



# Takeovers Code Approval Amendment Regulations 2007

Anand Satyanand, Governor-General

## Order in Council

At Wellington this 21st day of May 2007

Present:

His Excellency the Governor-General in Council

Pursuant to section 19(1) of the Takeovers Act 1993, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council and on the recommendation of the Minister formulated and made in accordance with Part 2 of the Takeovers Act 1993, makes the following regulations.

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## Regulations

### 1 Title

These regulations are the Takeovers Code Approval Amendment Regulations 2007.

### 2 Commencement

These regulations come into force on 1 July 2007.

### 3 Takeovers Code amended

These regulations amend the Takeovers Code (the **code**) set out in the Schedule of the Takeovers Code Approval Order 2000.

### 4 Rule 3: Interpretation

- (1) Rule 3(1) is amended by inserting the following definition in its appropriate alphabetical order:

“**listed**, in relation to a company or other entity, means a company or entity that is a party to a listing agreement with a registered exchange”.

- (2) Rule 3(1) is amended by revoking the definition of **offer period** and substituting the following definition:

“**offer period** means the period referred to in rules 24 to 24B”.

- (3) Rule 3(1) is amended by revoking the definition of **record date** and substituting the following definition:

“**record date**, in relation to an offer, means the latest date specified by the offeror under rule 43A(1)”.

### 5 Rule 7: Exceptions to fundamental rule

- (1) Rule 7(a) is amended by omitting “and 2” and substituting “to 3”.

- (2) Rule 7(b) is amended by omitting “and 2” and substituting “to 3”.

- (3) Rule 7(c) is amended by—

- (a) omitting “the person” and substituting “a person”; and  
(b) omitting “19” and substituting “19A”.

- (4) Rule 7(d) is amended by—

- (a) omitting “the person” and substituting “a person”; and

- (b) omitting “19” and substituting “19A”.
- (5) Rule 7(e) is amended by revoking subparagraph (ii) and substituting the following subparagraph:
- “(ii) the resulting percentage of the total voting rights in the code company that is held or controlled by the person does not exceed by more than 5 the lowest percentage of the total voting rights in the code company that was held or controlled by the person in the 12-month period ending on, and inclusive of, the date of the increase:”.

**6 Rule 10: When offeror does not hold or control more than 50% of voting rights**

- (1) Rule 10(1) is amended by omitting “for voting securities that, when taken together with voting securities already held or controlled by the offeror, confer—” and substituting “1 only of the following:”.
- (2) Rule 10(1) is amended by revoking paragraphs (a) and (b) and substituting the following paragraphs:
- “(a) a partial offer for a specified percentage of the voting securities of each class not already held or controlled by the offeror that, when taken together with the voting securities already held or controlled by the offeror, confers more than 50% of the voting rights in the target company; or
- “(b) a partial offer for a specified percentage of the voting securities of each class not already held or controlled by the offeror that, when taken together with the voting securities already held or controlled by the offeror, confers 50% or less of the voting rights in the target company if approval is obtained in accordance with the following provisions:
- “(i) the takeover notice and the offer must include a statement that approval is sought under rule 10 of the Takeovers Code and that the offer is conditional on approval being obtained:
- “(ii) the offer must be accompanied by a separate approval document providing for the offeree to approve or object to the offeror making an offer

for 50% or less of the voting rights in the target company:

- “(iii) approval under this rule is obtained if the offerees so approving hold more voting rights in the target company than are held by offerees so objecting:
- “(iv) for the purposes of subparagraph (iii), voting rights held by the offeror and its associates must be disregarded:
- “(v) for an approval or objection to be valid for the purposes of this rule, the completed approval document must be received by the target company or its agent before the end of the offer period.”.

#### **7 Rule 15: Notice of meeting: acquisition of voting securities**

Rule 15(b) is amended by adding the following subparagraph:

- “(iv) the aggregate of the percentages of all voting securities that will be held or controlled by the person acquiring the voting securities and by that person’s associates after completion of the acquisition; and”.

#### **8 Rule 16: Notice of meeting: allotment of voting securities**

Rule 16(b) is amended by adding the following subparagraph:

- “(iv) the aggregate of the percentages of all voting securities that will be held or controlled by the person to whom the voting securities are being allotted and by that person’s associates after completion of the allotment; and”.

#### **9 New rule 19A inserted**

The following heading and rule are inserted after rule 19:

##### *“Documents for Panel*

#### **“19A Documents for Panel in respect of shareholder meetings**

- “(1) A code company that sends a notice of meeting for the purposes of rule 15 or 16 must at the same time send to the Panel, in hard copy and (if possible) electronic form, a copy of that notice and any document accompanying it that relates to the meeting to be held for the purposes of rule 7(c) or 7(d).

“(2) A person who publishes or sends to any holder of voting securities, in respect of a meeting held for the purposes of rule 7(c) or (d), a statement or information that is not required to be published or sent by the rules of this code must at the same time send to the Panel, in hard copy and (if possible) in electronic form, a copy of that statement or information.”

## **10 Rule 22: Independent adviser’s report on fairness between classes**

(1) Rule 22 is amended by revoking subclause (1) and substituting the following subclause:

“(1) An offeror must obtain—

“(a) a report from an independent adviser if rule 8(3) or 8(4) or 9(5) applies:

“(b) a report or an amended report from an independent adviser if rule 44(3) applies.”

(2) Rule 22(2) is amended by omitting “the relevant rule specified in subclause (1)” and substituting “rule 8(3) or 8(4) or 9(5), as the case may be”.

