

## Financial Markets Conduct (Trustpower Group) Exemption Notice 2016

Pursuant to section 556 of the Financial Markets Conduct Act 2013, the Financial Markets Authority, being satisfied of the matters set out in section 557 of that Act, gives the following notice.

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### Notice

#### 1 Title

This notice is the Financial Markets Conduct (Trustpower Group) Exemption Notice 2016.

#### 2 Commencement

This notice comes into force on 3 June 2016.

#### 3 Revocation

This notice is revoked on the close of 31 December 2016.

#### 4 Interpretation

(1) In this notice, unless the context otherwise requires,—

**Act** means the Financial Markets Conduct Act 2013

**approval meeting** means the meeting of Trustpower shareholders that is to be held to consider and vote, by way of special resolution, on whether to approve the arrangement

**arrangement** means the scheme of arrangement relating to the proposal, ordered by the Court under Part 15 of the Companies Act 1993 and to be voted on at the approval meeting

**Court** means the High Court of New Zealand

**NZX Main Board** means the main equities market operated by NZX Limited as a licensed market

**proposal** means the restructure of the business of Trustpower and its subsidiaries involving:

- (a) all assets and liabilities of Trustpower being transferred to TPW Core and its subsidiaries, and TANZL and its subsidiaries, as the case may be; and
- (b) Trustpower being placed into liquidation; and
- (c) Trustpower shareholders receiving an in specie distribution of TPW Core shares and TANZL shares equal to the number of shares that that Trustpower shareholder holds in Trustpower; and
- (d) the TPW Core shares and TANZL shares being quoted on the NZX Main Board

**record date** means the date identified as such by Trustpower and announced through the NZX Main Board

**Regulations** means the Financial Markets Conduct Regulations 2014

**scheme booklet** means the scheme booklet prepared by Trustpower in respect of the arrangement and containing the information prescribed by clauses 6(e) and 6(f)

**specified financial products** means the TPW Core shares and the TANZL shares

**Takeovers Panel** means the Takeovers Panel established pursuant to the Takeovers Act 1993

**TANZL** means Trustpower Australia (New Zealand) Limited

**TANZL shares** means fully paid ordinary shares in TANZL

**TPW Core** means Bay Energy Limited

**TPW Core shares** means fully paid ordinary shares in TPW Core

**Trustpower** means Trustpower Limited

**Trustpower shareholders** means all registered holders of shares in Trustpower.

- (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 Part 3 of the Act

Trustpower, TPW Core and TANZL are exempted from Part 3 of the Act in respect of offers of specified financial products made to Trustpower shareholders 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 proceeds by way of a scheme of arrangement approved by the Court under Part 15 of the Companies Act 1993; and
- (b) it is a term of the offer that immediately following the implementation of the arrangement only Trustpower shareholders will be holders of TPW Core shares and TANZL shares and, in each case, in the same proportion as their shareholding in Trustpower immediately preceding the implementation of the arrangement; and
- (c) it is a term of the offer that the assets and businesses of TPW Core and TANZL, when taken as a whole, immediately following the implementation of the arrangement are materially the same as the assets and business of Trustpower immediately prior to the implementation of the arrangement (except that the TPW Core shares and TANZL shares are distributed in specie to the Trustpower shareholders and cease to be held by Trustpower); and

- (d) the scheme booklet is distributed to all Trustpower shareholders as at the record date together with the notice of meeting for the approval meeting giving Trustpower shareholders not less than 10 working days' notice of the approval meeting at which Trustpower shareholders will vote on the proposal; and
- (e) the scheme booklet includes particulars of all matters that, to the knowledge of the directors of Trustpower after making all inquiries that are reasonable in the circumstances, are material to a Trustpower shareholder making a decision on whether to approve the proposal; and
- (f) without limiting (e) above, the scheme booklet includes the following:
  - (i) a description of the rights attached to TPW Core shares and TANZL shares:
  - (ii) the purpose and effect of the proposal:
  - (iii) the steps necessary to bring the proposal into effect:
  - (iv) a statement as to why the directors of Trustpower believe the proposal is in the best interests of Trustpower shareholders:
  - (v) a summary of the material advantages and disadvantages of the proposal:
  - (vi) a summary of the costs of the proposal:
  - (vii) a statement of the material differences (if any) between the rights of shareholders under the constitution of Trustpower immediately prior to the implementation of the proposal and the rights of shareholders under the constitutions of both TPW Core and TANZL immediately following the implementation of the proposal:
  - (viii) the name and address of every person who will be a director of each of TPW Core and TANZL immediately following implementation of the proposal:
  - (ix) particulars of any material New Zealand taxation liabilities of Trustpower shareholders caused by the change of shareholding resulting from the implementation of the proposal:
  - (x) particulars of any material differences in the New Zealand taxation obligations of shareholders in holding, or disposing of, Trustpower shares compared to the New Zealand taxation obligations of shareholders in holding, or disposing of, TPW Core shares and TANZL shares: and
- (g) when the scheme booklet is distributed to Trustpower shareholders, it includes or is accompanied by a report from an independent expert approved by the Takeovers Panel on the merits of the proposal and a statement of the relevant qualifications of the independent expert giving the report.

