



Takeovers Code (Jade Software Corporation Limited) Exemption Notice 2003

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 Takeover Panel).

Contents

1	Title	Schedule 1
2	Application	Terms of outperformance share
3	Expiry	Schedule 2
4	Interpretation	Beneficial interests in outperformance share
5	Exemption from rule 6(1)(a) and (b) of Code	
6	Conditions	

Notice

1 Title

This notice is the Takeovers Code (Jade Software Corporation Limited) Exemption Notice 2003.

2 Application

This notice applies to acts or omissions occurring on or after the day after the date of its notification in the *Gazette*.

3 Expiry

This notice expires on the close of 31 December 2010.

4 Interpretation

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

Act means the Takeovers Act 1993

calculation date means the date specified in each annual report referred to in clause 6(b) from which the assumptions set out in clause 6(d) apply

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

control percentage means the percentage of voting securities in Jade held by an OPS shareholder and its associates

increased voting rights means any increase in an OPS shareholder's voting rights in Jade as a result of 1 or more OSBI

IPO means the initial public offer of shares in Jade

Jade means Jade Software Corporation Limited

OPS means the 1 outperformance share in Jade before the IPO that is materially on the terms set out in Schedule 1

OPS shareholder means a shareholder in Jade as at 14 December 2001 that is listed in Schedule 2

OSBI means a bonus issue of ordinary shares that may be triggered under the terms and conditions of the OPS.

- (2) Any term or expression that is defined in the Act or Code and used, but not defined, in this notice has the same meaning as in the Act or the Code.

5 Exemption from rule 6(1)(a) and (b) of Code

Every OPS shareholder is exempt from rule 6(1)(a) and (b) of the Code in respect of the increased voting rights obtained pursuant to an OSBI.

6 Conditions

The exemption in clause 5 is subject to the conditions that—

- (a) a summary of the terms of the OPS (including any OSBIs) must be included in the investment statement and prospectus issued as part of the IPO and that summary must clearly state the potential maximum control percentage of each OPS shareholder as a result of an issue of ordinary shares under the OSBIs if the potential maximum control percentage of that shareholder is greater than 20%; and
- (b) a summary of the terms of the OPS and how it may affect the OPS shareholders' voting rights in Jade must

- be set out in Jade's annual report in each year the OPS is on issue, including a statement of the potential maximum control percentage of each OPS shareholder as a result of an issue of ordinary shares under the OSBIs if the potential maximum control percentage of that shareholder is greater than 20%; and
- (c) the information to be provided under paragraph (a) must be based on the following working assumptions:
- (i) that the OPS shareholders maintain their shareholding in Jade between the date of application and the date of expiry of this notice;
 - (ii) that no voting securities, other than those issued under the IPO, are issued by Jade while the OPS is on issue;
 - (iii) that no OPS shareholder acquires additional voting rights under the IPO; and
- (d) the information to be provided under paragraph (b) must be based on the following working assumptions:
- (i) that the OPS shareholders maintain their shareholding in Jade between the calculation date and the expiry of this notice;
 - (ii) that no voting securities are issued by Jade after the calculation date while the OPS is on issue;
 - (iii) that no OPS shareholder acquires additional voting rights during the period between the calculation date and the expiry of this notice; and
- (e) the investment statement and prospectus must contain the following disclaimer:
- By exempting the OPS shareholders of Jade Software Corporation from rule 6(1) of the Takeovers Code, the Takeovers Panel is—*
- *neither endorsing nor supporting the accuracy or reliability of the contents of this investment statement and prospectus; and*
 - *not implying it has a view on the merits of either the offer or the potential allotments to the OPS shareholders; and*
- (f) any allotment of ordinary shares to an OPS shareholder made pursuant to an OSBI must be made in proportion to that OPS shareholder's percentage entitlement as listed in Schedule 2; and

- (g) the key terms and conditions of the OPS (including any OSBIs) must not be altered.
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Schedule 1 Terms of outperformance share

Outperformance share

- 1 The rights, privileges, and restrictions attaching to the out-performance share issued in Jade are set out in this schedule.

