

## Financial Markets Conduct Act (Meridian Energy Limited Substantial Product Holder) Exemption Notice 2014

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 Act (Meridian Energy Limited Substantial Product Holder) Exemption Notice 2014.

#### 2 Commencement

This notice comes into force on 1 December 2014.

#### 3 Revocation

This notice is revoked on the close of 30 June 2015.

#### 4 Interpretation

- (1) In this notice, unless the context otherwise requires, —  
**Act** means the Financial Markets Conduct Act 2013

**Australian trust deed** means the deed dated 19 September 2013 entered into between the Crown and the Australian trustee that

provides, among other things, for the Australian trustee to hold shares on separate trusts for holders of instalment receipts

**Australian trustee** means The Trust Company (Australia) Limited or any other person that is for the time being acting as trustee under the Australian trust deed

**Crown** means Her Majesty the Queen in right of New Zealand

**Guardians** means the Crown entity called the Guardians of New Zealand Superannuation established under section 48 of the New Zealand Superannuation and Retirement Income Act 2001

**instalment receipt** means an equity security in the form of an instrument having the characteristics described in the trust deeds

**Meridian Energy** means Meridian Energy Limited

**New Zealand Superannuation Fund** means the New Zealand Superannuation Fund established under section 37 of the New Zealand Superannuation and Retirement Income Act 2001

**New Zealand trust deed** means the deed dated 19 September 2013 entered into between the Crown and the New Zealand trustee that provides, among other things, for the New Zealand trustee to hold shares on separate trusts for holders of instalment receipts

**New Zealand trustee** means The New Zealand Guardian Trust Company Limited or any other person that is for the time being acting as trustee under the New Zealand trust deed

**NZX Main Board** means the securities market operated by NZX under that name (formerly known as the NZSX)

**NZX** means NZX Limited

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

**shares** means fully paid ordinary shares in Meridian Energy that are approved for trading on a licensed market (even if those shares are not yet traded on the market)

**trust deed** means either the New Zealand trust deed or the Australian trust deed, as applicable.

- (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 Exemption from sections 276 to 279 of the Act in respect of instalment receipts**

Every person who has a relevant interest in an instalment receipt is exempted from sections 276 to 279 of the Act to the extent that compliance with any of those sections requires disclosure in relation

to any substantial holding in instalment receipts as a class of quoted voting products.

## 6 Condition of exemption in clause 5

The exemption in clause 5 is subject to the condition that any person who has a relevant interest in an instalment receipt complies with sections 276 to 279 of the Act and with the Regulations:

- (a) as if that instalment receipt were a share and the person's relevant interest in the instalment receipt were a relevant interest in the share corresponding to that instalment receipt; and
- (b) on the basis that the determination of whether the person is a substantial product holder under section 274(1) of the Act is based on the total number of shares on issue and as if each relevant interest was a relevant interest in the share corresponding to that instalment receipt; and
- (c) the nature of the relevant interest that the person has in the instalment receipts should be treated as the nature of relevant interest that the person has in Meridian Energy shares for the purpose of determining the disclosure that is required under the Regulations, except that the class of quoted voting product should be described as "ordinary share (instalment receipt)".

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### Example:

Meridian has (as at the date of this notice) 2,563,000,000 ordinary shares on issue that have been approved for trading on the NZX Main Board.

A company (ABC Ltd) purchases 153,000,000 Meridian instalment receipts on the NZX Main Board, to be held by its nominee company, ABC Nominees Ltd.

ABC Ltd calculates whether it has a 5% "substantial holding" that requires disclosure under the Act, as follows:

$$\left( \frac{\text{number of instalment receipts held}}{\text{total number of Meridian shares}} \right) * 100$$

In this example,

$$\left( \frac{153,000,000}{2,563,000,000} \right) * 100 = 5.97$$

ABC Ltd is taken to have a substantial holding of 5.97% of the shares of Meridian Energy, and must disclose this under section 276 of the Act.

As ABC Ltd is the beneficial owner of the instalment receipts, its substantial holding must be treated as beneficial ownership of Meridian shares for the purposes of disclosure under the Regulations (so no relevant agreement documents need to be attached to the disclosure).

ABC Nominees Limited should be disclosed as the registered holder of the securities.

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**7 Exemption from section 278 of the Act in respect of a change in the nature of a relevant interest of the Crown**

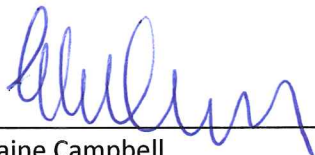
The Crown and every person acting on its behalf are exempted from section 278 of the Act in respect of a change in the nature of a relevant interest of the Crown in a share, where that change results solely from an acquisition or disposal of an instalment receipt, or a relevant interest in an instalment receipt, by or on behalf of the New Zealand Superannuation Fund.

