

Securities Act (Meridian Energy Limited Crown share offer) Exemption Notice 2013

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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Notice

1 Title

This notice is the Securities Act (Meridian Energy Limited Crown share offer) Exemption Notice 2013.

2 Commencement

This notice comes into force on 19 September 2013.

3 Revocation

- (1) Clauses 5 to 9 are revoked on the close of 18 December 2013.
- (2) Clauses 10 to 13 are revoked on the close of 31 July 2015.
- (3) Clauses 14 to 19 are revoked on the close of 18 December 2013.
- (4) The remainder of the 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

amended offer document means the offer document and any supplementary disclosure document as if those documents taken together were a registered prospectus and investment statement for the purposes of the Act and the Regulations

Australian trust deed means the deed entered into, or to be entered into between the Crown and the Australian trustee that provides, amongst other things, for the Australian trustee to hold shares on separate trusts for subscribers for shares under the offer

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

bookbuild process means the process used as part of the process under which the Crown will determine the price and allocation of shares under the offer

call centre means the call centre service being operated by or on behalf of the Crown and Meridian Energy in connection with the offer

closing time means 5pm on the closing date of the general public offer in New Zealand

Crown means Her Majesty the Queen in right of New Zealand

director means a director of Meridian Energy

excluded provisions means the provisions set out in the Schedule that are excluded from copies of the specified documents that must be delivered to the Registrar of Financial Services Providers and made available for public inspection in accordance with the Act and the Regulations

financial statements means the latest financial statements of Meridian Energy that comply with, and have been registered under, the Financial Reporting Act 1993

Government Share Offer website means an Internet site maintained by or on behalf of the Crown containing information about the Government's proposed share offer programme

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 trust deed means the deed entered into, or to be 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 subscribers for the shares under the offer

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

NZSX means the securities market operated by NZX under that name

NZX means NZX Limited

offer means the Crown's part sale of the shares

offer document means the combined investment statement and registered prospectus relating to the offer

offer website means an Internet site maintained by or on behalf of the Crown and Meridian Energy containing information about the offer

Regulations means the Securities Regulations 2009

shares means fully paid ordinary shares in Meridian Energy registered in the name of the Crown on the date on which this notice comes into force

significant event means an event or development arising after the date of the offer document which would make the offer document

false or misleading in a material particular (including by reason of failing to refer, or give proper emphasis, to adverse circumstances)

specified documents means:

- (a) the Share Purchase Agreement for the sale of shares in Meridian Wind Macarthur Holdings Pty Limited entered into between Meridian Energy Australia Pty Limited, Three River Holdings No. 2 Limited and Malakoff Holdings Pty Ltd on 28 June 2013; and
- (b) the Electricity Amendment Agreement entered into between Meridian Energy and New Zealand Aluminium Smelters Limited on 7 August 2013

supplementary disclosure document means a document providing disclosure about a significant event

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

trustee means either the New Zealand trustee or the Australian trustee, as applicable

withdrawal period means any period from the initial date of publication of the advertisements pursuant to clause 8(e) until the close of the date that is 7 days after the initial date of publication of the advertisements pursuant to clause 8(e).

- (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 34(1)(b) and 37A(1)(b) of Act and regulation 21 of the Regulations in relation to significant event

Meridian Energy, the Crown, and every person acting on behalf of either or both of them are exempted, in so far as the offer document is false or misleading in a material particular in relation to any significant event that occurs after the date of the offer document from:

- (a) section 34(1)(b) of the Act to the extent that the offer document is distributed by or on behalf of Meridian Energy or the Crown after the significant event has occurred but before publication of a supplementary disclosure document relating to that significant event pursuant to clause 8(b); and
- (b) section 37A(1)(b) of the Act; and
- (c) regulation 21 of the Regulations.

6 Application of exemptions in clause 5

The exemptions in clause 5 only apply if the significant event occurs prior to commencement of the bookbuild process.

7 Condition of exemptions in clause 5 that amended offer document not false or misleading

The exemptions in clause 5 are subject to the condition that no transfer of shares to the trustees and no allotment of the instalment receipts shall be made if, at the time of allotment, the amended offer document is known by the Crown, Meridian Energy, or any director, to be false or misleading in a material particular by reason of failing to refer, or give proper emphasis, to adverse circumstances whether or not the amended offer document became so false or misleading as a result of a change of circumstances occurring after the later of:

- (a) the date of the offer document; or
- (b) the date of the last supplementary disclosure document published in accordance with this notice.