(3) Rule 22(3) is amended by omitting “the relevant rule specified in subclause (1)” and substituting “rule 8(3) or 8(4) or 9(5), as the case may be”.

(4) Rule 22 is amended by adding the following subclauses after subclause (3):

“(4) The report must contain the information specified in Schedule 3.

“(5) The offeror must—

“(a) send the report referred to in subclause (1)(a) to the prospective target company at the same time that it sends the takeover notice:

“(b) send the report or amended report referred to in subclause (1)(b) to the prospective target company at the same time that it sends the notice of variation under rule 44(3)(b).”

## **11 Rule 24: Offer period**

Rule 24 is amended by revoking subclauses (3) and (4).

## 12 New rules 24A and 24B inserted

The following rules are inserted after rule 24:

### “24A Extension of offer period

- “(1) The offer period may be extended by a variation of the offer, but, subject to subclause (2) and rule 24B, must not be extended beyond the maximum period.
- “(2) The Panel may extend the offer period by an order made under section 32(4)(d) of the Act, and the order may extend the offer period beyond the maximum period.
- “(3) The additional period for which an offer is extended under subclause (1) or (2) or rule 24B is deemed to be included in the offer period for the purposes of this code unless otherwise expressly provided.
- “(4) In this rule and in rules 24B and 25(3A), **maximum period** means the period of 90 days beginning with the date of the offer.

### “24B Extension of offer period in case of full offer conditional at outset as to level of acceptances

- “(1) This rule applies only to a full offer and only if—
  - “(a) the offer at its outset was subject to a condition or conditions as to a minimum level of acceptances; and
  - “(b) the condition or conditions have been satisfied or waived before the end of the offer period.
- “(2) The offer period in respect of an offer to which this rule applies may be extended beyond the maximum period by a period of up to 60 days beginning on the day on which the offer becomes unconditional as to a minimum level of acceptances.”

## 13 Rule 25: Conditions

- (1) Rule 25 is amended by revoking subclause (3) and substituting the following subclauses:
  - “(3) The specified date referred to in subclause (2) may be changed to a later specified date if the offer is varied under rule 27(e).
  - “(3A) The latest specified date referred to in subclause (2) or (3) must not be later than 14 days, or, if the acquisition requires statutory approval, 30 days, after the end of the offer period



(excluding any part of the offer period that is extended beyond the maximum period under rule 24B).”

- (2) Rule 25(4) is amended by omitting “subclause (3)” and substituting “subclause (3A)”.

#### **14 Rule 27: Permissible variations**

Rule 27 is amended by revoking paragraphs (c) and (d) and substituting the following paragraphs:

- “(c) to add to the offer a cash alternative (if the directors of the target company have given their prior written approval);
- “(d) to extend the offer period in accordance with rule 24A or 24B;
- “(e) if the offer period is extended, to vary the date that must be specified under rule 25(2), provided that the date is not varied by more than the period of time by which the offer period is extended.”

#### **15 Rule 28: Variation notice**

Rule 28 is amended by adding the following subclauses:

- “(3) If the offer is subject to conditions that have not been satisfied or waived and the variation extends the offer period, the notice referred to in subclause (1) must specify the date by which the offer is to become unconditional.
- “(4) In the case of a variation of a kind referred to in rule 31(2) or (3), the notice must—
- “(a) prominently set out the relevant rights and obligations of the offerees under rules 31(2) to (5), 32(2), and 33; and
- “(b) be accompanied by a form, for acceptance of the variation, that is consistent with the rights and obligations of the offerees referred to in paragraph (a); and
- “(c) be accompanied by any documents necessary to revest in the offeror any consideration that must be returned by the offeree.”

#### **16 Rule 29: Timing of variation**

Rule 29 is amended by revoking subclause (3) and substituting the following subclause:

- “(3) Subclause (1) does not apply in the case of a full offer if—
- “(a) the offer is varied only by—
    - “(i) extension of the offer period; or
    - “(ii) extension of the offer period and consequent change of the specified date referred to in rule 25(2); and
  - “(b) the offer is, or has become, unconditional as to level of acceptances.”

**17 Rule 30: Further reports required for certain variations**

- (1) Rule 30 is amended by revoking paragraph (b) and substituting the following paragraphs:
- “(b) the further report must contain the information specified in Schedule 3; and
  - “(c) unless subclause (2) applies, the further report must accompany the variation notice sent under rule 28(1); and
  - “(d) the variation notice must contain a statement as to how the consideration and terms of the offer, as varied, have been calculated so as to be fair and reasonable as between the classes of securities.”
- (2) Rule 30 is amended by adding the following subclauses as subclauses (2) to (4):
- “(2) If the variation notice will be sent under rule 28 before the target company statement is sent under rule 46(a)(ii), the offeror must send the further report to the target company and the Panel at the same time that the offeror sends the variation notice under rule 28.
  - “(3) If subclause (2) applies, the further report must accompany the target company statement that the target company sends under rule 46(a)(ii).
  - “(4) The further report must not be sent to offerees before the target company statement has been sent to offerees.”

**18 New rules 31 and 32 substituted**

Rules 31 and 32 are revoked and the following rules substituted:

**“31 Variation of consideration and consideration alternatives**

- “(1) If an offer does not contain alternative consideration options and a variation is made under rule 27(a) or 27(b), the additional consideration must be provided to every offeree who accepts the offer.
- “(2) If an offer contains alternative consideration options and a variation is made under rule 27(a) or 27(b), any offeree may accept the varied alternative or, if more than 1 alternative is varied, 1 of those varied alternatives.
- “(3) If a variation is made under rule 27(c), any offeree may accept that alternative.
- “(4) Subclauses (1) to (3) apply whether an offeree has accepted the offer before the variation or not.
- “(5) An offeree’s acceptance of a consideration alternative under subclause (2) or (3) is only valid if the offeree complies with rule 32(2).