**8 Conditions of exemption in clause 7**

The exemption in clause 7 is subject to the conditions that:

- (a) the Crown discloses, in accordance with sections 280 and 281 of the Act, the nature of its relevant interests in all shares other than shares corresponding to instalment receipts forming part of the New Zealand Superannuation Fund; and
- (b) the Guardians disclose any relevant interests of the New Zealand Superannuation Fund in Meridian Energy shares in accordance with sections 276 to 279 of the Act (as modified by clauses 5 and 6 of this notice).

Dated at Wellington this 25<sup>th</sup> day of November 2014.



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Elaine Campbell  
Director of Compliance  
Financial Markets Authority

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**Statement of reasons**

This notice comes into force on 1 December 2014 and is revoked on 30 June 2015.

This notice exempts every person who has a relevant interest in an instalment receipt from sections 276 to 279 of the Financial Markets Conduct Act 2013 (Act) to the extent that compliance with any of those

sections requires disclosure in relation to any substantial holding in instalment receipts as a class of quoted voting products.

This notice further exempts the Crown and every person acting on its behalf from section 278 of the Act in respect of a change in the nature of a relevant interest of the Crown in a share, where that change results solely from an acquisition or disposal of an instalment receipt, or a relevant interest in an instalment receipt, by or on behalf of the New Zealand Superannuation Fund.

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 exemption because-

- these exemptions are carried over from the Securities Markets Act (Meridian Energy Limited Substantial Security Holder) Exemption Notice 2013, but the exemptions have been modified to take into account concepts under the Act.
- the Crown has sold nearly 49% of its holding in Meridian Energy by an offer of instalment receipts. These instalment receipts are listed and trading on the NZX Main Board. The underlying shares in Meridian Energy have been approved for trading on the NZX Main Board and will be listed and will trade on the NZX Main Board once the final instalment has been paid and the shares have been allotted to the holders of instalment receipts.

This notice contains two exemptions.

- the first exemption (in clause 5) clarifies and simplifies the substantial product holder obligations of persons who have instalment receipts. The effect of the exemption is to look through the instalment receipts and treat relevant interests in these securities as if they were relevant interests in the underlying Meridian Energy shares.
- the FMA is satisfied that it is appropriate to grant this exemption to prevent uncertainty in the market as to the appropriate disclosure to be made of substantial holdings relating to instalment receipts.
- the purpose of the substantial product holder disclosure provisions of the Act is to inform the market of who has, or may have, substantial voting power in relation to listed issuers. This can be achieved most simply and clearly by basing disclosure on the underlying shares in Meridian Energy. Holders of instalment receipts have a right to vote on the shares that underlie their

instalment receipts, but the instalment receipts do not have separate voting rights.

- although instalment receipts may be a class of quoted voting products, separate disclosure of instalment receipt holdings as a class of security would add additional compliance costs but would not provide the market with additional useful information and could be confusing. This exemption reduces the potential for confusion as to the appropriate market disclosures that should be made by people trading in instalment receipts. It requires holders of relevant interests related to instalment receipts to make disclosure to the market as if these were relevant interests related to shares, and so is necessary in order to ensure that the market will be appropriately informed and therefore promote the confident and informed participation of businesses, investors, and consumers in the financial markets. Further, this exemption only applies to persons who have a relevant interest in an instalment receipt and so is not broader than is reasonably necessary to address the matters that gave rise to the exemption.
- the second exemption applies only to the Crown and addresses a specific disclosure obligation that arises when the New Zealand Superannuation Fund trades instalment receipts.
- the Crown has disclosed the nature of its relevant interest in the quoted voting products of Meridian Energy as at 31 October 2013. The Crown's relevant interests arise principally through the combined effect of the Crown's beneficial ownership of 51% of the shares in Meridian Energy and the charge that the Crown has over the shares underlying the instalment receipts.
- in addition, the New Zealand Superannuation Fund holds some instalment receipts and may continue to trade instalment receipts. The legislation that established the New Zealand Superannuation Fund states that the Fund is the property of the Crown.
- the effect is that every time the Fund buys or sells an instalment receipt, the nature of the Crown's interest in the underlying share changes from an indirect interest (arising from the charge held by the Crown) to a more direct interest (arising from the Crown's ownership of the Fund). The Crown has disclosed the fact that the nature of its relevant interest in any share corresponding to an instalment receipt may change from time to time as a result of any acquisition or disposal of a relevant interest in the instalment receipt corresponding to that share by or on behalf of the New Zealand Superannuation Fund.

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- without an exemption, this could result in the Crown having to make a disclosure every time the Fund trades in instalment receipts. The FMA is satisfied that an exemption is appropriate as strict compliance would add unnecessary compliance costs and would not provide any useful information to the market. The Crown's holdings in Meridian Energy have already been disclosed and the condition of the exemption ensures that any substantial holding acquired by the Fund must be disclosed in the same way as holdings of any other person. The exemption is necessary in order to clarify disclosure for the market, and therefore promote the confident and informed participation of businesses, investors, and consumers in the financial markets. The exemption is also desirable in order to avoid unnecessary compliance costs. Further, because the exemption only applies to the Crown, the exemption is not broader than is reasonably necessary to address the matters that gave rise to the exemption.
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