



Takeovers Code (The Tindall Foundation) 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 (The Tindall Foundation) Exemption Notice 2006.

2 Application
This notice applies to acts or omissions occurring on or after 25 February 2004.

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)
control percentage means the percentage of voting rights in The Warehouse that a person holds or controls or is deemed to hold or control

The Warehouse means The Warehouse Group Limited

trustee means a trustee of the trust known as The Tindall Foundation established by deed of trust dated 18 April 1996 and registered as a charitable trust in terms of the Charitable Trusts Act 1957.

- (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 6(1) of Code

Jennifer Mary Casey, Peter Francis Menzies, Margaret Maria Tindall, and Stephen Robert Tindall are exempted from rule 6(1) in respect of any increase in that person's control percentage resulting from—

- (a) the appointment of Peter Francis Menzies as a trustee on 25 February 2004; and
- (b) the retirement of John Richard Avery and Keith Raymond Smith as trustees on 22 August 2006; and
- (c) the appointment of Jennifer Mary Casey as a trustee on 8 September 2006.

Dated at Auckland this 28th day of November 2006.

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

[Seal]

J C King,
Chairperson.

Statement of reasons

This notice applies to acts or omissions occurring on or after 25 February 2004.

The Tindall Foundation (the **Foundation**) is a charitable trust registered under the Charitable Trusts Act 1957. The Foundation, as a body corporate, holds more than 20% of the voting rights in The Warehouse Group Limited (**The Warehouse**), a code company. The trustees of the Foundation control the voting rights in The Warehouse held by the Foundation.

The Takeovers Panel (the **Panel**) has granted exemptions from rule 6(1) of the Takeovers Code (the **Code**) to Jennifer Mary Casey, Peter Francis Menzies, Margaret Maria Tindall, and Stephen Robert Tindall in respect of any increase or deemed increase in the percentage of voting rights in The Warehouse held or controlled by them as a result of the following changes in the trustees of the Foundation:

- (a) the appointment of Mr Menzies as a trustee on 25 February 2004:
- (b) the retirement of John Richard Avery and Keith Raymond Smith as trustees on 22 August 2006:
- (c) the appointment of Ms Casey as a trustee on 8 September 2006.

By operation of rule 6(2)(b) of the Code, when Mr Menzies and Ms Casey were appointed as trustees, they joined the existing trustees in the controlling of the voting rights in The Warehouse held by the Foundation, and were deemed to have become the controller of more than 20% of the voting rights in The Warehouse.

By operation of rule 6(2)(c) of the Code, on the retirement of Messrs Avery and Smith, the remaining trustees of the Foundation increased the extent to which they shared in the holding or controlling of voting rights in The Warehouse held by the Foundation, and were deemed to have become the controller of an increased percentage of the voting rights.

The Panel considers that the exemptions are appropriate and consistent with the objectives of the Code because—

- although the change of trustees resulted in an indirect change in the control of voting rights in The Warehouse, there was no effective change in the control of voting rights in The Warehouse as a result of the change of trustees:
- shareholders of The Warehouse were not disadvantaged in not having an opportunity to vote on the change of trustees at a meeting of shareholders, as the change had no real effect on those shareholders.

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

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

This notice is administered by the Takeovers Panel.