**“32 Procedure on variation of consideration and consideration alternatives**

- “(1) If rule 31(1) applies after the consideration has been sent to offerees who have accepted the offer, the additional consideration must be sent, no later than 7 days after the date on which the offer is varied, to every offeree to whom the consideration under the offer was sent before the variation.
- “(2) If rule 31(2) or (3) applies after the consideration has been sent to offerees who have accepted the offer, and an offeree accepts a different consideration alternative, the acceptance by that offeree of a different consideration alternative is not valid unless the offeree repays or returns, with the form of acceptance of the different consideration alternative, the consideration already sent by the offeror and any documents necessary to revest the returned consideration in the offeror.”

**19 New rule 36 substituted**

Rule 36 is revoked and the following rule substituted:

**“36 Acquisitions**

- “(1) During the offer period, the offeror, any related company of the offeror, any person acting jointly or in concert with the offeror, or any of the directors of any of them, must not

- acquire any equity securities in the target company otherwise than under the offer unless—
- “(a) the offeror has made a full offer for cash, or a full offer with a cash alternative; and
  - “(b) the acquisition is made no later than 14 days before the end of the offer period; and
  - “(c) the acquisition is made only for cash; and
  - “(d) the acquisition of any equity securities will not result in the offeror and the offeror’s associates holding or controlling in total more than 20% of the voting rights in the target company (excluding any equity securities in respect of which the offeror has received acceptances of the offeror’s offer), unless the offer has become unconditional; and
  - “(e) notice is given under subclause (2) by the offeror.
- “(2) Notice of the acquisition of securities under subclause (1) must—
- “(a) be given no later than the day after the date of acquisition,—
    - “(i) if any of the offeror, any holding company of the offeror, or the target company is a listed company or entity, to the target company, the registered exchange, and the Panel; or
    - “(ii) if none of the offeror, any holding company of the offeror, or the target company is a listed company or entity, to the target company and the Panel; and
  - “(b) state, in respect of the date of acquisition of the securities,—
    - “(i) the aggregate number of securities, per class, acquired; and
    - “(ii) the weighted average price, per class, paid.”

## 20 Rule 41: Takeover notice

Rule 41 is amended by revoking subclause (2) and substituting the following subclauses:

- “(2) If the offer will include an offer of securities to which the Securities Act 1978 applies, the notice referred to in subclause (1) must be accompanied by a copy of every relevant document.

- “(3) In subclause (2), **every relevant document** means every document that must be registered or lodged with, or produced to, any of the following persons or bodies for the offer to comply with the Securities Act 1978 (including any exemption granted under the Securities Act 1978 or any mutual recognition scheme established under that Act) or with the laws of any overseas jurisdiction in which the offer of the securities is to be made:
- “(a) the Registrar of Companies (including any equivalent person or body in an overseas jurisdiction):
  - “(b) any regulatory body (including a regulator in an overseas jurisdiction):
  - “(c) any offeree of the securities.
- “(4) The notice may contain, or be accompanied by, any additional information that the directors of the offeror determine could affect the decision of the offerees to accept or reject the offer.”

## 21 New rule 41A inserted

The following rule is inserted after rule 41:

### “41A Offeror’s notification obligations when takeover notice sent

- “(1) If the target company is a listed company, the offeror must send (electronically, if possible) to the registered exchange a copy of the documents that the offeror is required to send under rule 41.
- “(2) The offeror must send the documents to the registered exchange at the same time that the offeror sends the documents under rule 41.
- “(3) The offeror must send (electronically, if possible and if requested) within 1 day of receipt of the request, free of charge, a copy of the takeover notice and any of the documents that accompanied it under rule 41 to any person who requests them.”

## 22 New rules 42 to 42B substituted

Rule 42 is revoked and the following rules substituted:

### “42 Target company’s notification obligations when takeover notice received

- “(1) If it is a listed company, the target company must, immediately on receipt of a takeover notice,—

- “(a) notify the registered exchange in writing that a takeover notice has been received; and
  - “(b) send (electronically, if possible) to the registered exchange a copy of the notice and the documents that accompanied it under rule 41.
- “(2) If it is not a listed company, the target company must, immediately on receipt of a takeover notice, do all that is reasonably practicable to ensure that every person to whom the offer will be made is given a notice in writing that states—
- “(a) that the target company has received a takeover notice; and
  - “(b) the identity of the offeror; and
  - “(c) the main terms and conditions of the proposed offer; and
  - “(d) that a copy of the notice and any of the documents that accompanied it under rule 41 are available from the target company and the offeror free of charge on request.
- “(3) The target company must send (electronically, if possible and if requested) within 1 day of receipt of the request, free of charge, a copy of the takeover notice and of any of the documents that accompanied it under rule 41 to any person who requests them.

**“42A Target company must give offeror class notice**

- “(1) In this rule, **class notice** means a written notice by the target company containing a description of,—
- “(a) in the case of a full offer, each class of its equity securities whether voting or non-voting; or
  - “(b) in the case of a partial offer, each class of its voting securities.
- “(2) Not later than 2 days after receiving a takeover notice, the target company must send the offeror a class notice.
- “(3) The class notice must contain sufficient information about each class of equity security (in the case of a full offer) or voting security (in the case of a partial offer) to enable—
- “(a) the offeror to formulate an offer; and
  - “(b) an independent adviser to provide a report under rule 22.