Terms of issue

- 2 The outperformance share must be held on behalf of the persons listed in Schedule 2 by any 2 directors of Jade as nominated from time to time by Jade. The 2 directors of Jade must be entered on the share register as the holders of the outperformance share.
- 3 The persons listed in Schedule 2 have beneficial interests in the outperformance share, with entitlements under the out-performance share as determined over 8 financial years from 1 January 2002 (the **term**), in the proportions set out in Schedule 2.

Bonus issues

- 4 In any financial year falling within the term, if the earnings before interest, taxation, depreciation, and amortisation (**EBITDA**) of Jade meet the EBITDA targets detailed below, Jade must conduct an outperformance share bonus issue as set out in clauses 5 and 6 as soon as reasonably practicable following a determination that an EBITDA target has been met. Whether an EBITDA target has been met must be determined by reference to the audited financial statements of Jade. In the event an EBITDA target is met in financial year 8 of the term, Jade must issue the OSBI as soon as reasonably practicable after it has been determined the target has been met, and before the outperformance share is repurchased.

- 5 Each of the 3 OSBIs must be undertaken by Jade issuing a total of 7 million ordinary shares (per OSBI and subject to clause 13) directly to the beneficial holders of the out-performance share listed in Schedule 2, in proportion to each person's beneficial interest in the outperformance share on the following targets being met:

Target	EBITDA
One	\$55,000,000
Two	\$65,000,000
Three	\$75,000,000

- 6 Each triggering of an EBITDA target must result in an OSBI up to a maximum total of 21,000,000 ordinary shares that may be issued during the term, subject to clause 13. Each OSBI can be triggered only once at the attainment, in the first instance, of each of the above EBITDA targets. The following are provided as examples:

- (a) if, during the term, EBITDA of \$56,000,000 were achieved twice, the achieving of the target in the first instance triggers an OSBI but the achieving of the target in the second instance would not trigger an OSBI:
- (b) if, during the term, EBITDA of \$66,000,000 were achieved in a particular financial year, 2 OSBIs would be triggered involving the issue of a total of 14,000,000 ordinary shares:
- (c) if, during the term, EBITDA of \$56,000,000 were achieved in year 6 and EBITDA of \$76,000,000 were achieved in year 8, an OSBI would be triggered at the end of year 6 and 2 OSBIs would be triggered at the end of year 8, involving in total the issuing of 21,000,000 ordinary shares:
- (d) if, during the term, EBITDA of \$76,000,000 were achieved in years 6 and 7, only in relation to the year 6 target would 3 OSBIs be triggered totalling 21,000,000 shares. No OSBI would arise from the target being achieved in year 7.

Dividends

- 7 The outperformance share must not carry any rights to participate in any dividend or other distribution made in respect of the ordinary shares in Jade. Any ordinary shares that are issued as part of an OSBI must carry the right to receive any dividend or other distribution made from the date of issue of those ordinary shares.

Repurchase of outperformance shares

- 8 The outperformance share must be repurchased by Jade in accordance with the Companies Act 1993 after the expiry of the term, at a time when it has been determined whether an EBITDA target has been achieved in the final financial year applying to the outperformance share, and after any OSBI has been issued by Jade.
- 9 Jade must not be required to provide any consideration for the repurchase of the outperformance share.
- 10 After repurchase, the outperformance share must be immediately cancelled by Jade and no person continues to have any rights or obligations in respect of the outperformance share.

Voting rights attaching to outperformance share and change to rights

- 11 The outperformance share must not carry any rights to vote. No change to the terms of the outperformance share may occur without the consent in writing of the holders of 75% or more of the beneficial interest in the outperformance share as set out in Schedule 2.

Rights to participate in further issues

- 12 The outperformance share must not carry any rights to participate in any rights issues, or other issues of shares for consideration, declared or made by Jade in respect of the ordinary shares issued in Jade, except as set out in clause 13.

- 13 If, however, Jade undertakes a bonus issue, a share split, or consolidation in respect of the ordinary shares on issue, the number of shares to be issued under any future OSBIs must be adjusted to fully reflect the bonus issue, share split, or consolidation, as the case may be.

