



FINANCIAL MARKETS AUTHORITY  
TE MANA TATAI HOKOHOKO - NEW ZEALAND

## Securities Act (Mighty River Power 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 (Mighty River Power Limited Crown share offer) Exemption Notice 2013.

#### 2 Commencement

This notice comes into force on 4 April 2013.

#### 3 Revocation

- (1) Clauses 5 to 9 are revoked on the close of 31 March 2014.

- (2) Clauses 10 and 11 are revoked on the close of 30 November 2015.
- (3) 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

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

**call centre** means the call centre service being operated by or on behalf of the Crown and Mighty River Power 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 Mighty River Power

**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

**loyalty bonus share** means an additional share which is allotted pursuant to a term of the offer to a shareholder who retains his, her, or its original shares until the loyalty bonus share allotment date

**loyalty bonus share allotment date** means the date on which a loyalty bonus share is allotted pursuant to the offer

**Mighty River Power** means Mighty River Power Limited

**NZX** means NZX Limited

**offer** means the Crown's sale of part of the shares

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

**offer website** means an Internet site maintained by or on behalf of the Crown and Mighty River Power containing information about the offer

**original shares** means shares allotted to a shareholder pursuant to the offer before the close of 31 May 2013

**Regulations** means the Securities Regulations 2009

**shareholder** means a person who subscribes for shares pursuant to the offer

**shares** means fully paid ordinary shares in Mighty River Power 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)

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

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

Mighty River Power, 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 37A(1)(b) of the Act; and
- (b) 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 allotment of the shares shall be made if, at the time of allotment, the amended offer document is known by the Crown, Mighty River Power, 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 Mighty River Power 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 Mighty River Power;
  - (ii) describe the class of applicants who have a right to withdraw their application for shares;
  - (iii) 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) if the significant event is likely to have a material adverse effect on the value of the shares, contain a statement to that effect;
  - (vi) contain a statement quantifying the effect of the significant event on the value of the shares 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 Mighty River Power 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 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, 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 Mighty River Power and the Crown;
  - (v) a statement that persons who have already applied for shares have a right to withdraw their application;
  - (vi) a statement explaining how, and within what timeframe, applicants can withdraw their application;
- (f) 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 shares 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 link to one pdf document containing 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 Mighty River Power and the Crown:
  - (v) a statement that persons who have already applied for shares have a right to withdraw their application:
  - (vi) a statement explaining how, and within what timeframe, applicants can withdraw their application:
  - (vii) an online withdrawal form through which applicants can withdraw their application;
- (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 shares 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):
- "Important Notice: a material event has occurred in relation to the Mighty River Power Share Offer that could impact you. If you have applied, or are intending to apply, for Mighty Power River shares, click [here](#)."*
- (h) 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 shares under the offer or cancellation of the offer;
  - (i) either:
    - (i) the offer document must comply with the Regulations; or
    - (ii) the amended offer document must comply with the Regulations (except regulation 21);
  - (j) any offer document printed but not distributed to any person by the Crown or Mighty River Power, or by any person acting on behalf of either or both of them, prior to the publication of any supplementary disclosure document must have a copy of the

supplementary disclosure document attached to the front of the offer document prior to its distribution.

**9 Conditions of exemption in clause 5(a) relating to withdrawal and refund rights**

- (1) The exemption in clause 5(a) is 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 Mighty River Power before the close of the date that is 5 working days after the initial date of publication of the supplementary disclosure document:
    - (i) in the case of the supplementary disclosure document 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 supplementary disclosure document being published after the closing time, if the application has been made in accordance with the terms and conditions of the offer;
  - (b) the Crown and the Mighty River Power must refund to every withdrawing applicant their application money (without any interest on that money) within 10 working days after the earlier of:
    - (i) the last date of despatch of shareholding statements; or
    - (ii) the cancellation of the offer.

**10 Exemption from section 37A(1)(b) and (c) of Act in relation to loyalty bonus shares**

Mighty River Power, the Crown, and every person acting on behalf of either or both of them are exempted from section 37A(1)(b) and (c) of the Act in respect of loyalty bonus shares.

