



Takeovers Code (Class Exemptions) Notice 2001

Pursuant to section 45 of the Takeovers Act 1993, the Takeovers Panel gives the following notice.

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Notice

1 Title

This notice is the Takeovers Code (Class Exemptions) Notice 2001.

2 Commencement

This notice comes into force on 1 July 2001.

3 Interpretation

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

Act means the Takeovers Act 1993

additional voting rights, in relation to any person who has increased voting control, means the portion of the voting rights in a code company held or controlled by the person that corresponds to the person's increase in voting control

aggregate associate increase, in respect of any person whose control percentage has decreased in the manner referred to in clause 6(1) or clause 9(1) or clause 10(1) (the **relevant decrease**) and whose voting control is subsequently increased (the **relevant increase**), means,—

- (a) if the aggregate of the control percentages of the person and the person's associates after the relevant decrease was less than 20%, the increase (if any) in the aggregate of the control percentages of the person's associates after the relevant decrease and before the relevant increase; and
- (b) if the aggregate of the control percentages of the person and the person's associates after the relevant decrease was equal to or greater than 20%, zero

allotment includes the issue of voting securities by a code company and the sale, transfer, or other disposal of treasury stock by a code company

beneficiary,—

- (a) in relation to a nominee company, means a person for whom the nominee company acts in the ordinary course of business as a nominee company; and
- (b) in relation to a bare trustee of a trust, means a beneficiary of the trust; and

- (c) in relation to a sharebroker, means a person for whom the sharebroker acts in the ordinary course of business as a sharebroker

Code means the Takeovers Code approved by the Takeovers Code Approval Order 2000 (SR 2000/210)

control percentage means the percentage of voting rights in a code company that a person holds or controls

corporate representative means a person who is appointed by a body corporate that holds voting securities in a code company to attend, on behalf of the body corporate, 1 or more meetings of holders of voting securities in the code company

group means a body corporate and its wholly-owned subsidiaries

group parent means a body corporate that is a member of a group and is not a wholly-owned subsidiary of another body corporate

lender means a person whose ordinary business includes the lending of money or the provision of financial services (including the holding of security interests on behalf of lenders)

non-associate, in relation to a person, means any other person who is not an associate of the person

receiver has the same meaning as in section 2(1) of the Receiverships Act 1993

security interest has the same meaning as in section 17(1)(a) of the Personal Property Securities Act 1999

sharebroker means a person permitted under the Sharebrokers Act 1908 to act as a sharebroker

treasury stock means voting securities or securities that, but for the suspension of voting rights attached to them, would be voting securities issued by a code company and held by the code company

underwriter means a person whose ordinary business includes entering into bona fide underwriting or subunderwriting contracts with respect to offers of securities

upstream party, in relation to a person, means any other person who directly or indirectly has effective control over the person.

- (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 the voting rights in a code company.
- (3) Any term or expression that is defined in the Act or the Code and used, but not defined, in this notice has the same meaning as in the Act or the Code.

Part 1

Exemptions for certain acquisitions of voting securities

4 Exemption for buyback approved by shareholders

- (1) Every person who increases voting control as a result of the acquisition by a code company of its own voting securities is exempted from rule 6(1) of the Code in respect of that increase in voting control.
- (2) The exemption is subject to the condition that—
 - (a) the acquisition is approved by an ordinary resolution of the shareholders of the code company; and
 - (b) neither the person nor any person who is or was at the time an associate of the person voted in favour of the resolution; and
 - (c) the notice of meeting containing the proposed resolution contained, or was accompanied by,—
 - (i) the identity of the person; and
 - (ii) particulars of the voting securities that may be acquired by the code company, including—
 - (A) the maximum number of voting securities that may be acquired; and
 - (B) the percentage of all voting securities of the code company that the maximum number of voting securities represents; and
 - (C) the potential maximum aggregate of the percentages of all voting securities in the code company that the person and the person's associates would hold or control if the maximum number of voting securities were acquired; and