Transfer of outperformance share

- 14 The outperformance share must not be transferred, except to any director of Jade as determined by Jade, and must be held at all times by 2 directors of Jade for the benefit of those persons listed in Schedule 2.
- 15 Subject to clause 6(f) of this notice, a person's beneficial interest in the outperformance share may not be transferred to another person without the written consent of Jade. Despite this restriction on transfer, should a person with a beneficial interest in the outperformance share die, his or her beneficial interest must be transferred to the trustees and executors of his or her estate.

Extinguishing of rights on acceptance of takeover offer

- 16 In the event of a takeover offer under the Code, if the party making the offer and its associates (as defined in the Code) receive acceptances to take their holding to 90% or more of the voting securities in Jade, then the outperformance share must be repurchased immediately under the terms set out in clauses 8, 9, and 10, and the term is deemed to have expired on the date the offeror and its associates become dominant owners of Jade (as defined in the Code) to the intent that no OBSI must occur from that date.

Non-participation on liquidation

- 17 In the event of Jade being placed in liquidation, the out-performance share must not confer any rights to participate in the distribution of surplus assets to the shareholders of Jade.

Determination of entitlement under outperformance share

- 18 Jade must, in good faith, make all determinations required to be made regarding the application of the outperformance share and the entitlements of the persons listed in Schedule 2, and, as long as it acts in good faith, has no liability to the persons listed in Schedule 2 in relation to any entitlement, and in this respect the decisions of Jade are final and binding.
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Schedule 2

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Beneficial interests in outperformance share

Name	Beneficial interest (%)
Ainsworth Paul	0.1192
Amor Murray	0.0035
Aoraki Nominees Limited	15.9472
Ascroft John	0.1037
Bankier Selwyn	0.0736
Bardsley Colleen	0.0691
Barker Stephen	0.0138
Barr Robert	0.0490
Begg Jan	0.0366
Bellamy Roger	0.0346
Black Stephen	0.0487
Blair David	0.0346
Bonne David	0.0346
Borrie Adrien	0.0691
Boyle Thomas	0.0505
Brand Wayne	0.0346
Bremmers Pieter	0.0346
Brown Glenis	0.0035
Bruce Chris	0.0346
Buick Peter	0.1383
Burbidge Peter	0.0515
Burt David	0.0104
Callaghan Kevin	0.1037
Campbell John	0.0563
Campbell Peter	0.0242
Candy David	0.0138
Clark Adrian	0.0138
Cocco Morris	0.0069
Cooper Dean	0.1040
Cowan Keith	0.0968
Davis Robert	0.0346
DeCoursey Anthony	0.0346
Denhard Gary	0.0291
Dixon Colin	0.0346
Doak Peter	0.0864
Domigan Keith	0.0465
Donaldson Tony	0.0035
Doolan Brendon	0.0726
Douglas Kevin	0.0432
Draper Richard	0.0035
Duke Charles	0.1728
Duniam Darrell	0.0763
Engelken Robert	0.1037
Ewing Lee	0.0346
Eyers John	0.1044