8 Conditions of exemptions in clause 5 relating to notification about significant event and right of withdrawal

The exemptions in clause 5 are subject to the further conditions that:

- (a) the offer document must include a prominent, clear and concise description of:
 - (i) the process that will apply if a significant event occurs;
 - (ii) the withdrawal rights that applicants will have if a significant event occurs;
 - (iii) how, and within what timeframe, applicants will be able to withdraw;
- (b) as soon as practicable after any significant event and on an on-going basis until the allotment of the shares under the offer or cancellation of the offer, the Crown and Meridian Energy must publish on the offer website a supplementary disclosure document;
- (c) any supplementary disclosure document must:
 - (i) state that it has been published by the Crown and Meridian Energy;
 - (ii) describe the circumstances in which applicants have a right to withdraw their application pursuant to clause 9 or, where no rights to withdraw arise pursuant to clause 9, a clear and concise statement explaining why there are no rights to withdraw pursuant to clause 9;

- (iii) where there are rights to withdraw pursuant to clause 9, explain how, and within what timeframe, applicants can withdraw their application:
 - (iv) contain a clear and concise description of the issues raised by the significant event including the effect of the event, to the extent that the effect can be assessed, or where the effect of the event cannot be assessed, a statement to that effect:
 - (v) contain a statement describing the likely effect of the significant event on the value of the shares and the instalment receipts and a statement quantifying that effect if it can be quantified, or where the effect of the event cannot be quantified, a statement to that effect;
- (d) prior to publication of the supplementary disclosure document, the Crown and Meridian Energy must:
- (i) amend the offer document under section 43 of the Act to include the same information, statements, and other matters that are contained in the supplementary disclosure document:
 - (ii) deliver the supplementary disclosure document to the Registrar for lodgement:
 - (iii) provide a copy of an announcement referring to the supplementary disclosure document being available on the offer website to the NZX for the purpose of that announcement being publicly released on NZX's market announcement platform;
- (e) on the day immediately following the initial date of the publication of the supplementary disclosure document pursuant to paragraph (b), an advertisement must be prominently published, in at least A4 size, on the same day in The New Zealand Herald, The Dominion Post, The Press and the Otago Daily Times (or the equivalent weekend editions of these newspapers), containing:
- (i) a clear and concise summary of the material issues raised by the significant event:
 - (ii) a statement explaining that further information about the significant event is available on the offer website:
 - (iii) a statement explaining that a supplementary disclosure document containing further information about the significant event is available on request by calling the call centre on a specified telephone number:

- (iv) a statement that the information is published by Meridian Energy and the Crown:
 - (v) a statement that persons who have already applied for shares have a right to withdraw their application or, where there are no rights to withdraw pursuant to clause 9, a clear and concise statement explaining why there are no rights to withdraw pursuant to clause 9:
 - (vi) where there are rights to withdraw pursuant to clause 9, a statement explaining how, and within what timeframe, applicants can withdraw their application;
- (f) subject to paragraph (g), commencing on the initial date of the publication of the supplementary disclosure document pursuant to paragraph (b), and on an on-going basis until the allotment of the instalment receipts under the offer or cancellation of the offer, the offer website must include on its homepage in a prominent place:
- (i) a clear and concise summary of the material issues raised by the significant event:
 - (ii) a statement explaining that further information about the significant event is available at an attached link, followed by a hyperlink to the supplementary disclosure document and the offer document in that order, preceded by a statement explaining that the documents should be read together:
 - (iii) a statement explaining that a supplementary disclosure document containing further information about the significant event is available on request by calling the call centre on a specified telephone number:
 - (iv) a statement that the information is published by Meridian Energy and the Crown:
 - (v) a statement that persons who have already applied for shares have a right to withdraw their application or, where there are no rights to withdraw pursuant to clause 9 a clear and concise statement explaining why there are no rights to withdraw pursuant to clause 9:
 - (vi) if there are rights to withdraw pursuant to clause 9, a statement explaining how, and within what timeframe, applicants can withdraw their application, for the duration of the withdrawal period:
 - (vii) if there are rights to withdraw pursuant to clause 9, an online withdrawal form through which applicants can

