



FINANCIAL MARKETS AUTHORITY

TE MANA TATAI HOKOHOKO - NEW ZEALAND

## Securities Act (Dental Corporation Holdings Limited and Bupa Dental Corporation Limited) 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

- Title**

This notice is the Securities Act (Dental Corporation Holdings Limited and Bupa Dental Corporation Limited) Exemption Notice 2013.
- Commencement**

This notice comes into force on 1 March 2013.
- Revocation**

This notice is revoked on the close of 30 September 2017.
- Interpretation**
  - In this notice, unless the context otherwise requires, —  
**Act** means the Securities Act 1978  
**approval meetings** means the meetings of DCH shareholders that are to be held to consider and vote on whether to agree to the arrangement  
**arrangement** means the scheme of arrangement relating to the proposal to be voted on at the approval meetings  
**ASIC** means the Australian Securities and Investments Commission

**Bupa** means Bupa Dental Corporation Limited, a company registered in Victoria, Australia

**Bupa Finance Plc** means Bupa Finance Plc, a company incorporated in England and Wales

**Corporations Act** means the Corporations Act 2001 (Aust)

**Corporations Regulations** means the Corporations Regulations 2001 (Aust)

**Court** means the Supreme Court of Victoria, Australia

**DCH** means Dental Corporation Holdings Limited, a company registered in Victoria, Australia

**DCH shares** means the ordinary shares of DCH

**DCH shareholders** means holders of DCH shares

**effective date** means the date that an order of the Court made under section 411(4)(b) of the Corporations Act is lodged with ASIC, and upon being so lodged, takes effect, or is taken to have taken effect, or such earlier date as the Court determines and specifies in the order as the date on which that order has effect

**implementation date** means 7pm (Australian Eastern Standard Time) on the second business day after the effective date or such other time and date as set out in the explanatory booklet

**proposal** means the acquisition by Bupa from DCH shareholders of all of the DCH shares on issue at the implementation date in exchange for the agreement by Bupa to pay compensation (including the specified securities to certain DCH shareholders)

**Regulations** means the Securities Regulations 2009

**explanatory booklet** means the explanatory booklet prepared by DCH in accordance with the Corporations Act and Corporations Regulations and including the information prescribed in clauses 6(f) and 6(g)

**specified securities** means the securities proposed to be issued by Bupa to certain DCH shareholders under the arrangement, which securities carry the right to the additional earn out scheme consideration category 2 offered, and defined, in the explanatory booklet

- (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

DCH and Bupa, and every person acting on behalf of either or both of them, are exempted from:

- (a) section 33(2) and (3) of the Act; and
- (b) section 37 of the Act; and

- (c) section 37A of the Act; and
- (d) section 51 to 54 of the Act; and
- (e) the Regulations (except regulation 23)

in respect of the specified securities offered in accordance with the arrangement.

## **6 Conditions of exemptions in clause 5**

The exemptions in clause 5 are subject to the conditions that—

- (a) the proposal must proceed by way of the arrangement approved by the Court under Part 5.1 of the Corporations Act;
- (b) the offer and allotment of the specified securities must comply with the laws of Australia;
- (c) it is a term of the offer that subject to clause 7, Bupa must send, without fee, to holders of the specified securities, within 5 working days after receiving a request for financial information about the specified securities or a request for financial statements:
  - (i) a copy of its most recent published financial statements; and
  - (ii) the most recent published financial statements of Bupa Finance Plc;
- (d) it is a term of the offer that Bupa and DCH have each submitted to the non-exclusive jurisdiction of the courts of Victoria, Australia;
- (e) the explanatory booklet is distributed to DCH shareholders entitled to receive notice of the approval meetings, together with the notice of the approval meetings;
- (f) the explanatory booklet includes particulars of all matters that are material to a DCH shareholder making a decision on whether to approve the proposal; and
- (g) without limiting (f) above, the explanatory booklet includes, or has attached, the following:
  - (i) the terms of the specified securities;
  - (ii) the purpose and effect of the proposal;
  - (iii) information prescribed by the Corporations Act or the Corporations Regulations;
  - (iv) the steps necessary to bring the proposal into effect;
  - (v) a statement as to why the directors of DCH recommend that DCH shareholders vote in favour of the proposal;



- (vi) a summary of the material advantages, and material disadvantages of the proposal, and the risks associated with the specified securities;
- (vii) a copy of the latest published financial statements of Bupa Finance Plc;
- (viii) in respect of each of DCH and Bupa, the full name and address in New Zealand of 1 or more persons resident or incorporated in New Zealand who are authorised to accept service at that address of documents on its behalf;
- (ix) an opinion by an independent expert about whether the proposal is in the best interest of DCH shareholders and a statement of the relevant qualifications of the independent expert giving the opinion; and
- (x) a prominent statement at the front of the explanatory booklet to the following effect:

“Important notice - Dental Corporation Shareholders resident in New Zealand”

- A The Additional Earn Out Scheme Consideration Category 2 offered under the Scheme qualifies as a "security" under the Securities Act 1978 (NZ). The offer of Additional Earn Out Scheme Consideration Category 2 to New Zealand resident Scheme Shareholders Category 2 is made in reliance on an exemption granted by the Financial Markets Authority from the usual New Zealand securities law requirements to register a New Zealand prospectus and distribute a New Zealand investment statement in relation to securities offered to the public in New Zealand.
- B The Scheme and the content of this explanatory booklet are principally governed by Australian law rather than New Zealand law. In the main, the Corporations Act 2001 and Regulations (Australia) set out how the Scheme must be implemented.
- C The rights, remedies, and compensation arrangements available to New Zealand investors in Australian securities may differ from the rights, remedies, and compensation arrangements for New Zealand securities.
- D Both the Australian and New Zealand securities regulators have enforcement responsibilities in relation to this Scheme. If you need to make a

complaint about this Scheme, please contact the Financial Markets Authority, Wellington, New Zealand. The Australian and New Zealand regulators will work together to settle your complaint.

- E The taxation treatment of Australian securities may be different from the taxation treatment for New Zealand securities.
- F If you are uncertain about whether this investment is appropriate for you, you should seek the advice of an appropriately qualified financial adviser.
- G The offer may involve a currency exchange risk. The currency for the Additional Earn Out Scheme Consideration Category 2 is Australian dollars not New Zealand dollars. The value of the Additional Earn Out Scheme Consideration Category 2 will go up or down according to changes in the exchange rate between Australian dollars and New Zealand dollars. These changes may be significant.
- H You may incur significant fees in having the funds credited to a bank account in New Zealand in New Zealand dollars.

## **7 Request for financial statements**

Bupa is not required to send the financial statements specified in clause 6(c)(i) and (ii) if, after receiving a request for financial information about the specified securities or a request for financial statements, Bupa advises the relevant holder of the specified securities where these financial statements can be accessed on the internet and the relevant holder of the specified securities confirms that they do not require a copy to be sent to them.

Dated at Wellington this 26<sup>th</sup> day of February 2013



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Sue Brown  
Head of Primary Regulatory Operations  
Financial Markets Authority

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## Statement of reasons

This notice, which comes into force on 1 March 2013 and expires on 30 September 2017, exempts Dental Corporation Holdings Limited (DCH) and BUPA Dental Corporation Limited (BDCL), from the prospectus, investment statement, trustee and statutory supervisor, register, accounting record and securities certificates requirements of New Zealand securities law in relation to an offer of securities to holders of shares in DCH. The securities are rights to additional earn out payments offered as part of the consideration in a proposal for BDCL to acquire control of DCH from its existing shareholders (the Proposal). The Proposal will be implemented under a scheme of arrangement.

FMA considers that it is appropriate to grant the exemption because -

- (a) the offer is limited to existing shareholders of Australian company, DCH. Only 0.85% of the shareholders (18 shareholders) are New Zealand resident. The offer is made in accordance with the laws of Australia and particularly pursuant to a scheme of arrangement under the Corporations Act 2001 (Aust). In order to comply with the requirements of the scheme of arrangement and Corporations Act, a process must be followed that addresses shareholders' interests including that shareholders must be provided with an explanatory booklet containing information that is relevant to evaluating the securities and which is approved by ASIC and by the Supreme Court of Victoria, Australia (Explanatory Booklet):
- (b) conditions of the exemption also require that it is a term of the offer that the offer proceed in accordance with the laws of Australia and the scheme of arrangement, and that investors receive all material information, including an expert report, in the Explanatory Booklet to enable them to make a decision on the Proposal:
- (c) further the Explanatory Booklet will be an advertisement under the Act and therefore prohibited from containing untrue or misleading information about a material particular:
- (d) the exemptions from the requirements relating to the trustee and statutory supervisor, register, accounting records, and securities certificates recognise the protection for investors under Australian law is comparable to that under New Zealand law.

In all of these circumstances FMA does not consider that the exemption will cause significant detriment to subscribers for the securities who are members of the public in New Zealand, nor that the exemptions are broader than reasonably necessary to address the matters that gave rise to the exemptions.

