



Takeovers Code (Catalist Public Market Issuers) Exemption Notice 2021

Pursuant to section 45 of the Takeovers Act 1993, the Takeovers Panel, being satisfied of the matters set out in section 45(6) of that Act, gives the following notice.

Contents

		Page
1	Title	1
2	Commencement	1
3	Revocation	1
4	Interpretation	1
5	Exemption from rule 6(1) of Code	2
6	Conditions of exemption	2
7	Requirements for disclosure on relevant Internet page	4
8	Disclosure breach in relation to particular person does not effect other persons	5

Notice

1 Title

This notice is the Takeovers Code (Catalist Public Market Issuers) Exemption Notice 2021.

2 Commencement

This notice comes into force on 28 June 2021.

3 Revocation

This notice is revoked on the close of 28 June 2026.

4 Interpretation

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

Act means the Takeovers Act 1993

alternative disclosure provisions has the same meaning as in regulation 3 of the Financial Markets Conduct (Catalist Public Market) Regulations 2021

auction, in relation to an exempt issuer, means a process, lasting for a defined period of time, in which quoted financial products of the issuer are traded on the Catalist Public Market in accordance with the market rules for that market

Catalist Public Market has the same meaning as in regulation 3 of the Financial Markets Conduct (Catalist Public Market) Regulations 2021

Code means the Takeovers Code under the Act

exempt issuer means a company—

- (a) that is a code company under paragraph (a) or (b) of the definition of that term in section 2A(1) of the Act (which relate to listed issuers) because it has entered into a listing agreement relating to the Catalist Public Market; and
- (b) in relation to which either or both of the following apply:
 - (i) the company does not have 50 or more shareholders and 50 or more share parcels:
 - (ii) the company is not at least medium-sized (within the meaning of section 2A(4) of the Act)

material information has the same meaning as in section 231 of the Financial Markets Conduct Act 2013

relevant Internet page, in relation to an auction, means the page of the Catalist Public Market Internet site that relates to the auction

relevant transaction means an acquisition, an allotment, or a buyback of voting securities of an exempt issuer through an auction.

- (2) In this notice, a reference to a person increasing voting control is a reference to the person becoming the holder or controller of an increased percentage of voting rights in an exempt issuer.
- (3) Any term or expression that is defined in the Act or the Code or the Financial Markets Conduct Act 2013 and used, but not defined, in this notice has the same meaning as in the Act, the Code, or the Financial Markets Conduct Act 2013.

5 Exemption from rule 6(1) of Code

A person (A) is exempted from rule 6(1) of the Code in relation to any increase in A's voting control in an exempt issuer as a result of a relevant transaction.

6 Conditions of exemption

- (1) The exemption in clause 5, in relation to an exempt issuer and a relevant transaction, is subject to the conditions that—
 - (a) the issuer was not a code company immediately before it became a listed issuer on the Catalist Public Market; and

- (b) before the relevant transaction, the board of the issuer (the **board**) has resolved—
 - (i) to opt out of the Code in respect of the relevant transaction; and
 - (ii) that, in its opinion, it is in the best interests of the issuer to do so; and
 - (c) the resolution referred to in paragraph (b) was passed, or repeated, no more than 18 months before the relevant transaction; and
 - (d) the board has not ceased to have the opinion referred to in paragraph (b)(ii) at any time before the completion of the relevant transaction; and
 - (e) the issuer has notified all material information no later than the start of, and during, the auction in accordance with the alternative disclosure provisions if it has information that those alternative disclosure provisions require it to notify; and
 - (f) the issuer has disclosed, in relation to the relevant transaction, information that complies with clause 7 on the relevant Internet page at all times during the period that—
 - (i) starts no later than 24 hours before the start of the auction; and
 - (ii) ends no earlier than the completion of the relevant transaction.
- (2) Subclause (1)(f) is subject to clause 8.
- (3) If a person (A) increases their voting control in reliance on clause 5, the exemption in clause 5 is, in respect of A, subject to the further condition that—
- (a) the following information was disclosed to the exempt issuer at least 3 working days before the start of the auction:
 - (i) A's name and the name of each associate of A that holds or controls voting rights in the issuer;
 - (ii) the number of voting rights in the issuer held or controlled by A;
 - (iii) the number of voting rights in the issuer held or controlled by each of those associates;
 - (iv) the aggregate number of voting rights in the issuer held or controlled by A and those associates;
 - (v) the percentage of voting rights in the issuer held or controlled by A;
 - (vi) the percentage of voting rights in the issuer held or controlled by each of those associates;
 - (vii) the aggregate percentage of voting rights in the issuer held or controlled by A and those associates; and
 - (b) there is no change to the details disclosed in accordance with paragraph (a) between the date of that disclosure and the start of the auction.