- withdraw their application, for the duration of the withdrawal period;
- (g) paragraph (f) does not apply if, commencing on the initial date of publication of the supplementary disclosure document pursuant to paragraph (b), and on an on-going basis until the allotment of the instalment receipts under the offer or cancellation of the offer, the offer website includes on its homepage in a prominent place a hyperlink to a page dedicated to the supplementary disclosure event in accordance with paragraph (h). The page dedicated to the supplementary disclosure must include:
- (i) a clear and concise summary of the material issues raised by the significant event:
 - (ii) the supplementary disclosure document and the offer document in that order, preceded by a statement explaining that the documents should be read together:
 - (iii) a statement explaining that a supplementary disclosure document containing further information about the significant event is available on request by calling the call centre on a specified telephone number:
 - (iv) a statement that the information is published by Meridian Energy and the Crown:
 - (v) a statement that persons who have already applied for shares have a right to withdraw their application or, where there are no rights to withdraw pursuant to clause 9 a clear and concise statement explaining why there are no rights to withdraw pursuant to clause 9:
 - (vi) if there are rights to withdraw pursuant to clause 9, a statement explaining how, and within what timeframe, applicants can withdraw their application, for the duration of the withdrawal period:
 - (vii) if there are rights to withdraw pursuant to clause 9, an online withdrawal form through which applicants can withdraw their application, for the duration of the withdrawal period;
- (h) if the offer website includes a hyperlink on the homepage to a page dedicated to the supplementary disclosure event under paragraph (g), commencing on the initial date of the publication of the supplementary disclosure document pursuant to paragraph (b), and on an on-going basis until the allotment of the instalment receipts under the offer or cancellation of the offer, the offer website must include on its homepage in a prominent place a statement to the effect below, together with

a hyperlink to the offer website page dedicated to the supplementary disclosure event:

"Important Notice: a material event has occurred in relation to the Meridian Energy Share Offer that could impact you. If you have applied, or are intending to apply, for Meridian Energy shares, click [here](#)."

- (i) commencing on the initial date of the publication of the supplementary disclosure document pursuant to paragraph (b), and on an on-going basis until the allotment of the instalment receipts under the offer or cancellation of the offer, the Government Share Offer website must include on its homepage in a prominent place a statement to the effect below, together with a hyperlink to the offer website homepage referred to in paragraph (f), or to the page of the offer website dedicated to the supplementary disclosure event referred to in paragraph (g) (as applicable):

"Important Notice: a material event has occurred in relation to the Meridian Energy Share Offer that could impact you. If you have applied, or are intending to apply, for Meridian Energy shares, click [here](#)."

- (j) the Crown must send free of charge a copy of the supplementary disclosure document, on request to any person that has applied for shares if that request is received from such a person during the period between the date of publication of the supplementary disclosure document until the date of the allotment of the instalment receipts under the offer or cancellation of the offer;
- (k) either:
- (i) the offer document must comply with the Regulations; or
 - (ii) the amended offer document must comply with the Regulations (except regulation 21);
- (l) any offer document printed but not distributed to any person by the Crown or Meridian Energy, or by any person acting on behalf of either or both of them, prior to the publication of any supplementary disclosure document pursuant to clause 8(b) must have a copy of the supplementary disclosure document attached to the front cover of the offer document or inserted immediately behind the front cover of the offer document prior to its distribution.

9 Conditions of exemptions in clause 5(a) and (b) relating to withdrawal and refund rights

(1) The exemptions in clause 5(a) and (b) are subject to the further conditions that:

(a) in addition to any other rights of withdrawal that an applicant may have, an applicant may withdraw their application for shares by notice of withdrawal received by or on behalf of the Crown or Meridian Energy before the end of the withdrawal period:

(i) in the case of the advertisements pursuant to clause 8(e) being published before the closing time, if the application is dated on or before the initial date of publication of the supplementary disclosure document and received before the closing time; or

(ii) in the case of the advertisements pursuant to clause 8(e) being published after the closing time, if the application has been validly made in accordance with the terms and conditions of the offer;

(b) the Crown and Meridian Energy must refund to every withdrawing applicant his or her application money (without any interest on that money) within 5 working days after the earlier of:

(i) the end of the withdrawal period; or

(ii) the cancellation of the offer.