“(4) In subclause (3), **sufficient information** includes the terms of issue of each relevant class of security and the number of those securities on issue in each class, as at the date of the class notice.

**“42B Target company must send offeror copy of securities register**

Not later than 2 days after the record date, the target company must send to the offeror, in electronic form (or in such other form as the target company and the offeror may agree), a copy of the target company’s securities register relating to the securities to which the offer relates as at the record date.”

**23 New rules 43 to 43B substituted**

Rule 43 is revoked and the following rules substituted:

**“43 Who are offerees**

“(1) The offerees in respect of an offer are the persons shown as the holders of securities in the target company to which the offer relates on the securities register of the target company as at the record date.

“(2) Nothing in subclause (1) prevents the offeror from sending the offer to persons who acquire securities in the target company to which the offer relates after the record date.

**“43A Record date**

“(1) The offeror must send to the target company a notice in writing that specifies the record date for the purposes of the offer.

“(2) The record date must not be more than 10 days before the date of the offer.

“(3) The notice referred to in subclause (1) must be sent no later than 2 days before the record date.

“(4) Before the offeror has sent the offer to the offerees, the offeror may change the record date to a later record date by giving a further notice or notices under subclause (1), and in that case subclauses (2) and (3) apply to that notice or those notices as well.

**“43B When offer must be sent**

The offeror must send the offer to the offerees on a date that is—

- “(a) no later than 3 days after the date of the offer specified under rule 44(1)(c); and
- “(b) during the period beginning 14 days, and ending 30 days, after the takeover notice relating to the offer has been sent to the target company.”

**24 Rule 44: Offer document**

- (1) Rule 44(1) is amended by revoking paragraph (b) and substituting the following paragraph:
  - “(b) be on the same terms and conditions as those contained in or accompanying the takeover notice, except for—
    - “(i) conditions that have been satisfied or waived; and
    - “(ii) any variations to which the directors of the target company have given their prior written approval; and
    - “(iii) subject to subclause (3), any variation that extends the offer to an additional class or classes of security; and
    - “(iv) consequential amendments; and”.
- (2) Rule 44(1)(d) is amended by revoking subparagraphs (ii) and (iii) and substituting the following subparagraphs:
  - “(ii) any document required to accompany the takeover notice sent under rule 41(2) that is required by the Securities Act 1978 or any other applicable law to accompany an offer of securities; and
  - “(iii) any additional information contained in, or that accompanied, the takeover notice under rule 41(4); and
  - “(iv) a copy of the target company statement (if the target company statement has been given to the offeror under rule 46(a)(i)).”
- (3) Rule 44(2) is amended by omitting “41(2)” and substituting “41(4)”.
- (4) Rule 44 is amended by adding the following subclause:
  - “(3) The offer may be varied to extend the offer to an additional class or classes of security without the approval of the directors of the target company if—



- “(a) the class or classes were not included in the terms or conditions contained in or accompanying the takeover notice but were included in the class notice given under rule 42A; and
- “(b) the offeror has sent a notice of the variation referred to in subclause (1)(b)(iii) to the target company not less than 7 days before the date of the offer; and
- “(c) the offeror has obtained a report or an amended report under rule 22 if any of rules 8(3) or 8(4) or 9(5) apply in relation to the offer as varied under subclause (1)(b)(iii); and
- “(d) the notice of variation referred to in paragraph (b) is accompanied by a report or an amended report (as the case may be) under rule 22.”

## **25 New rule 47 substituted**

Rule 47 is revoked and the following rule substituted:

### **“47 Documents that must be sent to Panel or that Panel may require**

- “(1) A copy of a notice, statement, or other document that must be given or sent under rules 41 to 46 (excluding rule 42B) and rule 48 must at the same time be given or sent to the Panel in hard copy and (if possible) in electronic form.
- “(2) The notice, statement, or other document must be given or sent to the Panel by or on behalf of the person who is responsible for giving or sending it under the relevant rule.
- “(3) On request by the Panel the target company must send to the Panel a copy of the securities register that the target company must send to the offeror under rule 42B, and in that case the Panel’s copy must be in the same form as the offeror’s copy.
- “(4) An offeror or target company or person acting on behalf of any of them who, in relation to an offer, publishes or sends to any offeree any statement or information that is not required to be published or sent by the rules of this code must, at the same time that the statement or information is published or sent, also send a copy of it to the Panel in hard copy and (if possible) in electronic form.”

**26 New rule 49A inserted**

The following rule is inserted after rule 49:

**“49A Offeror must notify Panel, etc, of increases in acceptances of offer**

- “(1) The offeror must as soon as practicable notify the Panel and the target company in writing on each occasion when the total level of acceptances received for each class of equity securities subject to the offer increases by 1% or more of the total issued equity securities in each class in the target company.
- “(2) If the target company or the offeror or any holding company of the offeror is a listed company or entity, the offeror must provide the registered exchange with the same notification that is required under subclause (1).”

**27 New rule 54 substituted**

Rule 54 is revoked and the following rule substituted:

**“54 Acquisition notice**

- “(1) The dominant owner must send to the outstanding security holders a notice in writing (the **acquisition notice**) that complies with rule 55.
- “(2) If the dominant owner becomes the dominant owner by reason of acceptances of an offer (whether or not the dominant owner has also acquired equity securities under rule 36), the acquisition notice must be sent not later than 30 days after the end of the offer period.
- “(3) If subclause (2) does not apply, the acquisition notice must be sent not later than 30 days after the dominant owner becomes the dominant owner.
- “(4) A copy of the acquisition notice must be—
- “(a) sent immediately to the code company, the Panel, and (if the code company is a listed company) the registered exchange; and
  - “(b) delivered immediately to the Registrar of Companies for registration.”