- (iii) the consideration for the acquisition or the manner in which the consideration would be determined and when the consideration would be payable; and
 - (iv) the reasons for the acquisition; and
 - (v) a statement to the effect that the increase in the person's voting control that would result only from the acquisition by the code company of its own voting securities, if approved, would be permitted as an exception to rule 6 of the Code; and
 - (vi) a report (or summary of a report) from an independent adviser in relation to the acquisition that complies with rule 18 of the Code (as if the references in that rule to acquisition under rule 7(c) of the Code and notice of meeting referred to in rule 15 of the Code were references to the acquisition and the notice, respectively); and
 - (vii) a statement by the directors of the code company in relation to the acquisition that complies with rule 19 of the Code (as if the reference in that rule to acquisition under rule 7(c) of the Code was a reference to the acquisition); and
- (d) rules 18 and 19 of the Code are complied with in relation to the proposed acquisition (as if the references in those rules to acquisition under rule 7(c) of the Code and notice of meeting referred to in rule 15 of the Code were references to the acquisition and the notice, respectively).

5 Exemption for buyback that is not approved by shareholders: increased voting control eliminated within 6 months after increase

- (1) Every person who increases voting control as a result of the acquisition by a code company of its own voting securities is exempted from rule 6(1) of the Code in respect of that increase in voting control.
- (2) The exemption is subject to the condition that—
 - (a) the person's increase in voting control is not exempted from rule 6(1) of the Code by clause 4; and

- (b) the control percentage of the person is decreased within 6 months after the increase in the person's voting control to, or below, either—
 - (i) the control percentage of the person immediately before the increase in the person's voting control; or
 - (ii) if—
 - (A) the person's control percentage immediately before the increase in the person's voting control was more than 50%, the maximum control percentage to which the person would have been entitled under rule 7(e) of the Code at the time of the decrease had the increase not occurred; or
 - (B) the aggregate of the control percentages of the person and the person's associates immediately before that increase was less than 20%, 20% less the aggregate of the control percentages of the person's associates at the time of the decrease; and
- (c) the additional voting rights of the person are not exercised before that decrease.

6 Exemption for increased voting control within 6 months after buyback reduced control percentage

- (1) Every person whose control percentage is, or has been, decreased as a result of the acquisition by a code company of its own voting securities is exempted from compliance with rule 6(1) of the Code in respect of any increase in the person's voting control after that decrease.
- (2) The exemption is subject to the condition that—
 - (a) the increase in the person's voting control occurs within 6 months after the decrease of the person's control percentage; and
 - (b) the increase in the person's voting control does not result in the person's control percentage exceeding the lesser of—
 - (i) the percentage that exceeds by 5 the control percentage of the person immediately before the increase in the person's voting control, less any aggregate associate increase; or

- (ii) the control percentage of the person immediately before its decrease, less any aggregate associate increase.

Part 2

Exemptions for certain allotments of voting securities

7 Exemption for public offer of voting securities

- (1) Every person who increases voting control as a result of an allotment of voting securities by a code company is exempted from rule 6(1) of the Code in respect of that increase in voting control.
- (2) The exemption is subject to the condition that—
 - (a) the allotment is made within 6 months after, and pursuant to, an offer of voting securities to the public by the code company; and
 - (b) the offer complies with the Securities Act 1978; and
 - (c) the prospectus and investment statement relating to the offer clearly state the potential maximum aggregate of the control percentages of the person and the person's associates after the completion (and as a result) of allotments pursuant to the offer; and
 - (d) the company was not, or, but for having entered into a listing agreement with the stock exchange in connection with the offer, would not have been, a code company before the allotment of voting securities pursuant to the offer.

8 Exemption for allotments pursuant to pro rata offer: increased voting control eliminated within 6 months after increase

- (1) Every person who increases voting control as a result of an allotment of voting securities by a code company is exempted from rule 6(1) of the Code in respect of that increase in voting control.
- (2) The exemption is subject to the condition that—
 - (a) the allotment is made pursuant to—
 - (i) an offer of voting securities that is made pro rata to all holders of a class of voting securities in the code company, and in respect of which each person, the allotment to whom of voting securities