10 Exemption from section 36A of Act in relation to the use of instalment receipts

Meridian Energy, the Crown, and every person acting on behalf of either or both of them are exempted from section 36A of the Act in respect of subscriptions received by or on behalf of the Crown on account of the first instalment of the offer price for shares under the offer.

11 Condition of exemption in clause 10

The exemption in clause 10 is subject to the condition that subscriptions received by or on behalf of the Crown on account of the first instalment of the offer price for shares under the offer are held in trust for the subscribers until the shares to which the subscriber may be entitled are transferred to the trustees, the instalment receipts for those shares are allotted to the subscriber and any refund to which the subscriber is entitled is paid to the subscriber.

12 Exemption from section 37A(1)(a), (b) and (c) of Act in relation to the use of instalment receipts

Meridian Energy, the Crown, and every person acting on behalf of either or both of them are exempted from section 37A(1)(a), (b) and (c) of the Act in respect of the allotment of shares under the offer to holders of instalment receipts on payment by the holders of the instalment receipts of the final instalment of the offer price for those shares.

13 Conditions of exemption in clause 12

The exemption in clause 12 is subject to the conditions that:

- (a) the instalment receipts are listed on the NZSX from the time the instalment receipts are allotted to subscribers until the shares are listed on the NZSX;
- (b) no offer of instalment receipts or shares is made unless—
 - (i) the offer is made in an advertisement that refers to the offer document; or
 - (ii) the offer is made in, or accompanied by, the offer document;
- (c) the offer document—
 - (i) contains a summary of the terms of the trust deeds (including the rights and obligations attached to the instalment receipts);
 - (ii) states that copies of the trust deeds may be obtained on request and without charge;
 - (iii) specifies where copies of the trust deeds may be obtained;
 - (iv) prominently and clearly discloses the obligation to pay the final instalment of the offer price for the shares and the consequences of not paying the final instalment;
- (d) each trustee holds, and undertakes in the applicable trust deed that throughout the period during which the instalment receipts are on issue it will, subject to the terms of the applicable trust deed, continue to hold the shares transferred to it on the terms of the applicable trust deed for the benefit of the respective holders of the instalment receipts to which they correspond subject to a security interest in favour of the Crown securing payment by the holder of the instalment receipts of the final instalment for the instalment receipt, and only dispose of them in accordance with the terms of the applicable trust deed;
- (e) the Crown transfers to each trustee the number of shares that that trustee is required to hold under the applicable trust deed

to meet that trustee's obligations under the terms of the instalment receipts and the applicable trust deed; and

- (f) NZX has approved any statements in the offer document or in any advertisement, as the case may be, that refer to the instalment receipts being tradeable on a securities market, or to any rule of NZX.

14 Exemptions from sections 34(2)(a) and 54B(3)(b) of Act in relation to the financial statements

Meridian Energy, the Crown, and every person acting on behalf of either or both of them are exempted from sections 34(2)(a) and 54B(3)(b) of the Act in respect of the offer document being distributed or sent without containing, or being accompanied by, the financial statements.

15 Conditions of exemptions in clause 14

The exemptions in clause 14 are subject to the conditions that:

- (a) the offer document must contain a prominent statement that:
 - (i) summarised information about the financial statements is set out in section 6.1 *Introduction to Meridian's Financial Information*;
 - (ii) the full financial statements are available on the offer website at www.meridianshares.govt.nz and on request by calling the call centre;
- (b) the offer document must contain a section, containing information about the financial statements including:
 - (i) a descriptive analysis of the financial statements which explains in a clear and concise manner all information from the financial statements material to the decision of a prudent but non-expert prospective investor whether to subscribe for the securities;
 - (ii) a clear and concise explanation of the key determinates of Meridian Energy's financial performance supported by information from the financial statements, and summary financial statements;
 - (iii) a statement that the descriptive analysis, when read together with the information in the offer document, is not false or misleading in any particular by reason of failing to refer, or give proper emphasis, to adverse circumstances material to the offer of securities;
 - (iv) a statement immediately following the descriptive analysis that the financial statements are available on the offer website at www.meridianshares.govt.nz;