Dated at Wellington this 20<sup>th</sup> day of May 2016



Garth Stanish  
Director of Capital Markets  
Financial Markets Authority

## Statement of reasons

This notice comes into force on 3 June 2016 and is revoked on the close of 31 December 2016. This notice exempts Trustpower Limited (**Trustpower**), Bay Energy Limited (**TPW Core**), and Trustpower Australia (New Zealand) Limited (**TANZL**) subject to conditions, from Part 3 (Disclosure of offers of financial products) of the Financial Markets Conduct Act 2013 (**Act**), in relation to an offer of financial products in TPW Core and TANZL to Trustpower shareholders to implement a restructure of Trustpower and its subsidiaries under a proposed scheme of arrangement pursuant to Part 15 of the Companies Act 1993. This scheme of arrangement involves Trustpower demerging into TPW Core and TANZL, with Trustpower's existing shareholders receiving an *in specie* distribution of shares in each of TPW Core and TANZL (**Arrangement**).

The Financial Markets Authority (**FMA**), after satisfying itself as to the matters set out in section 557 of the Act, considers it appropriate to grant these exemptions because—

- Trustpower's shareholders already have economic exposure to the assets that are proposed to be transferred to TPW Core and TANZL (because such assets are currently held by Trustpower) and the Arrangement effectively involves shareholders continuing their interest in the same assets, in the same proportions, through a different ownership structure. The Arrangement is limited to Trustpower shareholders and therefore to persons who are already familiar with the assets and business proposed to be held by TPW Core and TANZL:
- it is a condition of the exemption that the Arrangement is carried out by way of a court approved scheme of arrangement and as a result, Trustpower's shareholders will be able to vote on the proposed Arrangement. Trustpower's shareholders must be invited to a meeting to vote whether to approve the Arrangement to allow it to proceed, and the scheme documents, including a scheme booklet, will contain specific information in relation to the Arrangement. It is also a condition of the exemption that Trustpower's shareholders receive all material information in the scheme booklet to enable them to make an informed decision in relation to the proposed Arrangement:
- Part 3 of the Act and the Financial Market Conduct Regulations 2014 (**Regulations**) focus on providing information about the financial products being offered including the assets and business of the issuer and so would only require information about the shares being offered in TPW Core and TANZL. However, in these circumstances Trustpower's shareholders require information about the Arrangement including its effects, in order to decide whether or not to approve it. Accordingly, the nature of the information Trustpower's shareholders require to assess the offers of shares in TPW Core and TANZL is different from that prescribed by the Act and Regulations and it would be unduly onerous to Trustpower, TPW Core and TANZL to prepare product disclosure statements and register entries in addition to the scheme documents:
- Trustpower, TPW Core and TANZL will still be subject to the fair dealing provisions of Part 2 of the Act with respect to the offer of financial products, and therefore Trustpower's shareholders will have protection against misleading or deceptive information being included in the scheme booklet:
- the Arrangement process is overseen by the High Court which will need to be satisfied that the scheme documents (including the scheme booklet) include sufficient information for a Trustpower shareholder to make an informed decision as to how to vote on the matter:
- as such, the FMA is satisfied that the exemption is desirable in order to promote the purposes of the Act, specifically to provide for timely, accurate and understandable information to be provided to Trustpower shareholders to assist them to make decisions relating to the proposed Arrangement, and by avoiding unnecessary compliance costs:

- in the circumstances that the exemption is limited to the offer of financial products to existing Trustpower shareholders made in the context of the Arrangement, and their key impact is to provide relief from the requirement to provide information about TPW Core and TANZL which is not material to those shareholders' decision on whether to approve the proposed Arrangement, the FMA is satisfied that the exemption is not broader than reasonably necessary to address the matters that gave rise to the exemption.