

Securities Act (ProCare Health Limited) Exemption Notice 2012

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 (ProCare Health Limited) Exemption Notice 2012.
- 2 Commencement**
This notice comes into force on 22 June 2012.
- 3 Expiry**
This notice expires on the close of 31 May 2017.
- 4 Interpretation**
(1) In this notice, unless the context otherwise requires, —
Act means the Securities Act 1978



Company means ProCare Health Limited

specified equity securities means ordinary shares of which the Company is the issuer

Regulations means the Securities Regulations 2009

transacting shareholder means, in relation to the Company, any person who would be a transacting shareholder under section 4 of the Co-operative Companies Act 1996 if the Company was a co-operative company under that Act.

- (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

- (1) The Company and every person acting on its behalf are exempted in respect of any specified equity securities from—
- (a) section 37A(1)(c) of the Act; and
 - (b) clauses 4 to 10, 12 to 20, 22 to 24, and 26 to 28 of Schedule 1 of the Regulations.
- (2) However, the exemption from clause 26 of Schedule 1 of the Regulations does not apply to a first offer to the public of specified equity securities.

6 Condition that securities allotted only to transacting shareholders

The exemptions in clause 5 are subject to the condition that the specified equity securities are allotted only to persons who are, or immediately after allotment will be, transacting shareholders of the Company.

7 Condition that directors' statement must be attached to investment statement

- (1) The exemptions in clause 5 are subject to the further condition that every copy of the investment statement relating to the offer of the specified equity securities that is distributed by or on behalf of the Company more than 9 months after the date of the most recent statement of financial position of the Company registered under the Financial Reporting Act 1993 has attached to it, or contained in it, a directors' statement that—
- (a) complies with subclause (2); and
 - (b) is dated no earlier than 8 months after the date of that statement of financial position; and

- (c) is signed by each director of the Company (or his or her agent who has been authorised in writing).
- (2) The directors' statement must contain the following matters:
- (a) particulars of any material matters relating to the offer of the specified equity securities, other than—
 - (i) matters set out elsewhere in the investment statement relating to the offer, the registered prospectus relating to the offer, or the most recent financial statements of the Company; and
 - (ii) contracts entered into in the ordinary course of business of the Company; and
 - (b) a statement by the directors of the Company as to whether, in their opinion, after due enquiry by them, any of the following has materially and adversely changed during the period between the date of the Company's most recent statement of financial position and the date of the directors' statement referred to in this clause:
 - (i) the trading or profitability of the Company or the group;
 - (ii) the value of the assets of the Company or the group;
 - (iii) the ability of the Company or the group to pay its liabilities due within the next 12 months.

8 Condition about sale arrangements

The exemptions in clause 5 are subject to the further condition that the investment statement and registered prospectus relating to the specified equity securities must contain a description of:

- (a) the arrangements under which a persons who holds a specified equity security can sell the specified equity security (before and after they cease to be a transacting shareholder), including the method by which the price or consideration for the specified equity security will be determined; and
- (b) any circumstances under which a persons who holds a specified equity security may not be able to sell the specified equity security (before and after they cease to be a transacting shareholder).

9 Condition that financial statements must be attached to prospectus

The exemption in clause 5(1)(a) is subject to the further condition that it is a term of the offer of the specified equity securities that:

- (a) a copy of the most recent audited consolidated financial statements of the Company, being financial statements that comply with, and have been registered under, the Financial Reporting Act 1993, will be attached to, or contained in, every copy of the registered prospectus for the offer that is sent to a person under section 54B of the Act; and
- (b) a copy of the interim consolidated financial statements for the most recently completed financial half year of the Company that comply with the Financial Reporting Act 1993 are attached to, or are contained in, every copy of the registered prospectus for the offer that is sent to a person under section 54B of the Act if the specified equity securities are offered more than 9 months after the date of the most recent audited consolidated financial statements of the Company.

10 Condition that information must be contained in investment statement

- (1) The exemption in clause 5(1)(b) is subject to the further condition that the information required by clauses 4, 6 to 8, 13 to 15, 17, 18, 20 and 28 of Schedule 1 of the Regulations is contained in the investment statement relating to the offer of the specified equity securities.
- (2) However, where any of the clauses referred to in subclause (1) define a date or period for which information must be provided by reference to the specified date (as defined in regulation 4(1) of the Regulations), the information must instead be provided by reference to the date that 2 directors of the Company signed the certificate required by regulation 30 of the Regulations on behalf of the board in relation to the investment statement.

Dated at Wellington this 18th day of June 2012



Sue Brown
Head of Primary Regulatory Operations
Financial Markets Authority

Statement of reasons

This notice comes into force on 22 June 2012 and expires on 31 May 2017.

This notice exempts ProCare Health Limited (**ProCare**) in respect of ordinary shares offered by ProCare to any person who would be a transacting shareholder under section 4 of the Co-operative Companies Act 1996, as if ProCare was a co-operative company under that Act. ProCare is exempt from section 37A(1)(c) of the Securities Act 1978, and from clauses 4 to 10, 12 to 20, 22 to 24, and 26 to 28 of Schedule 1 of the Securities Regulations 2009.

The effect of the notice is to allow ProCare to use a reduced content evergreen prospectus, with the conditions that—

- (a) certain information that would normally be disclosed in the prospectus is to be disclosed in the investment statement relating to the offer of the ordinary shares;
- (b) information about sale arrangements for the ordinary shares must be disclosed in the investment statement and prospectus;
- (c) a copy of the most recent consolidated financial statements is to be attached to every prospectus sent under section 54B of the Securities Act 1978; and
- (d) investment statements distributed more than 9 months after the date of the most recent statement of financial position must provide updated information on material matters relating to the offer of securities and circumstances materially adversely affecting the Company's trading, profitability, asset value, or ability to pay its liabilities.

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

- ProCare has chosen not to register as a cooperative company but operates in a similar manner to a cooperative company. All its voting shares are held by health professionals who use its services and its principal business is the provision of services to its shareholders. The exemptions only apply to ordinary shares offered by ProCare to healthcare professionals contracted, or those who will be contracted, to use its services after the allotment of ordinary shares. Shareholders and prospective shareholders are participants in the primary healthcare industry in the Auckland region and are familiar with both the industry and ProCare. Shareholders have

access to company information on a regular basis, and are given the opportunity to participate in the appointment of directors, ProCare's governance, and policy development:

- The exemptions enable ProCare to reduce compliance costs by registering a reduced content evergreen prospectus. The conditions to which those exemptions are subject are intended to ensure that investors receive up to date material information about the securities, in a manner that takes into account the familiarity and access to information of the prospective shareholders. In these circumstances, FMA is satisfied that the exemptions will not cause detriment to the prospective shareholders:
 - The exemptions only apply to ordinary shares offered by ProCare to healthcare professionals using, or those who will be using, its services after the allotment of shares. Given this limitation, and the conditions requiring the provision of relevant information in an appropriate alternative manner, FMA is satisfied that the extent of the exemptions is not broader than what is reasonably necessary to address the matters that gave rise to the exemptions.
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