- (v) a statement that the directors of Meridian Energy and the Crown confirm that the financial statements, when read together with the information in the offer document are not false or misleading in any particular by reason of failing to refer, or given proper emphasis, to adverse circumstances material to the offer of securities:
- (vi) a statement that the full financial statements are available without fee, and will be sent on request to any prospective investor as soon as practicable, but in any event, within 5 working days of Meridian Energy or the Crown receiving the request.
- (c) the financial statements must be published on the offer website immediately following the offer document;
- (d) while the offer is open, both the offer document and the financial statements must be sent to any person that requests either the offer document or the financial statements, without fee, as soon as practicable but, in any event, within 5 working days of Meridian Energy or the Crown receiving the request. However, the financial statements do not need to be sent to any person that has requested the offer document and has expressly stated that they do not wish to receive the financial statements.

16 Exemption from regulation 18(1)(a) of Regulations in relation to specified documents

Meridian Energy, the Crown, and every person acting on behalf of either or both of them are exempted from regulation 18(1)(a) of the Regulations in so far as that regulation requires the offer document to have attached to it or be accompanied by a copy of the specified documents.

17 Conditions of exemption in clause 16

The exemption in clause 16 is subject to the condition that the offer document delivered to the Registrar for registration must:

- (a) have attached to it or be accompanied by a copy of the specified documents without the excluded provisions;
- (b) state that the excluded provisions have been excluded from the copies of the specified documents delivered to the Registrar;
- (c) state why the excluded provisions have been excluded;
- (d) contain a statement of the general nature of the excluded provisions;
- (e) state-

- (i) that copies of the specified documents (without the excluded provisions) may be inspected during the currency of the offer document on request and without any fee by any person;
 - (ii) when and where in New Zealand they may be inspected; and
- (f) contain a prominent statement to the effect that the directors of Meridian Energy and the Crown warrant that the exclusion of the excluded provisions from the specified documents does not make the offer document misleading in any material particular by a failure to refer, or give proper emphasis, to any adverse circumstances.

18 Exemption from clause 25(c) of Schedule 1 of Regulations in relation to specified documents

Meridian Energy, the Crown, and every person acting on behalf of either or both of them are exempted from clause 25(c) of Schedule 1 of the Regulations in respect of the offer in so far as that clause applies to the specified documents.

19 Conditions of exemption in clause 18

The exemption in clause 18 is subject to the conditions that the offer document delivered to the Registrar for registration must state:

- (a) that copies of the specified documents without the excluded provisions may be inspected during the currency of the offer document on request and without any fee by any person; and
- (b) when and where in New Zealand they may be inspected.

20 Exemption from section 61 of the Act in relation to the indemnification of directors

The Crown is exempted from section 61 of the Act in respect of any indemnification of a director in respect of:

- (a) liability for any negligence, default, breach of duty, or breach of trust in that director's capacity as a director arising out of, or in relation to, the offer; and
- (b) costs incurred by a director in defending or settling any claim or proceeding relating to liability of a kind referred to in paragraph (a).

Schedule

Provisions Excluded from Copies of Specified Documents

1 Provisions excluded from the Share Purchase Agreement

- (1) In each of the seventh line and the ninth line of clause 5.5(a)(i), the words that appear after the words "on or before the date" but before the words "after the Completion Date".
- (2) In clause 5.5(b):
 - (a) the words that appear in subparagraph (i) after the words "an amount equal to";
 - (b) the words that appear in subparagraph (ii) after the words "an amount equal to"; and
 - (c) at the end of clause 5.5(b) after the words "an amount equal to".
- (3) In clause 5.5(c):
 - (a) the words that appear in subparagraph (i) after the words "less than"; and
 - (b) the words that appear in subparagraph (ii) after the word "exceeds".
- (4) The "Locked Box Balance Sheet" set out in Schedule 7.
- (5) The "Facility Details Notice" set out in Schedule 8 other than the following items in attachment 1:
 - (a) item 1 Term Facility Limit;
 - (b) item 2 Enterprise Value; and
 - (c) item 19 Equity Amount.

