

**Reprint
as at 2 November 2008**



**Takeovers Code (Viking Capital
Limited) Exemption Notice 2007**

(SR 2007/62)

Takeovers Code (Viking Capital Limited) Exemption Notice 2007: expired, on
2 November 2008, by clause 3.

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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Note

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this reprint.

A general outline of these changes is set out in the notes at the end of this reprint, together with other explanatory material about this reprint.

This notice is administered by the Takeovers Panel.

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Notice

1 Title

This notice is the Takeovers Code (Viking Capital Limited) Exemption Notice 2007.

2 Application

This notice applies to acts or omissions occurring on or after 7 March 2007.

3 Expiry

This notice expires on the close of 1 November 2008.

4 Interpretation

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

Act means the Takeovers Act 1993

Baker Investment Trust means Grant Baker, Donna Baker, and Paul Smithies as trustees of the Baker Investment Trust

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

final warrant exercise date means 1 October 2008

founder warrants means—

(a) the 10 000 000 warrants issued to Snowdon Peak as founder warrants under the Viking Capital prospectus; and

(b) 3 300 000 warrants issued to the Baker Investment Trust as founder warrants under the Viking Capital prospectus

IPO warrants means the warrants, not being founder warrants, issued under the Viking Capital prospectus as follows:

(a) 3 266 667 to Snowdon Peak:

(b) 33 333 to Brent King:

(c) 6 667 to each of Chloe King, James King, Katie King, Marcus King, and Catherine Burkhart:

(d) 1 111 111 to the Baker Investment Trust

King family means Chloe King, James King, Katie King, Marcus King, and Catherine Burkhart

meeting means the meeting of Viking Capital shareholders to be held on or about 7 March 2007 to consider whether or not to approve, for the purposes of rule 7(d) of the Code, the possible allotment of voting securities to the warrant holders as a result of the exercise by them of all or some of the warrants

notice of meeting means the notice of the meeting to be sent to Viking Capital shareholders in respect of the meeting

Snowdon Peak means Snowdon Peak Investments Limited

Viking Capital means Viking Capital Limited

Viking Capital prospectus means the prospectus issued by Viking Capital dated 2 June 2006

voting security means an ordinary share in Viking Capital

warrant holders means—

- (a) Brent King; and
- (b) Snowdon Peak; and
- (c) the King family; and
- (d) the Baker Investment Trust

warrants means the IPO warrants and the founder warrants.

- (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 Viking Capital.
- (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.

5 Exemption from rule 7(d) of Code

Each warrant holder is exempted from rule 7(d) of the Code in respect of any increase in that warrant holder's voting control resulting from the allotment of voting securities to that warrant holder as a result of the exercise by that warrant holder of any warrants to the extent that the notice of meeting does not comply with rule 16(b) of the Code.

6 Exemption from rule 16(b) of Code

Viking Capital is exempted from rule 16(b) of the Code in respect of the notice of meeting.

7 Condition relating to particulars of voting securities to be contained in notice of meeting

The exemptions in clauses 5 and 6 are subject to the following conditions:

Brent King, Snowdon Peak, and the King family:

Individual basis

- (a) that the notice of meeting contains, or is accompanied by, the following particulars of the voting securities that may be allotted in respect of the warrants held by Brent King:
 - (i) the maximum number of voting securities that could be allotted to Brent King as a result of the exercise of all of the warrants held by him:
 - (ii) the maximum number of voting securities that could be allotted to Brent King as a result of the exercise of all of the warrants held by him expressed as a percentage of the total voting securities on issue after the allotment of the voting securities resulting from the exercise of all the warrants held by him:
 - (iii) the maximum percentage of the total voting securities on issue that could be held or controlled by Brent King after the allotment of the voting securities resulting from the exercise of all the warrants held by him:
 - (iv) the maximum percentage of the total voting securities on issue that could be held or controlled by Brent King and Brent King's associates after the allotment of the voting securities resulting from the exercise of all the warrants held by Brent King (calculated on the basis that Snowdon Peak, the King family, and the Baker Investment Trust are not associates of Brent King):
- (b) that the numbers and percentages referred to in paragraph (a) are calculated on the basis that—