- resulted in the increase, or part of the increase, in voting control (an **allottee**),—
- (A) acquired no more than the allottee's pro rata share of the securities offered; or
 - (B) if the allottee is a nominee company, bare trustee of a trust, or sharebroker, acting for a beneficiary whose increase in voting control resulted in the person's increase (or part of the person's increase) in voting control, acquired on behalf of the beneficiary no more than the beneficiary's pro rata share of the securities offered to the allottee; or
- (ii) a scheme for the reinvestment of dividends in return for voting securities or the issue of voting securities instead of dividends that is available on the same terms to all holders of the relevant class of voting securities in the code company; and
- (b) the control percentage of the person is decreased within 6 months after the increase in the person's voting control to, or below, either—
 - (i) the control percentage of the person immediately before the increase in the person's voting control; or
 - (ii) if—
 - (A) the control percentage of the person immediately before the increase in the person's voting control was more than 50%, the maximum control percentage to which the person would have been entitled under rule 7(e) of the Code at the time of the decrease had the increase not occurred; or
 - (B) the aggregate of the control percentages of the person and the person's associates immediately before that increase was less than 20%, 20% less the aggregate of the control percentages of the person's associates at the time of the decrease; and
- (c) the additional voting rights of the person are not exercised before that decrease.

9 Exemption for increased voting control within 6 months after allotments pursuant to pro rata offer reduced control percentage

- (1) Every person whose control percentage is, or has been, decreased as a result of an allotment of voting securities by a code company is exempted from rule 6(1) of the Code in respect of any increase in the person's voting control after the decrease.
- (2) The exemption is subject to the condition that—
 - (a) the allotment was made pursuant to—
 - (i) an offer of voting securities made pro rata to all holders of a class of voting securities in the code company; or
 - (ii) a scheme for the reinvestment of dividends in return for voting securities or the issue of voting securities instead of dividends that is available on the same terms to all holders of the relevant class of voting securities in the code company; and
 - (b) the increase in the person's voting control occurs within 6 months after the decrease of the person's control percentage; and
 - (c) the increase in the person's voting control does not result in the person's control percentage exceeding the control percentage of the person immediately before its decrease, less any aggregate associate increase.

10 Exemption for increased voting control within 6 months after allotments pursuant to non-pro rata offer reduced control percentage

- (1) Every person whose control percentage is, or has been, decreased as a result of an allotment of voting securities by a code company is exempted from rule 6(1) of the Code in respect of any increase in the person's voting control after the decrease.
- (2) The exemption is subject to the condition that—
 - (a) the allotment was not made pursuant to—
 - (i) an offer of the kind described in clause 9(2)(a)(i); or
 - (ii) a scheme of the kind described in clause 9(2)(a)(ii); and

- (b) the increase in the person's voting control occurs within 6 months after the decrease of the person's control percentage; and
- (c) the increase in the person's voting control does not result in the person's control percentage exceeding the lesser of—
 - (i) the percentage that exceeds by 5 the control percentage of the person immediately before the increase in the person's voting control, less any aggregate associate increase; or
 - (ii) the control percentage of the person immediately before its decrease, less any aggregate associate increase.

Part 3

Miscellaneous exemptions

11 Exemption for lenders and receivers

- (1) Every person who is a lender, an upstream party of a lender, or a receiver appointed by a lender is exempted from rule 6(1) of the Code in respect of any increase in the person's voting control.
- (2) The exemption is subject to the condition that the increase in the person's voting control results only from the lender or the receiver (as the case may be) holding or controlling voting rights pursuant to the terms of a security interest that—
 - (a) is held by the lender, or secures obligations owed to the lender that arise, in the ordinary course of the lender's business of lending money or providing other financial services; and
 - (b) was granted and is held in relation to a bona fide transaction for the lending of money or the provision of financial services that does not have a collateral purpose of enabling a person to increase the person's voting control otherwise than in compliance with the Code.

12 Exemption for persons whose associates include lenders or receivers

- (1) Every person, an associate of whom is exempted by clause 11 from rule 6(1) of the Code, is exempted from rule 6(1) of the Code in respect of any increase in the person's voting control.

- (2) The exemption is subject to the condition that—
 - (a) the increase in voting control by the person would comply with rule 6(1)(a) of the Code if the associate's additional voting rights were held and controlled by a non-associate of the person; and
 - (b) the person does not control the associate's additional voting rights.