**Takeovers Code (Jade Software
Corporation Limited) Exemption
Notice 2003**

Schedule 2

2003/127

Name	Beneficial interest (%)
Ferguson Daniel	0.0356
Fitchett Peter	0.0691
Fitzgerald Edward	0.0874
Franklin John	0.0346
Gamperle Victor	0.0415
Garlick Douglas	0.0173
Gleeson Patrick	0.0439
Glover Chris	0.0518
Glynn Kerry	0.0104
Graham Richard	0.0196
Gray Colin	0.0346
Greaves Colin	0.0138
Greer Richard	0.0112
Grice Stephen	0.0454
Grueber Anne	0.0691
Gulbrandsen Geraldine	0.0346
Harliwich Julie	0.0484
Harriss Marion	0.0035
Helms Peter	0.1728
Hemsworth David	0.0213
Henwood Brian	0.0104
Herring Charlene	0.0786
Hickin Russell	0.0173
Hitchcock Alison	0.0346
Howie Bill	0.4148
Humm Jeffrey	0.0069
Hutchins Carolyn	0.0190
Jagers Martin	0.0173
Jarquin Roger	0.1210
Johnstone Brian	0.0218
Johnstone Margaret	0.0346
Jones Nigel	0.1797
Joyce Graeme	0.0518
Joyce Sean	0.0346
Kershaw Peter	0.0254
Lay Greg	0.0987
Leadley Martyn	0.0173
Ligeti Zsolt	0.0207
Lindsay David	0.3456
Lipinski Lynne	0.0985
Lipinski Nelson	0.1038
Little Heather	0.0346
Lund Darren	0.0622
Lund Nancy	0.0242
Lynskey Tim	0.0171
Marsh Nick	0.0346
Mathews Jane	0.0564
Mattsen Patricia	0.0346
Maynard Michael	0.0069

**Takeovers Code (Jade Software
Corporation Limited) Exemption
Notice 2003**

2003/127

Schedule 2

Name	Beneficial interest (%)
McColl Hugh	0.0346
McDonald Rod	0.0200
McDonald William	0.0346
McKane Shona	0.0069
McManus John	0.0691
McMurtry Alan	0.0173
McNamara Kevin	0.0864
Meynell Ross	0.0346
Mitchell Richard	0.1555
Morrison David	0.0173
Mulick Anthony	0.0691
Neilson Murray	0.0425
Newman Julian	0.0518
Ng Paul	0.0346
Nicholson Michelle	0.0243
O'Brien Gerard	0.0294
O'Brien Nick	0.0346
O'Keefe David	0.0138
Parfield Trust No 1 Limited	0.8136
Parfield Trust No 2 Limited	0.8136
Paterson Graeme	0.0307
Patterson Mark	0.0173
Paul Victor	0.0518
Pearce Clarrie	0.0691
Peters Tony	0.0601
Pirie Brian	0.0236
Pooch Vincent	0.0346
Porter John	0.0173
Poulton Joyce	0.0035
Quennell David	0.0691
Rae Don	0.0193
Rathgen Gray	0.0173
Reeves Mark	0.0242
Riach Lorraine	0.0249
Richardson Hon Ruth	0.1728
Ridout Richard	0.0810
Roberts Leigh	0.0264
Robinson James	0.0086
Robinson Martin	0.1037
Russel Matthew	0.1037
Ryall Madeleine	0.0346
Sault Nicholas	0.0346
Saunders Jeanette	0.0069
Schwalger Peter	0.0346
Scott Nicholas	0.0207
Scott Owen	0.0972
Segaran Chendra	0.0277
Shore Colin	0.0173
Simpson Sir Gilbert	71.9252

**Takeovers Code (Jade Software
Corporation Limited) Exemption
Notice 2003**

Schedule 2

2003/127

Name	Beneficial interest (%)
Simpson Hugo	0.6528
Smith Mike	0.1728
Smith Peter	0.0508
Smith Stephen	0.0207
Snell Brian	0.2074
South Jackie	0.0644
South Jeffrey	0.0068
Sullivan Denis	0.1027
Tamplin Marie	0.0691
Taylor Harvey	0.0196
Thompson Faye	0.0992
Thompson Trevor	0.0518
Thomson Alan	0.0035
Tully Wendy	0.0109
Uys Anne	0.0518
Valentine Murray	0.3456
Van Soest Adele	0.0691
Varga Judith	0.0311
Voorwinde Lisa	0.0346
Vukelic Milan	0.0432
Walden Bernie	0.1037
Ward Simon	0.1728
Watson David	0.0363
Weeds Graeme	0.0346
White Michael	0.3456
Williams Lucy	0.0346
Williamson Greg	0.0162
Winsloe Owen	0.0173
Winter Brian	0.0035
Wohlers Alan	0.1857
Wright Dot	0.0035
Wright Gavin	0.0705
Yamagishi Fumiaki	0.0069
Yorke Shirely	0.0093
Young Peter	0.1068

Dated at Auckland this 28th day of May 2003.

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

[L.S.]