- (i) no warrants held by persons other than Brent King are exercised; and
 - (ii) there is no change to the total number of voting securities on issue between the date of the notice of meeting and the final warrant exercise date other than as a result of the exercise of the warrants held by Brent King:
- (c) that the notice of meeting contains, or is accompanied by, the following particulars of the voting securities that may be allotted in respect of the warrants held by Snowdon Peak:
- (i) the maximum number of voting securities that could be allotted to Snowdon Peak as a result of the exercise of all the warrants held by it:
 - (ii) the maximum number of voting securities that could be allotted to Snowdon Peak as a result of the exercise of all the warrants held by it expressed as a percentage of the total voting securities on issue after the allotment of the voting securities resulting from the exercise of all the warrants held by it:
 - (iii) the maximum percentage of the total voting securities on issue that could be held or controlled by Snowdon Peak after the allotment of the voting securities resulting from the exercise of all the warrants held by it:
 - (iv) the maximum percentage of the total voting securities on issue that could be held or controlled by Snowdon Peak and Snowdon Peak's associates after the allotment of the voting securities resulting from the exercise of all the warrants held by Snowdon Peak (calculated on the basis that Brent King, the King family, and the Baker Investment Trust are not associates of Snowdon Peak):
- (d) that the numbers and percentages referred to in paragraph (c) are calculated on the basis that—
- (i) no warrants held by persons other than Snowdon Peak are exercised; and

- (ii) there is no change to the total number of voting securities on issue between the date of the notice of meeting and the final warrant exercise date other than as a result of the exercise of the warrants held by Snowdon Peak:
- (e) that the notice of meeting contains, or is accompanied by, the following particulars of the voting securities that may be allotted in respect of the warrants held by the King family:
 - (i) the maximum number of voting securities that could be allotted to the King family as a result of the exercise of all the warrants held by them:
 - (ii) the maximum number of voting securities that could be allotted to the King family as a result of the exercise of all the warrants held by them expressed as a percentage of the total voting securities on issue after the allotment of the voting securities resulting from the exercise of all the warrants held by them:
 - (iii) the maximum percentage of the total voting securities on issue that could be held or controlled by the King family after the allotment of the voting securities resulting from the exercise of all the warrants held by them:
 - (iv) the maximum percentage of the total voting securities on issue that could be held or controlled by the King family and the King family's associates after the allotment of the voting securities resulting from the exercise of all the warrants held by the King family (calculated on the basis that Brent King, Snowdon Peak, and the Baker Investment Trust are not associates of the King family):
- (f) that the numbers and percentages referred to in paragraph (e) are calculated on the basis that—
 - (i) no warrants held by persons other than the King family are exercised; and
 - (ii) there is no change to the total number of voting securities on issue between the date of the no-

tice of meeting and the final warrant exercise date other than as a result of the exercise of the warrants held by the King family:

Brent King, Snowdon Peak, and the King family:

Aggregate basis

- (g) that the notice of meeting contains, or is accompanied by, the following particulars of the voting securities that may be allotted in respect of the warrants held by Brent King, Snowdon Peak, and the King family:
- (i) the maximum number of voting securities that could be allotted to Brent King, Snowdon Peak, and the King family, in aggregate, as a result of the exercise of all the warrants held by them:
 - (ii) the maximum number of voting securities that could be allotted to Brent King, Snowdon Peak, and the King family, in aggregate, as a result of the exercise of all the warrants held by them expressed as a percentage of the total voting securities on issue after the allotment of the voting securities resulting from the exercise of all the warrants held by them:
 - (iii) the maximum percentage of the total voting securities on issue that could be held or controlled by Brent King, Snowdon Peak, and the King family, in aggregate, after the allotment of the voting securities resulting from the exercise of all the warrants held by them:
 - (iv) the maximum percentage of the total voting securities on issue that could be held or controlled by Brent King, Snowdon Peak, the King family, and the associates of each of them, in aggregate, after the allotment of the voting securities resulting from the exercise of all the warrants held by Brent King, Snowdon Peak, and the King family (calculated on the basis that the Baker Investment Trust is not an associate of Brent King, Snowdon Peak, or the King family):
- (h) that the numbers and percentages referred to in paragraph (g) are calculated on the basis that—

- (i) no warrants held by persons other than Brent King, Snowdon Peak, and the King family are exercised; and
- (ii) there is no change to the total number of voting securities on issue between the date of the notice of meeting and the final warrant exercise date other than as a result of the exercise of the warrants held by Brent King, Snowdon Peak, and the King family:

Baker interests

- (i) that the notice of meeting contains, or is accompanied by, the following particulars of the voting securities that may be allotted in respect of the warrants held by the Baker Investment Trust:
 - (i) the maximum number of voting securities that could be allotted to the Baker Investment Trust as a result of the exercise of all the warrants held by it:
 - (ii) the maximum number of voting securities that could be allotted to the Baker Investment Trust as a result of the exercise of all the warrants held by it, expressed as a percentage of the total voting securities on issue after the allotment of the voting securities resulting from the exercise of all the warrants held by it:
 - (iii) the maximum percentage of the total voting securities on issue that could be held or controlled by the Baker Investment Trust after the allotment of the voting securities resulting from the exercise of all the warrants held by it:
 - (iv) the maximum percentage of the total voting securities on issue that could be held or controlled by the Baker Investment Trust and the Baker Investment Trust's associates after the allotment of the voting securities resulting from the exercise of all the warrants held by the Baker Investment Trust (calculated on the basis that Brent King, Snowdon Peak, and the King family are not associates of the Baker Investment Trust):

- (j) that the numbers and percentages referred to in paragraph (i)(i) to (iv) are calculated on the basis that—
 - (i) no warrants held by persons other than the Baker Investment Trust are exercised; and
 - (ii) there is no change to the total number of voting securities on issue between the date of the notice of meeting and the final warrant exercise date other than as a result of the exercise of the warrants held by the Baker Investment Trust:

Aggregated voting control

- (k) that the notice of meeting contains, or is accompanied by, the following particulars of the voting securities that may be allotted in respect of the exercise of the warrants held by Brent King, Snowdon Peak, the King family, and the Baker Investment Trust, in aggregate:
 - (i) the maximum aggregate number of voting securities that could be allotted to Brent King, Snowdon Peak, the King family, and the Baker Investment Trust as a result of the exercise of all the warrants held by them:
 - (ii) the maximum aggregate number of voting securities that could be allotted to Brent King, Snowdon Peak, the King family, and the Baker Investment Trust as a result of the exercise of all of the warrants held by them expressed as a percentage of the total voting securities on issue after the allotment of the voting securities resulting from the exercise of all the warrants held by them:
 - (iii) the maximum aggregate percentage of the total voting securities on issue that could be held or controlled by Brent King, Snowdon Peak, the King family, and the Baker Investment Trust after the allotment of the voting securities resulting from the exercise of all the warrants held by them:
 - (iv) the maximum aggregate percentage of the total voting securities on issue that could be held or controlled by Brent King, Snowdon Peak, the King family, and the Baker Investment Trust and

the associates of each of them after the allotment of the voting securities resulting from the exercise of all the warrants held by Brent King, Snowdon Peak, the King family, and the Baker Investment Trust:

- (l) that the numbers and percentages referred to in paragraph (k) are calculated on the basis that there is no change to the total number of voting securities on issue between the date of the notice of meeting and the final warrant exercise date other than as a result of the exercise of the warrants held by Brent King, Snowdon Peak, the King family, and the Baker Investment Trust.

8 Additional conditions relating to contents of notice of meeting

The exemptions in clauses 5 and 6 are subject to the additional conditions that—

- (a) the notice of meeting also contains, or is accompanied by,—
 - (i) full particulars of the issue of the voting securities; and
 - (ii) a summary of the terms and conditions of the exemptions granted to Brent King, Snowdon Peak, the King family, and the Baker Investment Trust; and
- (b) the form of the notice of meeting is approved by the Takeovers Panel.

9 Additional condition relating to allottees

The exemption granted to each of Brent King, Snowdon Peak, the Baker Investment Trust, and the King family in clause 5 is subject to the additional condition that that proposed allottee does not become the holder or controller of an increased percentage of voting securities, except as a result of the exercise of the warrants as approved by shareholders at the meeting until the earlier of—

- (a) the exercise of the last of the warrants held by that proposed allottee; or
- (b) the final warrant exercise date.

10 Additional condition relating to change of control in Snowdon Peak

The exemption granted to Snowdon Peak in clause 5 is subject to the additional condition that there is no change in control of Snowdon Peak until the earlier of—

- (a) the exercise of the last of the warrants held by Snowdon Peak; or
- (b) the final warrant exercise date.