13 Exemption for proxies

- (1) Every person who is, or is an upstream party of, a person appointed to be a proxy for another person to vote at a meeting of holders of voting securities of a code company is exempted from rule 6(1) of the Code in respect of any increase in the person's voting control.
- (2) The exemption is subject to the condition that—
 - (a) the increase in the person's voting control results only from the person's appointment as a proxy for a meeting (including any reconvened meeting following an adjournment of the meeting) after notice of that meeting has been given; and
 - (b) no consideration is provided, directly or indirectly, by, or on behalf of, the person or any associate of the person to, or for, the benefit of the appointor or any associate of the appointor in connection with the person's appointment as proxy.

14 Exemption for persons whose associates include proxies

- (1) Every person, an associate of whom is exempted by clause 13 from rule 6(1) of the Code, is exempted from rule 6(1) of the Code in respect of any increase in the person's voting control.
- (2) The exemption is subject to the condition that—
 - (a) the increase in voting control by the person would comply with rule 6(1)(a) of the Code if the associate's additional voting rights were held and controlled by a non-associate of the person; and
 - (b) the person does not control the associate's additional voting rights.

15 Exemption for corporate representatives

- (1) Every person who is appointed by resolution of the directors or other governing body of a body corporate to act as its representative at a meeting of holders of voting securities of a code company is exempted from rule 6(1) of the Code in respect of any increase in the person's voting control.
- (2) The exemption is subject to the condition that—
 - (a) the increase in the person's voting control results only from the person's appointment as a corporate representative; and
 - (b) no consideration is provided, directly or indirectly, by, or on behalf of, the person or any associate of the person to, or for, the benefit of the appointor or any associate of the appointor in connection with the person's appointment as corporate representative.

16 Exemption for persons whose associates include corporate representatives

- (1) Every person, an associate of whom is exempted by clause 15 from rule 6(1) of the Code, is exempted from rule 6(1) of the Code in respect of any increase in the person's voting control.
- (2) The exemption is subject to the condition that—
 - (a) the increase in voting control by the person would comply with rule 6(1)(a) of the Code if the associate's additional voting rights were held and controlled by a non-associate of the person; and
 - (b) the person does not control the associate's additional voting rights.

17 Exemption for sharebrokers

- (1) Every person who is, or is an upstream party of, a sharebroker is exempted from rule 6(1) of the Code in respect of any increase in the person's voting control.
- (2) The exemption is subject to the condition that—
 - (a) the increase in the person's voting control results only from the sharebroker acting for a beneficiary in the ordinary course of business as a sharebroker; and
 - (b) the person is not the beneficiary, or an upstream party of the beneficiary; and

- (c) the sharebroker exercises the additional voting rights only at the direction of the beneficiary.

18 Exemption for persons whose associates include sharebrokers

- (1) Every person, an associate of whom is exempted by clause 17 from rule 6(1) of the Code, is exempted from rule 6(1) of the Code in respect of any increase in the person's voting control.
- (2) The exemption is subject to the condition that—
 - (a) the increase in voting control by the person would comply with rule 6(1)(a) of the Code if the associate's additional voting rights were held and controlled by a non-associate of the person; and
 - (b) the person does not control the associate's additional voting rights.

19 Exemption for underwriters

- (1) Every person who is, or is an upstream party of, an underwriter is exempted from rule 6(1) of the Code in respect of any increase in the person's voting control.
- (2) The exemption is subject to the condition that—
 - (a) the increase in the person's voting control results only from the allotment or transfer to the underwriter of voting securities in a code company under a bona fide underwriting or subunderwriting contract entered into in the underwriter's ordinary course of business; and
 - (b) the control percentage of the person is decreased within 6 months after the increase in the person's voting control to, or below, either—
 - (i) the control percentage of the person immediately before the increase in the person's voting control; or
 - (ii) if—
 - (A) the control percentage of the person immediately before the increase was more than 50%, the maximum control percentage to which the person would have been entitled under rule 7(e) of the Code at the time of the decrease had the increase not occurred; or

- (B) the aggregate of the control percentages of the person and the person's associates immediately before the increase was less than 20%, 20% less the aggregate of the control percentages of the person's associates at the time of the decrease; and
- (c) the additional voting rights of the person are not exercised before the decrease.

