



## Takeovers Code (Mike Pero Mortgages Limited) Exemption Notice 2006

Pursuant to section 45 of the Takeovers Act 1993, the Takeovers Panel gives the following notice (to which is appended a statement of reasons of the Takeovers Panel).

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### Notice

- 1 **Title**  
This notice is the Takeovers Code (Mike Pero Mortgages Limited) Exemption Notice 2006.
- 2 **Application**  
This notice applies to acts or omissions occurring on or after 18 August 2006.
- 3 **Interpretation**
  - (1) In this notice, unless the context otherwise requires,—
    - Act** means the Takeovers Act 1993
    - Code** means the Takeovers Code approved by the Takeovers Code Approval Order 2000 (SR 2000/210)

**despatch notice** means the notice required to be sent by MPMH under rule 45 of the Code in relation to the MPMH offer

**Liberty** means Liberty Financial Limited

**Mike Pero** means Mike Pero Mortgages Limited

**MPMH** means MPMH Limited

**MPMH offer** means an offer to be made by MPMH for all—

- (i) voting securities; and
- (ii) options to acquire voting securities

**NZF** means New Zealand Finance Holdings Limited

**voting securities** means the voting securities in Mike Pero.

- (2) 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.

#### **4 Exemption from rule 35 of Code**

MPMH, Liberty, NZF, and Forbar Custodians Limited (to the extent that it holds voting securities as nominee for Liberty) are exempted from rule 35 of the Code in respect of the MPMH offer.

#### **5 Conditions of exemption in clause 4**

The exemption in clause 4 is subject to the conditions that—

- (a) the MPMH offer is made on or before 29 September 2006; and
- (b) Liberty, NZF, and Forbar Custodians Limited (to the extent that it holds voting securities as nominee for Liberty) accept the MPMH offer within 5 working days from the date of the despatch notice; and
- (c) none of MPMH, Liberty, or NZF, nor any other person acting jointly or in concert with any of them, disposes of any equity securities in Mike Pero during the offer period, other than to—
  - (i) MPMH; or
  - (ii) an offeror under another offer that is made under the Code.

**6 Exemption from rule 56 of Code**

MPMH, Liberty, NZF, and Forbar Custodians Limited (to the extent that it holds voting securities as nominee for Liberty) are exempted from rule 56 of the Code in respect of the MPMH offer to the extent that rule 56(2) requires the following to be included in calculating the percentage of acceptances of the offer or the equity securities that were the subject of the offer:

- (a) the acceptances of the MPMH offer by Liberty, NZF, and Forbar Custodians Limited (to the extent that it holds voting securities as nominee for Liberty); and
- (b) the voting securities in Mike Pero held or controlled by Liberty and NZF.

Dated at Wellington this 18th day of August 2006.

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

[Seal]

David J Quigg,  
Member.

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**Statement of reasons**

This notice applies to acts or omissions occurring on or after 18 August 2006.

New Zealand Finance Holdings Limited (**NZF**) holds or controls 74.7% of the shares in Mike Pero Mortgages Limited (**Mike Pero**). Liberty Financial Limited (**Liberty**) holds or controls 19.9% of the shares in Mike Pero.

On 26 June 2006, Liberty and NZF entered into a 50/50 joint venture agreement to acquire all the equity securities in Mike Pero through their newly incorporated joint venture company MPMH Limited (**MPMH**). Liberty and NZF have also entered into a business co-

operation agreement in respect of the future business activities of Mike Pero that they will operate as part of their joint venture.

The Takeovers Panel (the **Panel**) has exempted MPMH, Liberty, and NZF from compliance with rule 35 of the Takeovers Code (the **Code**).

Rule 35 prevents the offeror, and persons acting jointly or in concert with the offeror, from disposing of any target company securities during the offer period other than to a competing bidder. The exemption granted by the Panel enables Liberty and NZF to accept the offer that is to be made by their joint venture company, and this will enable the offer to meet the Code's minimum acceptance condition. Because of the size of their holdings, MPMH, Liberty, and NZF will become dominant owners under the Code when Liberty and NZF accept the offer by MPMH. They will then be able to compulsorily acquire the outstanding securities in Mike Pero.

In order to ensure that the Code's compulsory acquisition price determination process in rules 56 and 57 works as intended, the Panel has exempted MPMH, Liberty, and NZF from rule 56 to the extent that, for the purposes of determining the consideration payable under compulsory acquisition, the shares held or controlled and the acceptances given by Liberty and NZF for the offer by MPMH would otherwise be included in—

- the acceptances of the offer; and
- the voting securities that were the subject of the offer.

As a result of this exemption, rule 57 of the Code may apply to the compulsory acquisition, depending on the level of acceptances of the takeover offer by the 5.4% minority shareholders in Mike Pero. The Panel considers that it is appropriate and consistent with the objectives of the Code to grant the exemptions from rules 35 and 56 of the Code because—

- they facilitate the utilisation of a special purpose company for making the takeover offer and for compulsorily acquiring the outstanding securities, and the use of such companies is accepted market practice; and
- they preserve the integrity of the compulsory acquisition price determination process encapsulated in rules 56 and 57 of the Code.

2006/277

**Takeovers Code (Mike Pero Mortgages  
Limited) Exemption Notice 2006**

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Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 7 September 2006.

This notice is administered by the Takeovers Panel.

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