11 Application of exemption in clause 5

The exemption in clause 5 does not apply to any increase in voting control resulting from the exercise of a particular warrant if, immediately after the completion of the allotment resulting from the exercise of the warrant, the total percentage of voting securities held or controlled by the warrant holder is greater than the maximum percentage of voting securities that could be held or controlled by that person as disclosed in the notice of meeting,—

- (a) in respect of Brent King, in accordance with clause 7(a)(iii):
- (b) in respect of Snowdon Peak, in accordance with clause 7(c)(iii):
- (c) in respect of the King Family, in accordance with clause 7(e)(iii):
- (d) in respect of the Baker Investment Trust, in accordance with clause 7(i)(iii).

Dated at Auckland this 27th day of February 2007.

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 7 March 2007 and expires on 1 November 2008.

The Takeovers Panel (the **Panel**) has granted exemptions to—

- Brent King, Snowdon Peak Investments Limited (**Snowdon Peak**), the King family (comprising Chloe King, James King, Katie King, Marcus King, and Catherine Burkhart), and the Baker Investment Trust from rule 7(d) of the Takeovers Code (the **Code**) to the extent that rule 7(d) requires the notice of meeting to be in accordance with rule 16(b) of the Code in respect of any increase in the percentage of voting rights held in Viking Capital Limited (**Viking Capital**) as a result of the exercise of the warrants held by them:
- Viking Capital from rule 16(b) in respect of the notice of meeting.

Snowdon Peak is the holder of 19 600 000 ordinary shares in Viking Capital and consequently holds over 20% of the voting rights in Viking Capital.

Brent King is the sole shareholder and director of Snowdon Peak. Chloe King, James King, Katie King, and Marcus King are the children of Brent King and Catherine Burkhart. Grant Baker was named as an associate of Brent King in the prospectus under which Viking Capital conducted its initial public offering. Consequently, Brent King, the King family, and the Baker Investment Trust are associates of Snowdon Peak.

Snowdon Peak holds 13 266 667 warrants in Viking Capital. Any exercise by Snowdon Peak of its warrants would result in it being allotted ordinary shares in Viking Capital and thereby increasing the percentage of voting rights that it holds or controls beyond the 20% threshold. Accordingly, shareholder approval under rule 7(d) would be required for that increase in voting control.

Brent King, the King family, and the Baker Investment Trust also hold warrants in Viking Capital. Due to their relationships of association with Snowdon Peak, any exercise of warrants by one of those

persons would result in that person being allotted ordinary shares in Viking Capital, thereby increasing the percentage of voting rights that that person holds and controls, when aggregated with the percentage of voting rights held or controlled by Snowdon Peak, beyond the 20% threshold. Accordingly, shareholder approval under rule 7(d) would be required for that increase in voting control.

At a special meeting of shareholders to be held on or about 7 March 2007, Viking Capital proposes to ask shareholders to approve the allotment of shares to the warrant holders as a result of the exercise of the warrants held by them. However, Viking Capital is unable to comply with rule 16(b) of the Code because Viking Capital is unable to specify—

- the exact number of Viking Capital shares that will be allotted pursuant to the exercise of warrants held by the warrant holders because the number of warrants that will be exercised by each of those persons will not be known until the expiry date of the warrants. Additionally, the terms and conditions of the warrants provide for an adjustment to the number of shares issued on the exercise of a warrant where there is a change to the capital structure of Viking Capital:
- the exact percentage of the aggregate of all existing voting securities and all voting securities being allotted to the warrant holders as a result of the exercise of their warrants because that will depend on unknown variables: the number of warrants ultimately exercised by each of the warrant holders and the future capital structure of Viking Capital:
- the exact percentage of all voting securities that will be held or controlled by the warrant holders and their associates after completion of the allotment of voting securities, because that will depend on unknown variables: the number of warrants ultimately exercised by each of the warrant holders, the future capital structure of Viking Capital, and whether the warrant holders have increased their voting control otherwise than as a result of the exercise of their warrants.