J. C. King,
Chairperson.

Statement of reasons of Takeovers Panel

This notice applies to acts or omissions occurring on or after the day after the date of its notification in the *Gazette* and expires on the close of 31 December 2010.

This notice exempts the outperformance share (**OPS**) holders from rule 6(1)(a) and (b) of the Takeovers Code (the **Code**).

Issue of OPS

On 14 December 2001, mandatory convertible notes were issued by Jade Software Corporation Limited (**Jade**) to certain parties. The terms and conditions of the OPS were determined as part of the contractual negotiations that involved the issuing of mandatory convertible notes.

OSBIs

This exemption applies to the bonus issues of ordinary shares (**OSBIs**) that may be triggered under the terms and conditions of the OPS. The OSBIs are the potential issue of an additional 21 million ordinary shares (in 3 possible tranches of 7 million ordinary shares) to OPS shareholders, according to their beneficial interest in the OPS.

The OSBIs will be triggered should earnings before interest, taxes, depreciation, and amortisation (**EBITDA**) of Jade, in any of the 8 financial years beginning from 1 January 2002, reach certain targets. These targets are \$55 million, \$65 million, and \$75 million.

In order to comply with the exemption, allotments made under an OSBI must be made in the same proportions as the beneficial interests set out in *Schedule 2*.

IPO

Jade is intending to conduct an initial public offer during 2003 subject to market conditions. One effect of the initial public offer will be that shareholders will invest in Jade who were not shareholders at the time that the OPS was issued.

As a result of the issue of ordinary shares under an OSBI, it is likely that 1 or more OPS shareholders will become the holder or controller of an increased percentage of voting rights in Jade. Without the present exemption, an OPS shareholder that holds 20% or less and

that increases its holding or control above 20%, or that holds in excess of 20% and that increases its holding or control, would probably be in breach of rule 6 of the Code.

Takeovers Code (Class Exemptions) Notice (No 2) 2001

Clause 7 of the Takeovers Code (Class Exemptions) Notice (No 2) 2001 provides a class exemption from rule 6(1) in respect of issues of shares within 6 months of an initial public offering subject to, amongst other matters, disclosure in the relevant prospectus and investment statement. It is not possible for Jade to rely on the exemption provided in clause 7 of the Takeovers Code (Class Exemptions) Notice (No 2) 2001 with respect to the OPS, as the OSBIs will not occur within 6 months of the initial public offer.

Rule 7(d) of Code

It is not appropriate for Jade to rely on the exception provided in rule 7(d) of the Code. Under rule 7(d) of the Code, any allotment of ordinary shares would need to be approved at a shareholders' meeting by ordinary resolution of Jade. Under rule 17(2) of the Code, no OPS shareholders or their associates would be able to vote on the resolution. There is no certainty that such a resolution would be approved. By voting against the issue of ordinary shares under the OSBI, the future shareholders in Jade would be able to avoid the dilutionary effect of the OSBIs despite the fact that the existence of the OPS was disclosed as part of the initial public offer.

Disclosure

As part of this exemption, Jade is required to disclose the terms and conditions of the OPS and the potential impact of the OSBIs in—

- the investment statement and prospectus that are issued in respect of the initial public offer; and
- Jade's annual reports (while the OPS is on issue).

The Takeovers Panel considers that it is appropriate to grant the exemption from rule 6(1)(a) and (b) of the Code because, while shareholders at the time of an OSBI will not have an opportunity to vote to approve the allotment or allotments of ordinary shares to the OPS shareholders that might otherwise have occurred under rule 7(d) of the Code, those shareholders have the opportunity to express

their approval (or otherwise) of the OPS in deciding whether or not to invest in Jade through the initial public offer or at a future time.

The Takeovers Panel considers that the exemption is consistent with the objectives of the Code because—

- it ensures that the holders of securities in Jade are fairly treated; and
- it recognises that potential investors in Jade will ultimately decide for themselves the merits of the potential allotments when deciding whether to invest in the initial public offer.

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

Date of notification in *Gazette*: 5 June 2003.

This notice is administered by the Takeovers Panel.