**28 Rule 55: Contents of acquisition notice**

- (1) Rule 55 is amended by revoking paragraph (c) and substituting the following paragraphs:

- “(c) unless rule 56A applies, specify the consideration to be provided for the outstanding securities; and
- “(ca) if rule 56A applies, state—
  - “(i) the alternative consideration options; and
  - “(ii) the procedure for nominating an alternative consideration option; and
  - “(iii) what happens if an outstanding security holder does not nominate an alternative consideration option; and”.
- (2) Rule 55(f) is amended by inserting, before the words “be accompanied”, the words “subject to subclause (2),”.
- (3) Rule 55 is amended by adding the following subclause as subclause (2):
  - “(2) If rule 56A applies, the instrument of transfer must provide for the outstanding security holder to nominate an alternative consideration option.”

## **29 Rule 56: Dominant owner through acceptances of offer**

Rule 56 is amended by revoking subclause (3) and substituting the following subclause:

- “(3) In subclause (2), equity securities controlled by the dominant owner or held or controlled by associates of the dominant owner are not included for the purposes of calculating the following:
  - “(a) the acceptances of the offer;
  - “(b) the equity securities that were the subject of the offer.”

## **30 New rule 56A inserted**

The following rule is inserted after rule 56:

### **“56A Alternative consideration options**

- “(1) This rule applies if rule 56 applies and the offer provided for alternative consideration options.
- “(2) If the offer provided for alternative consideration options, an outstanding security holder may nominate 1 of those options as the consideration payable and the dominant owner must provide that consideration.
- “(3) If the offer provided for alternative consideration options with a default consideration, and an outstanding security holder

does not nominate 1 of the options, the dominant owner must provide the default consideration.

- “(4) If the offer provided for alternative consideration options without a default consideration, and an outstanding security holder does not nominate 1 of the options, the dominant owner must provide the consideration containing the greatest cash component.
- “(5) In this rule, **default consideration** means the consideration that was specified in the offer document to be payable if an accepting offeree did not nominate 1 of the alternative consideration options.”

### **31 Rule 57: Determination of consideration in other cases**

- (1) Rule 57 is amended by revoking subclause (1) and substituting the following subclauses:

“(1) If the consideration cannot be established under rule 56, the consideration specified in the acquisition notice—

“(a) must be a cash sum certified as fair and reasonable by an independent adviser; or

“(b) if a person becomes the dominant owner by reason of acceptances of an offer (whether or not the dominant owner has also acquired equity securities under rule 36) and the consideration under the offer was a cash sum or included a cash alternative, must be the same cash sum or cash alternative provided as consideration under the offer for equity securities of the same class.

“(1A) The consideration specified under subclause (1) is the consideration payable for the outstanding securities.”

- (2) Rule 57(2) is amended by omitting “(1)(b)” and substituting “(1A)”.

- (3) Rule 57 is amended by revoking subclause (5) and substituting the following subclauses:

“(5) On receipt of the independent adviser’s certificate required under subclause (1)(a), the dominant owner must send a copy of it free of charge—

“(a) immediately to the Panel and, if the target company is a listed company, to the registered exchange; and

“(b) on request to any other person within 1 day of receipt of the request.

- “(6) On receipt of the expert determination required under subclause (3), the dominant owner must send a copy of it free of charge—
- “(a) immediately to the Panel and, if the target company is a listed company, to the registered exchange; and
  - “(b) on request to any other person within 1 day of receipt of the request.”

**32 Rule 60: Payment of consideration to outstanding security holder**

Rule 60 is amended by revoking subclause (1) and substituting the following subclause:

- “(1) If an outstanding security holder returns to the dominant owner the documents referred to in rule 59, the dominant owner must, within 7 days after the dominant owner receives those documents, send to the outstanding security holder—
- “(a) the consideration specified in the acquisition notice; or
  - “(b) if rule 56A applies, the consideration that is payable under that rule.”

**33 Rule 61: Delivery of consideration to code company**

Rule 61(1) is amended by revoking paragraph (a) and substituting the following paragraph:

- “(a) deliver to the code company—
- “(i) the consideration specified in the acquisition notice; or
  - “(ii) if rule 56A applies, the consideration that is payable under that rule; and”.

**34 New heading to Schedule 1 substituted**

The heading to Schedule 1 is omitted and the following heading substituted: “**Information that must be contained in, or must accompany, takeover notice and offer document**”.

**35 New clause 4 of Schedule 1 substituted**

Schedule 1 is amended by revoking clause 4 and substituting the following clause:

**“4 Advice statement**

“A statement in the following form, to be set out in a prominent position at the front of the offer document:

“IMPORTANT

“If you are in doubt as to any aspect of this offer, you should consult your financial or legal adviser.

“If you have sold all your shares in [*name of target company*] to which this offer applies, you should immediately hand this offer document and the accompanying acceptance form to the purchaser or the agent (eg the broker) through whom the sale was made, to be passed to the purchaser.

“[*Name of target company*]'s target company statement, together with an independent adviser's report on the merits of this offer [and another independent adviser's report on the fairness and reasonableness of the consideration and terms of this offer as between classes of securities]\* either accompanies this offer or will be sent to you within 14 days and should be read in conjunction with this offer.