20 Exemption for executors, trustees, and administrators

- (1) Every person who is, or is an upstream party of, an executor, trustee, or administrator of the estate of a deceased person is exempted from rule 6(1) of the Code in respect of any increase in the person's voting control.
- (2) The exemption is subject to the condition that the increase in the person's voting control results only from—
 - (a) the transmission of any property to the person in accordance with the terms of the will; or
 - (b) the transmission of any property to the person in accordance with any applicable law relating to intestacy.

21 Exemption for persons whose associates include executors, trustees, or administrators

- (1) Every person, an associate of whom is exempted by clause 20 from rule 6(1) of the Code, is exempted from rule 6(1) of the Code in respect of any increase in the person's voting control.
- (2) The exemption is subject to the condition that—
 - (a) the increase in voting control by the person would comply with rule 6(1)(a) of the Code if the associate's additional voting rights were held and controlled by a non-associate of the person; and
 - (b) the person does not control the associate's additional voting rights.

22 Exemption for beneficiaries of wills and intestacies

- (1) Every person who is a beneficiary of a deceased person's estate is exempted from rule 6(1) of the Code in respect of any increase in the person's voting control.

- (2) The exemption is subject to the condition that the increase in the person's voting control results only from the transfer of property to the person in accordance with—
 - (a) the terms of the will and the person is named, either directly or by reference to a class of persons, as a beneficiary in the will; or
 - (b) any applicable law on intestacy.

23 Exemption for nominee companies and bare trustees of trusts

- (1) Every person who is a nominee company or a bare trustee of a trust is exempted from rule 6(1) of the Code in respect of any increase in the person's voting control.
- (2) The exemption is subject to the condition that—
 - (a) the increase in the person's voting control results only from the person holding voting rights for a beneficiary—
 - (i) in the ordinary course of its business as a nominee company; or
 - (ii) as a bare trustee of a trust; and
 - (b) the person does not control the voting rights.

24 Exemption for persons whose associates include nominee companies or bare trustees

- (1) Every person, an associate of whom is exempted by clause 23 from rule 6(1) of the Code, is exempted from rule 6(1) of the Code in respect of any increase in the person's voting control.
- (2) The exemption is subject to the condition that—
 - (a) the increase in voting control by the person would comply with rule 6(1)(a) of the Code if the associate's additional voting rights were held and controlled by a non-associate of the person; and
 - (b) the person does not control the associate's additional voting rights.

25 Exemption for transfers within wholly-owned groups

- (1) Every person who is a member of a group is exempted from rule 6(1) of the Code in respect of any increase in the person's voting control.
- (2) The exemption is subject to the condition that—

- (a) the person's increase in voting control results from a transfer of voting securities in—
 - (i) a code company from a member of the group to another member of the group; or
 - (ii) a member of the group, other than the group parent, from a member of the group to another member of the group; and
- (b) the group parent has control of the voting securities in the code company before and after the transfer.

26 Exemption for share register disclosure

- (1) Every code company is exempted from the requirement under rule 47 of the Code to send a copy of its securities register to the Panel at the time that a copy of that register is sent to an offeror under rule 42(2) of the Code.
- (2) The exemption is subject to the condition that, immediately after the code company complies with rule 42(2) of the Code, the code company confirms in writing to the Panel that—
 - (a) the code company has complied with rule 42(2) of the Code; and
 - (b) the securities register will be made available to the Panel and its representatives for inspection on request by the Panel.

Dated at Wellington this 13th day of June 2001.

The Common Seal of the Takeovers Panel was affixed in the presence of:

[L.S.]

John King,
Chairperson.

Explanatory note

This note is not part of the notice, but is intended to indicate its general effect.

This notice, which comes into force on 1 July 2001, exempts certain persons, subject to conditions, from rule 6(1) of the Takeovers Code in respect of any increase in the persons' voting control.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 14 June 2001.
This notice is administered by the Takeovers Panel.