7 Requirements for disclosure on relevant Internet page

- (1) For the purposes of clause 6(1)(f), the information to be disclosed on the relevant Internet page must—
 - (a) contain the statements set out in subclause (2); and
 - (b) set out the board’s reasons for the opinion referred to in subclause (2)(a); and
 - (c) set out the information that has been disclosed to the exempt issuer under clause 6(3); and
 - (d) identify each director who did not vote in favour of the resolution referred to in clause 6(1)(b) and set out the director’s reasons for not doing so.
- (2) The statements are statements to the effect that,—
 - (a) in the board’s opinion, it is in the exempt issuer’s best interests to opt out of compliance with the Code in relation to any change of ownership of the issuer’s voting securities that occurs as a result of the auction; and
 - (b) the effect of the opt out is that—
 - (i) rule 6(1) of the Code will not apply to the relevant transaction; and
 - (ii) accordingly, any person will not be restricted from increasing their holding or control (including by association) of the voting rights of the exempt issuer above the 20% threshold contemplated by rule 6(1) of the Code; and
 - (iii) shareholders will not receive an independent adviser’s report on the merits of the relevant transaction; and
 - (iv) shareholders will not have the opportunity to vote for or against the relevant transaction; and
 - (c) holders of the exempt issuer’s voting securities may, however, view—
 - (i) updated information about certain changes in ownership by directors, senior managers, and people who have a substantial holding in the issuer, as required under subparts 5 and 6 of Part 5 of the Financial Markets Conduct Act 2013; and
 - (ii) on the relevant Internet page, information about the voting rights that are held or controlled by persons who may increase their voting control in the exempt issuer in reliance on clause 5 of the Takeovers Code (Catalist Public Market Issuers) Exemption Notice 2021; and
 - (d) all necessary information has been included in the disclosure information released on the Catalist Public Market Internet site to comply with the conditions of the Takeovers Code (Catalist Public Market Issuers) Exemption Notice 2021.

8 Disclosure breach in relation to particular person does not effect other persons

- (1) This clause applies if—
 - (a) a person (**A**) and another person (**B**) each increase their voting control in reliance on clause 5; and
 - (b) A and B are not associates; and
 - (c) the information referred to in clause 6(3) in relation to A and its associates is disclosed under clause 7(1)(c); but
 - (d) the information referred to in clause 6(3) in relation to B or any of its associates is not disclosed under clause 7(1)(c).
- (2) The fact that the information in relation to B or any of its associates is not disclosed does not prevent the exemption in clause 5 from continuing to apply in relation to A.

Dated at Auckland this 20th day of June 2021.

R A Coupe,
Chairperson.

Statement of reasons

This notice applies to acts or omissions occurring on or after 28 June 2021 and is revoked on 28 June 2026.

The Takeovers Panel (the **Panel**) has granted an exemption from rule 6(1) of the Takeovers Code (the **Code**) in respect of allotments, acquisitions, and buybacks relating to certain specified companies. The companies affected by the exemption are companies that—

- are listed on the licensed stepping-stone market operated by Catalist Markets Limited; and
- were not code companies immediately before being listed on that market; and
- either do not have 50 or more shareholders and 50 or more share parcels or are small companies with total assets of no more than \$30 million and total revenue of no more than \$15 million.

Catalist Markets Limited may be granted a licence to operate a market with a reduced regulatory burden that is targeted at small and growth issuers because of the difficulties faced by those issuers to access capital. The purpose of the exemption granted by the Panel is to lower disproportionate cost barriers to capital raising by those companies. Those costs include the costs of holding a shareholders' meeting to approve an

acquisition under rule 7(c) of the Code or an allotment under rule 7(d) of the Code, obtaining an independent adviser's report, and obtaining legal advice to facilitate the process.

The effect of the exemption is to allow the specified companies to opt out of Code compliance. The exemption applies to share allotments, share acquisitions, and share buybacks. The exemption applies only if the company meets 4 main requirements. First, the company must not have been a code company immediately before becoming listed on the Catalist Public Market. Second, the company's board must resolve that, in its opinion, opting out of the Code is in the best interests of the company. Third, this resolution must be repeated at least every 18 months. Fourth, the company must disclose details about its opt out from the Code.

The Panel considers that it is appropriate and consistent with the objectives of the Code to grant the exemption from the Code because—

- the exemption reduces compliance costs for some Code-regulated transactions for small listed companies that fall within the definition of exempt issuer in this notice; and
- an alternative stepping-stone market will be advantageous for New Zealand capital markets more broadly; and
- the exemption maintains a proper relationship between the costs of compliance with the Code and the benefits resulting from it by ensuring that shareholders have adequate disclosure before each auction, but at a lower cost to the company; and
- the Catalist Public Market will provide a well-regulated, licensed stepping-stone market that will provide market participants with an alternative to traditional or unlicensed exchanges.

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*: 24 June 2021.
This notice is administered by the Takeovers Panel.