*\*omit if rule 22 report not required”.*

**36 Clause 6 of Schedule 1 amended**

- (1) Clause 6(1) of Schedule 1 is amended by omitting “The number” and substituting “A statement of the number”.
- (2) Clause 6(1) of Schedule 1 is amended by revoking paragraph (e) and substituting the following paragraph:

“(e) any other person holding or controlling 5% or more of the class, to the knowledge of the offeror”.
- (3) Clause 6 of Schedule 1 is amended by revoking subclause (2) and substituting the following subclause:

“(2) A statement that except for those persons who are specified in the statement made under subclause (1) as holding or controlling equity securities of the target company, no person referred to in clause 6(1)(a) to (d) holds or controls equity securities of the target company.”

**37 New clause 7 of Schedule 1 substituted**

Schedule 1 is amended by revoking clause 7 and substituting the following clause:

**“7 Trading in target company equity securities**

- “(1) If any of the persons referred to in clause 6(1)(a) to (d) has, during the 6-month period referred to in subclause (3), acquired or disposed of any equity securities of the target company, in respect of each such person—
- “(a) the total number and the designation of each class of the equity securities acquired or disposed of; and
  - “(b) in the case of a single transaction on any day to which this subclause applies, the number of securities, the consideration per security, and the date of the transaction; and
  - “(c) in the case of multiple transactions on any day to which this subclause applies, the total number of securities acquired or disposed of on that day, in each class, and the weighted average consideration per security per class.
- “(2) If no person referred to in clause 6(1)(a) to (d) has, during the 6-month period referred to in subclause (3), acquired or disposed of any equity securities of the target company, a statement to that effect.
- “(3) The 6-month period referred to in subclauses (1) and (2) is,—
- “(a) if the information is specified under rule 41, the 6-month period before the date of the takeover notice;
  - “(b) if the information is specified under rule 44, the 6-month period before the date of the offer.”

**38 Clause 13 of Schedule 1 revoked**

Schedule 1 is amended by revoking clause 13.

**39 New clause 17 of Schedule 1 substituted**

- (1) Schedule 1 is amended by revoking clause 17 and substituting the following clause:

**“17 Classes of securities**

- “(1) If the offer is for more than 1 class of securities,—
- “(a) a statement as to how the consideration and terms offered for each class of securities have been calculated to be fair and reasonable in compliance with rule 8(3) or 8(4) or 9(5), whichever applies; and
  - “(b) a statement that—

- “(i) the offeror has obtained a report by [*name of independent adviser*] concerning the fairness and reasonableness of the consideration and terms of the offer in relation to the different classes of securities; and
- “(ii) the report will be sent to offerees with the target company statement; and
- “(iii) the offer should be read in conjunction with the report and with the report obtained by the target company on the merits of the offer.
- “(2) If the offer is for only 1 class of securities, the following statement:
- No report is required under rule 22 of the Takeovers Code (which, if the offer is for more than 1 class of securities, requires a report by an independent adviser on the fairness and reasonableness of the consideration and terms of the offer as between different classes of securities).”
- 40 Clause 18 of Schedule 1 revoked**  
Schedule 1 is amended by revoking clause 18.
- 41 Clause 19 of Schedule 1 amended**  
Clause 19(1) of Schedule 1 is amended by omitting “the offer document” and substituting “or accompanying the takeover notice *or* the offer document\* [*\*omit whichever does not apply*]”.
- 42 New heading to Schedule 2 substituted**  
The heading to Schedule 2 is omitted and substituted with the following heading: “**Information that must be contained in, or must accompany, target company statement**”.
- 43 Clause 5(1)(b) of Schedule 2 amended**  
Clause 5(1)(b) of Schedule 2 is amended by omitting “more than 5%” and substituting “5% or more”.
- 44 New clause 6 of Schedule 2 substituted**  
Schedule 2 is amended by revoking clause 6 and substituting the following clause:



**“6 Trading in target company equity securities**

- “(1) If any of the persons referred to in clause 5(1) has, during the 6-month period before the latest practicable date before the date of the target company statement, acquired or disposed of any equity securities of the target company,—
- “(a) in respect of each such person, the total number and the designation of each class of the equity securities acquired or disposed of; and
  - “(b) in the case of a person referred to in—
    - “(i) clause 5(1)(a), the number of securities, the consideration per security, and the date of each transaction to which this subclause applies; or
    - “(ii) clause 5(1)(b)—
      - “(A) in the case of a single transaction in any week to which this subclause applies, the number of securities, the consideration per security, and the week of each transaction; and
      - “(B) in the case of multiple transactions in any week to which this subclause applies, the total number of securities acquired or disposed of in a week, in each class, and the weighted average consideration per security per class.
- “(2) If no person referred to in clause 5(1) has, during the 6-month period referred to in subclause (1), acquired or disposed of equity securities of the target company, a statement to that effect.”

**45 New clauses 13 and 13A of Schedule 2 substituted**

Schedule 2 is amended by revoking clause 13 and substituting the following clauses:

**“13 Interests of directors and officers of target company in contracts of offeror or related company**

- “(1) A statement as to whether any director or senior officer of the target company or their associates has an interest in any contract to which the offeror, or any related company of the offeror, is a party.
- “(2) Particulars of the nature of any interest referred to in subclause (1).

“(3) The extent and (if capable of quantification) monetary value of any interest referred to in subclause (1).

“(4) Subclause (3) does not apply if the contract was entered into in the ordinary course of business of the offeror or its related company and on usual terms and conditions.

**“13A Interests of target company’s substantial security holders in material contracts of offeror or related company**

“(1) A statement as to whether any person who, to the knowledge of the directors or the senior officers of the target company holds or controls 5% or more of any class of equity securities of the target company, has an interest in any material contract to which the offeror, or any related company of the offeror, is a party.