2 Provisions excluded from the Electricity Amendment Agreement

- (1) In clause 5.2(a) of the amended and restated Electricity Agreement set out in Schedule 1 to the Electricity Amendment Agreement:
 - (a) the dollar amount in the definition of "BP"; and
 - (b) in the definition of "Clawback Fund":
 - (i) the dollar amount in the first line of paragraph (a); and
 - (ii) each dollar amount in the formula in paragraph (a).
- (2) In the table in clause 5.2(c) of the amended and restated Electricity Agreement set out in Schedule 1 to the Electricity Amendment Agreement, each dollar amount in the column headed "Energy Price".
- (3) In the model attached as Annex Two to Schedule A of the amended and restated Electricity Agreement set out in Schedule 1 to the

Electricity Amendment Agreement, the hydrological data for the years 1932 to 2006 as contained in the sheet titled "inflows" at pages 43 to 46 of that Annex.

Dated at Auckland this 17th day of September 2013.



Simone Robbers
Head of Primary Regulatory Operations
Financial Markets Authority

Statement of reasons

This notice comes into force on 19 September 2013. The exemptions relating to a significant event arising after the date of the offer document are revoked on 18 December 2013, the exemptions in relation to instalment receipts are revoked on 31 July 2015, the exemptions in relation to the specified documents and financial statements are revoked on 18 December 2013, and the exemption in respect of an indemnity given by the Crown is revoked on 30 September 2017.

This notice exempts Her Majesty the Queen in right of New Zealand (the **Crown**) and Meridian Energy Limited (**Meridian Energy**) from the prohibition on allotment of shares and distribution of the offer document in circumstances where an event arises after the date of the offer document which would make the offer document false or misleading in a material particular by reason of failing to refer, or give proper emphasis, to adverse circumstances. The exemption applies if wide public notice is given about the event and about subscribers' rights to withdraw their application (**significant event exemption**).

The Financial Markets Authority (**FMA**), after satisfying itself as to the matters set out in section 70B(2) of the Securities Act 1978 (**Act**), considers it appropriate to grant this significant event exemption because—

- the Act does not contain a mechanism by which issuers can amend an offer document that includes an investment statement. This means that, without an exemption, if a significant event arose after the date of the offer document, which without further information would render the offer document false or misleading in a material particular by reason of failing to refer, or give proper emphasis, to adverse circumstances, a new offer document would be required to be

distributed to all prospective investors for their consideration about whether to invest in the shares offered. Due to the large size of the offer, this would be logistically difficult and expensive:

- the exemption only applies in the case of a significant event that occurs after the date of the offer document. This means that there is no exemption from the requirement that the offer document contain particulars of all material matters relating to the offer of shares known at the date of the offer document:
- additionally the exemption only applies if the significant event occurs prior to the commencement of the bookbuild process. This is the process used to establish the demand for the shares by institutional investors and to determine an appropriate price for the shares in consideration of that demand. The bookbuild will be part of the process under which the Crown will determine the price of the shares under the offer. This ensures that the impact of the significant event on the value of the shares will be considered in setting the price of the shares:
- this exemption allows for continuous distribution of the offer document. In the event that Meridian Energy and the Crown determine that a significant event has occurred the notice allows for supplementary disclosure to be provided and the offer document to be amended. This provides a mechanism for the Crown and Meridian Energy to produce a supplementary disclosure statement so that potential investors in Meridian Energy can be informed of any material and adverse effects that may arise during the offer period without the Crown and Meridian Energy incurring costs or delay in producing new offer documents:
- conditions of the exemptions require a supplementary disclosure document to be published that contains a clear and concise description of the issues raised by the significant event including the effect on the value of the shares. Further conditions prohibit allotment of the shares if the offer document, read together with the supplementary disclosure document, is false or misleading. This means that if the issues cannot be described clearly and concisely in a supplementary disclosure document (such that the offer document read together with the supplementary disclosure document would not be false or misleading) the offer would need to be withdrawn and a new offer document distributed in order to proceed with the offer:
- the high profile nature of the offer means that there would be wide publicity surrounding any significant event relevant to the offer. In addition to the wide publicity that could be expected in light of the high profile nature of this offer, conditions of the exemption require that wide public notice be given of both any significant event and the right of share applicants to withdraw their application in that instance.