**11 Conditions of exemption in clause 10**

The exemption in clause 10 is subject to the conditions that:

- (a) the offer document contains particulars of all material matters relating to the offer of the loyalty bonus shares:
- (b) without limiting (a) above, the offer document contains information explaining:
  - (i) the terms of the offer of loyalty bonus shares, including:

- A. the date on which the terms of the offer provide that the loyalty bonus shares will be allotted:
- B. the number of loyalty bonus shares which the terms of the offer provide will be allotted as a ratio to original shares held at the loyalty bonus share allotment date and any other terms about the number of loyalty bonus shares which the terms of the offer provide will be allotted:
- C. all conditions that the terms of the offer provide must be met in order for the loyalty bonus shares to be allotted:
  - (ii) principal risks that the loyalty bonus shares will not be allotted:
  - (iii) that the value of the loyalty bonus shares at the loyalty bonus share allotment date will be determined by the market value of shares in Mighty River Power at that date.

**12 Exemption from section 61 of the Act**

The Crown is exempted from section 61 of the Act in respect of 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:
- (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).

Dated at Wellington this 3rd day of April 2013



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Sue Brown  
Head of Primary Regulatory Operations  
Financial Markets Authority

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## Statement of reasons

This notice comes into force on 4 April 2013. The exemptions relating to a significant event arising after the date of the offer document are revoked on 31 March 2014, the exemption in relation to loyalty bonus shares is revoked on 30 November 2015, and the exemption in respect an indemnity given by the Crown is revoked on 30 September 2017.

This notice exempts the Her Majesty the Queen in right of New Zealand (the **Crown**) and Mighty River Power Limited (**Mighty River Power**) from the prohibition on allotment of shares 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' right 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 original offer document being required to contain particulars of all material matters relating to the offer of shares known at the date of that 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 considering 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 means that the impact of the significant event on the value of the shares will be considered in setting the price of the shares:

- conditions of the exemption 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 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 complete 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. Further conditions require that the process that would apply, and rights that share applicants would have, in the event of a significant event to be prominently explained in the offer document. This means subscribers should be aware this process may occur, and if the process does occur there would 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 Mighty River Power in respect of 'loyalty bonus shares' to be allotted to shareholders that have held their shares for a prescribed period, from the prohibition on allotment of securities beyond a defined period from the date of the financial statements in the offer document, and where at the time of the allotment material information about Mighty River Power or the securities may no longer be as described in the offer document (**loyalty bonus exemption**). FMA, after satisfying itself as to the matters set out in section 70B(2) of the Act, considers it appropriate to grant this loyalty bonus exemption because—

- without an exemption the Crown and Mighty River Power would be prohibited from allotting the loyalty bonus shares unless they first registered a new offer document relating to the loyalty bonus 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 in the offer document. Additionally the Crown and Mighty River Power would also be likely to be required to register a new offer document because, given the extended passage of time to allotment of the loyalty bonus 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 registration of a new offer document would be a significant exercise and create a significant expense:

- the conditions of the exemption require all material matters relating to the offer of the loyalty bonus shares to be included in the original offer document. Investors will have made their investment decision at the time they subscribed to the original offer. The loyalty bonus shares are allotted on a fully paid basis and so no additional investment consideration or decision is required by investors following that initial subscription to the original offer. These factors mean that a new offer document registered closer to allotment would not be useful to assist investors with their investment decision:
- in all of these circumstances FMA considers that the loyalty bonus share 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.

Further, this notice exempts the Crown from any prohibition on indemnifying the directors of Mighty River Power in relation to liability arising out of, or in relation to, the offer for sale by the Crown of shares in Mighty River Power (**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 the section does not prohibit an indemnity for liability to be given by the offeror to the directors of the original allotter in which the subscribers will acquire their interests in circumstances where there is an offer of previously allotted securities, so that both the offeror and the original allotter are issuers in relation to the offer:
- section 61 however does not expressly address the circumstances of multiple issuers in relation to the same offer, and may be interpreted 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 that may be raised by a narrow literal interpretation of the section:



- 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 the Mighty River Power 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 documents or any other non-compliance in connection with the offer, nor in respect of any conduct where they engaged in wilful misconduct, malice, fraud or recklessness. The directors will remain 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 Mighty River Power have confidence to proceed on the basis that FMA considers is consistent with the appropriate interpretation of section 61.
-