“(2) Particulars of the nature of any interest referred to in subclause (1).

“(3) The extent and (if capable of quantification) monetary value of any interest referred to in subclause (1).

“(4) Subclause (3) does not apply if the contract was entered into in the ordinary course of business of the offeror or its related company and on usual terms and conditions.”

**46 New clause 19A of Schedule 2 inserted**

Schedule 2 is amended by inserting the following clause after clause 19:

**“19A Different classes of securities**

“(1) If an independent adviser’s report is required under rule 22,—

“(a) the identity of the independent adviser; and

“(b) a copy of the adviser’s full report.

“(2) If a further report obtained by the offeror under rule 30 is to be sent by the target company with the target company statement under rule 30(3),—

“(a) the identity of the independent adviser from whom the further report was obtained; and

“(b) a copy of the adviser’s full further report; and

“(c) an explanation of why the further report is required in addition to the initial report required under rule 22.”

**47 New Schedule 3 added**

The code is amended by adding the schedule set out in the Schedule to these regulations.

**48 Transitional provision**

The Code that is in force immediately before the commencement of these regulations (the **pre-amendment Code**) applies, and the Code as amended by these regulations does not apply, to—

- (a) any offer made pursuant to a takeover notice that has been sent to a target company before the commencement of these regulations;
- (b) any compulsory sale or voluntary sale pursuant to an acquisition notice that is sent by the dominant owner who becomes the dominant owner by reason of acceptances of an offer to which paragraph (a) applies;
- (c) any notice of meeting of shareholders to be held for the purposes of rule 7(c) or 7(d) of the pre-amendment Code that has been sent to shareholders before the commencement of these regulations.

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**Schedule**  
**New Schedule 3 added**

cl 47

**Schedule 3**  
**Information that must be contained in reports**  
**required under rule 22**

cls 22(4), 30(1)(b)

**1 Identity of adviser**

The name of the adviser.

**2 Adviser's qualifications and expertise**

A statement of the adviser's qualifications and expertise.

**3 No conflict of interest**

A statement that the adviser has no conflict of interest that could affect the adviser's ability to provide an unbiased report.

**Schedule 3**—*continued***4 Statement in relation to rule 22 report and further rule 22 report**

(1) This clause applies to a report that is required under rule 22 (a **rule 22 report**) or a further rule 22 report obtained under rule 30 (a **further rule 22 report**).

(2) A rule 22 report must contain the following statement in a prominent position at the front of the report:

*“Purpose of report*

“1 This report is **not** a report on the merits of the offer.

“2 This report has been obtained by the offeror.

“3 The purpose of this report is solely to compare the consideration and terms offered for the different classes of securities, and to certify as to the fairness and reasonableness of that consideration and terms as between the different classes.

“4 A separate independent adviser’s report on the merits of the offer, commissioned by the directors of [*name of target company*], must accompany [*name of target company*]’s target company statement.

“5 The offer should be read in conjunction with this report and the separate independent adviser’s report on the merits of the offer.”

(3) A further rule 22 report must contain the following statement in a prominent position at the front of the report:

*“Purpose of report*

“1 This report is **not** a report on the merits of the offer as varied by the variation notice dated [*date of variation notice*].

“2 This report has been obtained by [*name of offeror*] in connection with the variation to the offer.

“3 The purpose of this report is solely to compare the consideration and terms offered for the different classes of securities, and to certify as to the fairness and reasonableness of that consideration and terms as between the different classes.

“4 The offer should be read in conjunction with this report and the separate independent adviser’s report on the merits of the offer (which you will have received with [*name of target company*]’s target company statement).”

**Schedule 3**—*continued***5 Explanation for further rule 22 report**

If the report is a further rule 22 report, an explanation of why the further rule 22 report is required in addition to the rule 22 report.

Rebecca Kitteridge,  
for Clerk of the Executive Council.

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**Explanatory note**

*This note is not part of the regulations, but is intended to indicate their general effect.*

These regulations, which come into force on 1 July 2007, amend the Takeovers Code (the **code**). The amendments are technical only and arose out of discussion papers by the Takeovers Panel (the **Panel**) and recommendations to the Minister of Commerce in the period 2003–05. These documents are available on the Panel’s website at [www.takeovers.govt.nz](http://www.takeovers.govt.nz).

Broadly, the amendments clarify, streamline, and enhance various aspects of the shareholder meeting and takeovers procedures under the code. Some of the more significant changes are described in general terms below:

- *new rules 15(b)(iv) and 16(b)(iv)*: in the notice of meeting sent to shareholders, the disclosures of the control percentages of voting securities that will be held or controlled by the person acquiring voting securities under rule 15 or the person to whom the voting securities are being allotted under rule 16 must now include also the voting securities that will be held or controlled by those persons and their associates;
- *new rule 19A*: this requires that documents sent or published in respect of shareholder meetings held to approve acquisitions or allotments under the code must also be sent to the Panel;
- *rule 22 and new Schedule 3*: the independent adviser’s report on fairness between classes (the **rule 22 report**) must now accompany the target company statement when it is sent to offerees (see *new clause 19A of Schedule 2*, which sets out the obligations of the target company to send a rule 22 report or a

further rule 22 report with the target company statement). Information required in a rule 22 report is set out in *new Schedule 3*:

- *new rules 24A and 24B*: these rules clarify the position in relation to the extension of the offer period. In particular, offers generally cannot be extended beyond the 90-day maximum period. However, full offers that are or have become unconditional as to a minimum level of acceptances can be extended (at any time during the offer period) for up to 60 days, even if that takes the offer period beyond the 90-day maximum:
- rule 28: there are new requirements for the information that must accompany a notice of variation for offers that contain consideration alternatives or for a variation that adds a cash alternative to an offer:
- rule 30: the changes to rule 30 (which relates to further rule 22 reports) reflect the changes made in respect of the initial rule 22 report. The variation notice must also describe how the consideration and terms of the offer, as varied, have been calculated so as to be fair and reasonable as between classes of securities:
- *new rules 31 and 32*: the rules relating to the variation of consideration and consideration alternatives have been rewritten with a number of new obligations for offerors and offerees. The changes ensure that all offerees can accept a consideration alternative that has been increased or added to an offer, even if they have already accepted the offer. In order to be able to switch, offerees must return any consideration that has already been sent to them:
- *new rule 36*: old rule 36 relating to acquisitions is mostly reproduced in *new rule 36(1)* (old rule 36(b) has been revoked). *New rule 36(2)* sets out the notice requirements in relation to an acquisition of securities under *new rule 36(1)*:
- *new rule 41(2) and (3)*: this prescribes the documentation that must accompany the takeover notice sent to a prospective target company if the offer will include an offer of securities to which the Securities Act 1978 applies:
- *new rule 41A* and rule 42: these rules require the offeror and the target company, in the case of a listed target company, to send copies of the takeover notice and accompanying documents to the registered exchange. Both the offeror and the

target company also have obligations to provide copies, free of charge, of the takeover notice and accompanying documents to anyone who requests them:

- *new rules 42A and 42B* and rule 44(3): these new rules require that a target company, on receiving a takeover notice, informs the prospective offeror of all the classes of securities that would be subject to an offer, and the prospective offeror may vary the final terms and conditions of the formal takeover offer accordingly without the prior approval of the target company's directors:
- *new rules 43 to 43B*: these replace and largely replicate old rule 43. Under *new rule 43A(4)* the offeror may change the record date; the offer can proceed under the original takeover notice if the offer can still be made within the 14- to 30-day period prescribed by the code. The result is that the offeror may be saved from having to restart the whole offer process:
- *new rule 47*: this rule expands the category of documents that must be supplied to the Panel and includes any statements or information published or sent to offerees by or on behalf of the offeror or target company:
- *new rule 49A*: the offeror must notify the Panel and the target company (and the registered exchange, if either the offeror or the target company is listed) of each increase of acceptances of 1% or more of the total issued securities in each class under offer:
- *new rule 54(2) and (3)*: old rule 54 is largely replicated except that, if the dominant owner becomes the dominant owner by reason of acceptances of an *offer*, the acquisition notice must be sent not later than 30 days after the end of the offer period. If the dominant owner becomes a dominant owner by a code mechanism other than an offer, the acquisition notice must be sent not later than 30 days after the dominant owner becomes the dominant owner:
- *new rule 56(3)*: for the purpose of determining the compulsory acquisition consideration under rule 56(2), *new rule 56(3)* excludes equity securities controlled by the dominant owner, or held or controlled by associates of the dominant owner, from the calculation of the percentage of voting rights obtained through acceptances of an offer:
- *new rule 56A*: this rule sets out the rights of an outstanding security holder to elect the type of consideration to be paid for

compulsory acquisition where a dominant owner has become dominant owner through acceptances of an offer and the offer provided for alternative consideration options. The rule is designed to prevent coercion of acceptances by comparisons with an unattractive default consideration on compulsory acquisition:

- rule 57: the changes in *new rule 57(1)* affect the requirement of certification by an independent adviser of a cash sum as fair and reasonable in a case where the consideration under a compulsory acquisition could not be determined under rule 56. The effect of the changes is that an independent adviser's report is required under *new rule 57(1)* only if there was no takeover offer made, or if the takeover offer was not for cash or did not include a cash alternative, and acceptances were received for 50% or less of the equity securities under the offer:
- *new clauses 6 and 7 of Schedule 1*: changes to the requirements of disclosure in the offer document about ownership of, and trading in, securities of the target company have been streamlined. The obligation to disclose certain information in the offer document has been removed and transferred to the target company statement requirements in Schedule 2 (see *new clause 6 of Schedule 2*):
- *new clause 17 of Schedule 1*: if there is more than 1 class of securities under the offer, the offeror is now required to state in the offer document how the consideration and terms offered for each class have been calculated to be fair and reasonable as between classes. If there is only 1 class of security, the offer document must explain that no rule 22 report is required:
- *clause 19 of Schedule 1*: the certificate that must be signed by directors and senior officers of the offeror as to the accuracy of the offer document must now also be signed, in the same way, for the draft offer that accompanies a takeover notice:
- *new clause 6 of Schedule 2*: changes to the requirements of disclosure in the target company statement about trading in securities of the target company have been streamlined. Trading information about the target company's substantial security holders must now be disclosed in the target company statement instead of the offer document:



- *new clauses 13 and 13A of Schedule 2*: the requirement of disclosure by the target company of interests in material contracts to which the offeror or its related company is a party has been modified by dropping the qualification of “material” in the case of a director or senior officer of the target company or their associates. This means that the interests of those persons in *all* contracts to which the offeror or its related company is a party must be disclosed. However, the extent and monetary value of those interests, whether an interest is the interest of a director, senior officer, or substantial security holder of the target company, need not be disclosed in the case of contracts entered into in the ordinary course of business of the offeror.
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Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 24 May 2007.

These regulations are administered by the Ministry of Economic Development.

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