Further conditions require that the process that would apply, and rights that share applicants would have, in the event of a significant event must be prominently explained in the offer document. This means subscribers should be aware this process may occur, and if the process does occur there will be high public awareness of it:

- in all of these circumstances FMA considers that the significant event exemption will not cause significant detriment to subscribers, and that the exemption is not broader than reasonably necessary to address the matters that gave rise to it.

This notice also exempts the Crown and Meridian Energy in respect of the use of instalment receipts (which represent the rights of holders to be registered as the holder of the underlying share on payment of the final instalment of the purchase price of the shares) from the requirement to hold subscriptions on trust and from the prohibition on allotment of the shares where the holder of the instalment receipt at the date of the final instalment did not receive an investment statement, and where at the time of the allotment of the shares, material information about Meridian Energy or the shares may no longer be as described in the offer document, and from the prohibition on allotment of shares beyond a defined period from the date of the financial statements referred to in the offer document (**instalment receipts exemption**). FMA, after satisfying itself as to the matters out in section 70B(2) of the Act, considers it appropriate to grant this instalment receipts exemption because—

- the exemption from the obligation to hold subscriptions on trust is limited to any obligation the Crown may have to hold the first instalment on trust until the shares are allotted to holders of instalment receipts on payment of the final instalment. The conditions require that subscriptions received by the Crown on account of the first instalment are held on trust until the instalment receipts are allotted, the shares to which the subscriber is entitled are transferred to the applicable trustee and any refund to which the subscriber is entitled is paid to the subscriber:
- without an exemption the Crown and Meridian Energy would be prohibited from allotting the shares unless they first registered a new offer document relating to the shares. This is because the terms of the offer provide for the proposed allotment to be more than the standard 9 month period from the date of the financial statements referred to in the offer document. Additionally the Crown and Meridian Energy would also be likely to be required to register a new offer document because, given the extended passage of time to allotment of the shares, it is likely that the original offer document would be out of date and as a consequence false or misleading in a material particular by reason of failing to refer or give proper emphasis to adverse circumstances current at allotment time. The

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registration of a new offer document would be a significant exercise and create a significant expense:

- investors will have made their investment decision at the time they subscribed to the original offer. The conditions require that the instalment receipts are listed on the NZX equities securities market which means that Meridian Energy will be required to comply with the NZX listing rules relating to continuous disclosure and information material to the instalment receipts and shares will be publically available:
- the conditions also require that the instalment receipt holders' beneficial interest in the shares is held on trust for the benefit of the instalment receipt holders and that the shares are transferred to the instalment receipt holders upon payment of the final instalment. This protects instalment receipt holders' interest in and right to receive the shares:
- in all of these circumstances FMA considers that the instalment receipts exemption will not cause significant detriment to subscribers, and that the exemption is not broader than reasonably necessary to address the matters that gave rise to it:

This notice also exempts Meridian Energy and the Crown in respect of the distribution of the offer document not containing, or being accompanied by, Meridian Energy's most recent financial statements registered under the Financial Reporting Act 1993 (**financial statements exemption**). FMA, after satisfying itself as to the matters set out in section 70B(2) of the Act, considers it appropriate to grant this financial statements exemption because—

- the provision of a clear and concise descriptive analysis of the most recent financial statements of Meridian Energy and descriptive explanation of the key determinates of Meridian Energy's financial performance, together with its 5 year historical summary financial statements and prospective financial information will provide more useful and understandable information to retail investors than inclusion in the offer document of the most recent full financial statements. It facilitates an offer document that is more clear, concise and effective for retail investors:
- the directors of Meridian Energy and the Crown will be responsible to ensure this descriptive information is clear and concise, and contains all information from the financial statements that is material to the decision of a retail investor on whether to invest:
- the directors of Meridian Energy and the Crown will in any event remain responsible for the content of the most recent financial statements by reason of them being referred to in the offer document, and additionally this is supported by the notice which

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requires the directors of Meridian Energy and the Crown to confirm that the financial statements, when read together with the information in the offer document are not false or misleading, nor omit information material to the offer of securities:

- retail investors that do wish to read the full financial statements will have clear information on where to access or request them, and if requested the financial statements must be sent promptly;
- Meridian Energy has debt securities listed on the NZX Debt Market so this means that in addition to its financial statements being available on the Companies Office register, they are also available on the NZX's website and Meridian Energy is subject to continuous disclosure requirements. In these circumstances fuller financial information is already publicly available about Meridian Energy than would generally be available about another company undertaking an initial public offer of shares;
- in all of these circumstances FMA considers that the offer document not containing, or being accompanied by, Meridian Energy's financial statements will not cause significant detriment to subscribers, and that the exemption is not broader than reasonably necessary to address the matters that gave rise to it.

Further, this notice exempts Meridian Energy and the Crown in respect of attaching complete copies of certain material contracts to the offer document and making complete copies of those material contracts available for inspection (**commercially sensitive information exemption**). The commercially sensitive information exemption allows certain commercially sensitive information to be excluded from the copies of the specified documents that constitute material contracts and are attached to the offer document. FMA, after satisfying itself as to the matters set out in section 70B(2) of the Act, considers it appropriate to grant this exemption because-

- the exemptions meet the criteria stated in FMA's Exemption Policy Note for "Applications to Exclude Commercially Sensitive Information from Material Contracts" (the Exemption Policy Note can be viewed on FMA's website at <http://www.fma.govt.nz/help-me-comply/issuers/exemptions/applications-to-exclude-commercially-sensitive-information-from-material-contracts/>);
- the detriment to the commercial interests of Meridian Energy by the disclosure of the excluded provisions would outweigh any benefit to prospective investors from their disclosure;
- the directors of Meridian Energy and the Crown must warrant that the non-disclosure of the excluded provisions does not make the offer document misleading in any material particular by a failure to refer, or give proper emphasis, to any adverse circumstances:

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- the offer document must state that information has been excluded from the agreement in question, the reasons why that information has been excluded, and the general nature of the material information that has been excluded:
- in these circumstances, the scope of the exemptions which is limited to excluding certain sensitive information in material contracts, and the conditions requiring directors' and the Crown's warranties and explanations about the exclusions, mean that the exemptions are not broader than reasonably necessary to address the matters that gave rise to the exemptions and that the exemptions will not cause significant detriment to subscribers.

This notice also exempts the Crown from any prohibition on indemnifying the directors of Meridian Energy in relation to liability arising out of, or in relation to, the offer for sale by the Crown of shares in Meridian Energy (**indemnity exemption**). FMA, after satisfying itself as to the matters set out in section 70B(2) of the Act, considers it appropriate to grant this indemnity exemption because—

- the purpose of the prohibition in section 61 of the Act on an issuer indemnifying directors is that investors should not effectively incur the costs of paying for any compensation to which they are entitled through a loss in the value of their securities. FMA considers that the proper interpretation of section 61 does not, in the case of an offer of previously allotted shares, prohibit an indemnity for liability to be given by the offeror to the directors of the original allotter where the offeror and the original allotter are issuers in relation to the new offer:
- section 61 does not expressly address the circumstances of multiple issuers in relation to the same offer, and may be interpreted literally as operating to prevent third party indemnities from persons who are issuers. Any indemnity given in contravention of section 61 is void. It is desirable to ensure that market participants have certainty in the application of such a provision. This exemption clarifies the appropriate interpretation for the avoidance of any doubt:
- an indemnity from the Crown (as issuer because it is the offeror of the securities but is not the entity in which subscribers will hold an interest) raises no significant detriment to subscribers. Both the directors of Meridian Energy and the Crown will remain liable to subscribers for any untrue statements in the offer documents:
- further the Crown has confirmed it will not indemnify the directors from criminal liability for any false or misleading information in the offer document or any other non-compliance in connection with the offer, nor in respect of any conduct where they engage in wilful misconduct, malice, fraud or recklessness. The directors will remain

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motivated to conduct appropriate enquiries and take a full and proper interest in the information in the offer documents and compliance generally of the offer:

- the exemption is not broader than necessary to ensure the Crown and the directors of Meridian Energy have confidence to proceed on the basis that FMA considers is consistent with the appropriate interpretation of section 61.
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