The Panel considered that it was appropriate to grant the exemptions to Viking Capital and the warrant holders because—

- it is impossible for the actual number of voting securities to be allotted and the relevant percentages required by rule 16(b)

to be stated in the notice of meeting, as these numbers and percentages are dependent on the extent to which the warrants are ultimately exercised by the warrant holders and whether there is a change to the capital structure Viking Capital before the expiry date of the warrants:

- all non-associated shareholders will have an opportunity to vote on the potential allotment of voting securities to the warrant holders as a result of the exercise of their warrants:
- if the non-associated shareholders approve the potential maximum allotment of voting securities to the warrant holders, then, by implication, the shareholders also approve any lesser percentage of voting rights that may be acquired as a result of the allotment of voting securities as a result of the exercise by the warrant holders of their warrants:
- the issue of the warrants was pursuant to a registered prospectus and is an acknowledged method of incentivising shareholders to participate and contribute to a company's growth as well as providing a company with a means of raising equity capital in New Zealand, and the Panel should facilitate these arrangements by granting appropriate exemptions where necessary.

The Panel considers that the exemptions are consistent with the objectives of the Code, because the non-associated shareholders of Viking Capital will have an opportunity to vote on the potential allotments of voting securities to the warrant holders.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 8 March 2007.

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Notes

1 *General*

This is a reprint of the Takeovers Code (Viking Capital Limited) Exemption Notice 2007. The reprint incorporates all the amendments to the notice as at 2 November 2008, as specified in the list of amendments at the end of these notes.

Relevant provisions of any amending enactments that have yet to come into force or that contain relevant transitional or savings provisions are also included, after the principal enactment, in chronological order.

2 *Status of reprints*

Under section 16D of the Acts and Regulations Publication Act 1989, reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by the amendments to that enactment. This presumption applies even though editorial changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in the reprint.

This presumption may be rebutted by producing the official volumes of statutes or statutory regulations in which the principal enactment and its amendments are contained.

3 *How reprints are prepared*

A number of editorial conventions are followed in the preparation of reprints. For example, the enacting words are not included in Acts, and provisions that are repealed or revoked are omitted. For a detailed list of the editorial conventions, *see*

<http://www.pco.parliament.govt.nz/legislation/reprints.shtml>
or Part 8 of the *Tables of Acts and Ordinances and Statutory Regulations, and Deemed Regulations in Force*.

4 Changes made under section 17C of the Acts and Regulations Publication Act 1989

Section 17C of the Acts and Regulations Publication Act 1989 authorises the making of editorial changes in a reprint as set out in sections 17D and 17E of that Act so that, to the extent permitted, the format and style of the reprinted enactment is consistent with current legislative drafting practice. Changes that would alter the effect of the legislation are not permitted. A new format of legislation was introduced on 1 January 2000. Changes to legislative drafting style have also been made since 1997, and are ongoing. To the extent permitted by section 17C of the Acts and Regulations Publication Act 1989, all legislation reprinted after 1 January 2000 is in the new format for legislation and reflects current drafting practice at the time of the reprint.

In outline, the editorial changes made in reprints under the authority of section 17C of the Acts and Regulations Publication Act 1989 are set out below, and they have been applied, where relevant, in the preparation of this reprint:

- omission of unnecessary referential words (such as “of this section” and “of this Act”)
- typeface and type size (Times Roman, generally in 11.5 point)
- layout of provisions, including:
 - indentation
 - position of section headings (eg, the number and heading now appear above the section)
- format of definitions (eg, the defined term now appears in bold type, without quotation marks)
- format of dates (eg, a date formerly expressed as “the 1st day of January 1999” is now expressed as “1 January 1999”)
- position of the date of assent (it now appears on the front page of each Act)

- punctuation (eg, colons are not used after definitions)
- Parts numbered with roman numerals are replaced with arabic numerals, and all cross-references are changed accordingly
- case and appearance of letters and words, including:
 - format of headings (eg, headings where each word formerly appeared with an initial capital letter followed by small capital letters are amended so that the heading appears in bold, with only the first word (and any proper nouns) appearing with an initial capital letter)
 - small capital letters in section and subsection references are now capital letters
- schedules are renumbered (eg, Schedule 1 replaces First Schedule), and all cross-references are changed accordingly
- running heads (the information that appears at the top of each page)
- format of two-column schedules of consequential amendments, and schedules of repeals (eg, they are rearranged into alphabetical order, rather than chronological).

5 *List of amendments incorporated in this reprint
(most recent first)*

Takeovers Code (Viking Capital Limited) Exemption Notice 2007 (SR 2007/62): clause 3
