

## Securities Act (The NP Equity Group Limited) Exemption Notice 2011

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 (The NP Equity Group Limited) Exemption Notice 2011.
- 2 Commencement**  
This notice comes into force on 23 December 2011.
- 3 Expiry**  
This notice expires on the close of 30 November 2016.
- 4 Interpretation**  
(1) In this notice, unless the context otherwise requires, —  
**Act** means the Securities Act 1978  
**company** means The NP Equity Group Limited

**eligible employee** means

- (a) a senior management employee of the group; or
- (b) a person who has a contract to provide personal services (other than as an employee) principally to the group

**eligible member** means a person who—

- (a) is a financial services provider; and
- (b) has entered into an agreement with TNP Services to use its services; and
- (c) is a party to a shareholders' agreement relating to the company, or has signed a deed of accession to the shareholders' agreement relating to the company

**equity securities** means equity securities of which the company is the issuer

**financial service provider** means financial service provider as defined in section 4 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008

**group** means The National Adviser Group Limited and its wholly owned subsidiaries, and the company

**Regulations** means the Securities Regulations 2009

**TNP Services** means TNP Services Limited

- (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 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 a class of equity securities.

## **6 Condition that equity securities allotted only to eligible employees or eligible members**

The exemptions in clause 5 are subject to the condition that the equity securities are allotted only to persons who are, or immediately after the allotment will be, eligible members or eligible employees.

**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 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 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; or
    - (ii) the value of the assets of the company or the group; or
    - (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 equity securities must contain a description of:

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

**9 Conditions about financial statements**

- (1) The exemption in clause 5(1)(a) is subject to the further conditions that it is a term of the offer of the equity securities that—
  - (a) a copy of the most recent audited consolidated financial statements of the company and TNP Services, both being financial statements that comply with the Financial Reporting Act 1993, are attached to, or contained in, every copy of the registered prospectus sent to a person under section 54B of the Act; and
  - (b) a copy of the interim financial statements for the most recently completed financial half year of the company and TNP Services, both being interim financial statements that comply with the Financial Reporting Act 1993, are attached to, or contained in, every copy of the registered prospectus sent to a person under section 54B of the Act if the equity securities are offered more than 9 months after the date of the most recent audited consolidated financial statements of the company and TNP Services.

**10 Condition that information must be contained in annual report of the company**

- (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 every annual report of the company.
- (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 annual report on behalf of the board.





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Dated at Wellington this 21<sup>st</sup> day of December 2011



Sue Brown  
Head of Primary Regulator Operations  
Financial Markets Authority

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### Statement of reasons

This notice, which comes into force on 23 December 2011 and expires on 30 November 2016, enables The NP Equity Group Limited (**NPE Limited**) (subject to conditions) to use a reduced content evergreen prospectus for equity securities it offers to persons who use the services of TNP Services Limited (**TNP Services**) as well as certain employees and contractors of The National Adviser Group Limited and its wholly owned subsidiaries and NPE Limited (**Group**).

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

- the offer of the shares is limited to persons who use the services of TNP Services Limited, a member of the Group, as well as senior managers, and contractors who provide personal services principally to the Group. No direct consideration is paid for the shares as the shares allotted to members are issued annually based on the annual net premium income written with a qualifying supplier, and the shares allotted to employees and contractors are issued as a performance reward:
- members of the Group are financial and risk advisers and so are likely to have a greater understanding of investment. Further they are users of the Group's services and so generally have significant knowledge about the business and are more likely to treat shareholding as an incident of doing business with the Group and the means by which they can access the benefits of membership. In this way the Group is similar to a co-operative company:

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- the senior managers, and the contractors who provide personal services principally to the Group, who are eligible for shares, also have a special relationship with the Group and familiarity with its business:
  - in these circumstances the reduced-content evergreen prospectus, with provision of alternative supplementary information including the directors' statements about any material adverse changes to trading and profitability, asset value, and ability to pay liabilities, the provision of updated financial statements with any prospectus requested, the additional information in the annual report, and the information in the investment statement and prospectus about the procedure for sale of shares, requires the provision of sufficient information disclosure in a cost effective manner that is appropriate for the prospective investors. FMA is satisfied that this information is sufficient to avoid any detriment to those prospective investors:
  - FMA is also satisfied that the extent of the exemptions are not broader than what is reasonable necessary to address the matters that gave rise to the exemptions because the exemptions only apply to shares of NPE Limited offered to persons using services of TNP Services Limited, and senior employees and contractors of the Group, and only provide exemptions to the extent appropriate to reduce regulatory compliance costs while requiring the provision of relevant information in an appropriate alternative manner.
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