment.

New Zealand law normally requires people who offer financial products to give information to investors before they invest. This information is designed to help investors to make an informed decision.

The usual rules do not apply to this offer because it is made under an exemption granted by the Financial Markets Authority that allows Southern Pastures to offer the partnership interests to eligible persons. As a result, you may not be given all the information usually required. You will also have fewer other legal protections for this investment.

Ask questions, read all documents carefully, and seek independent financial advice before committing yourself.



The partnership interests are not quoted on the NZX or any other exchange. This means the trading market for the investment is likely to be limited and you may not be able to sell it.

The partnership interests cannot be disposed of or otherwise dealt with other than in accordance with the disposal restrictions in the Limited Partnership Agreement for the Subsidiary LP, the terms of the offer and all applicable laws, namely:

*[insert summary of arrangements under which the investor may redeem or sell the partnership interest (if any) and any restrictions on their ability to do so.]"*

## Statement of reasons

This notice comes into force on 28 October 2021 and is revoked on 27 October 2026.

This notice exempts Southern Pastures Management Limited (**SPML**) and Southern Pastures Limited Partnership (**SPLP**) (together, **Southern Pastures**) from compliance with the disclosure, governance and financial reporting requirements of Parts 3, 4 and 7 respectively of the Financial Markets Conduct Act 2013 (the **Act**).

The exemptions apply only to offers of partnership interests in limited partnerships in which SPML is the general partner and SPLP is the holder of more than 50% of the partnership interests, to certain eligible persons, including employees who provide personal services to those limited partnerships or an associated company or trust (**eligible persons**).

The exemptions are subject to certain conditions that any offer made to eligible persons is consistent, as far as practicable, with the requirements of the Financial Markets Conduct (Employee Share Purchase Schemes) Exemption Notice 2021 which in turn is consistent with the requirements of clause 8 of Schedule 1 of the Act (the **Schedule 1 exclusion**) and clauses 10-12 of Schedule 8 of the Financial Markets Conduct Regulations 2014 (which relate to the Schedule 1 exclusion). In addition to the information required by the Schedule 1 exclusion, a further condition of the exemptions requires any offer to be accompanied by a copy of a recent independent valuation of the farm owned by the limited partnership to which the offer relates.

The Financial Markets Authority (the **FMA**), after satisfying itself as to the matters set out in section 557 of the Act, considers it is appropriate to grant the exemptions because-

- the exemptions recognise situations where eligible persons do not elect to participate directly in employee investment schemes but participate instead through other vehicles such as family trusts. The FMA considers that offers to these vehicles remain in substance employee investment schemes:
- the exemptions enable farm operators to acquire an interest in a limited partnership that has been set up to own the farm on which they work. In these circumstances, information that is similar to that required for offers under the Schedule 1 exclusion and an independent valuation report of the relevant farm is appropriate and useful information for the farm operators:
- the offers of limited partnership interests which are covered by this notice would have fallen within the Schedule 1 exclusion had the limited partnerships been structured as companies:
- without the benefit of the exemptions, there are significant compliance costs in respect of disclosure, governance and financial reporting that apply to limited partnerships making a regulated offer of financial products under the Act. It is unlikely that SPML and SPLP would make such offers to farm operators and consequently the farm operators would not have the opportunity to own an interest in the farm on which they work.

As such, the FMA is satisfied that-

*ASV*

- the granting of the exemptions is desirable in order to promote the purposes of the Act, in particular the confident and informed participation of farm operators to invest in the farms on which they work, to avoid unnecessary compliance costs for Southern Pastures, and to promote flexibility in financial markets; and
- as the exemptions only apply in relation to offers made to eligible persons in specific limited partnerships, which own specific farms operated by those persons (or associated persons) and the eligible persons will still have access to similar kinds of information as would be required under the Schedule 1 exclusion, the exemptions are not broader than is reasonably necessary to address the matters that gave rise to them.