

Reprint

as at 6 November 2008

Takeovers Code (Beauty Direct and Online Limited) Exemption Notice 2005

(SR 2005/5)

Takeovers Code (Beauty Direct and Online Limited) Exemption Notice 2005: revoked, on 6 November 2008, by clause 3 of the Regulations Revocation Order 2008 (SR 2008/367).

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 eprint.

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

This notice is administered by the Takeovers Panel.

**Schedule
Investors**

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1 Title

This notice is the Takeovers Code (Beauty Direct and Online Limited) Exemption Notice 2005.

2 Application

This notice applies to acts or omissions occurring on or after 20 December 2004.

3 Interpretation

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

Act means the Takeovers Act 1993

BDO means Beauty Direct and Online Limited

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

EBITDA means earnings before interest, tax, depreciation, and amortisation

incentive shares means up to 54 598 909 shares in BDO that may be allotted to LPL and the investors under the transaction if certain EBITDA or turnover targets specified in the notice of meeting are achieved

investors means the persons named in the Schedule (excluding LPL)

LPL means Life Pharmacy Limited

meeting means the meeting of BDO's shareholders to be held on or about 14 February 2005 to consider whether or not to approve, for the purposes of rule 7(d) of the Code, the allotment of voting securities to LPL and the investors under the transaction

notice of meeting means the notice of special meeting of shareholders of BDO that—

(a) has been sent to BDO's shareholders; and

(b) contains proposed shareholder resolutions to be considered at the meeting

Pharmacy Group means LPL and the investors jointly
transaction means the transaction between BDO, LPL, and the investors under which BDO proposes to issue and allot up to 592 912 352 shares (including the incentive shares) to LPL and the investors.

- (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 7(d) of Code

LPL and the investors are exempted from rule 7(d) of the Code in so far as that rule requires the notice of meeting to be in accordance with rule 16(b) of the Code in respect of—

- (a) the exact number of voting securities that can be allotted to each allottee; and
- (b) the percentage of the aggregate of all existing voting securities and all voting securities being allotted that that number represents; and
- (c) the percentage of all voting securities that will be held or controlled by the person to whom the voting securities are being allotted after completion of the allotment.

5 Exemption from rule 16(b) of Code

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

6 Condition of exemptions

- (1) The exemptions in clauses 4 and 5 are subject to the condition that the notice of meeting contains particulars of—

- (a) the securities that may be allotted to LPL and the investors including—
 - (i) the maximum number of shares that may be allotted to LPL and each investor excluding the incentive shares (Assumption A); and
 - (ii) the maximum number of shares that may be allotted to LPL and each investor including the incentive shares (Assumption B); and

- (b) the percentage of the aggregate of the following that the maximum numbers in Assumption A and Assumption B represent:
 - (i) all existing voting securities; and
 - (ii) all voting securities that could be allotted; and
 - (c) the percentage of all voting securities that could be held or controlled by LPL and each investor after the completion of the allotment of the maximum numbers of voting securities in Assumption A and Assumption B; and
 - (d) the total number of shares—
 - (i) that could be allotted to the Pharmacy Group under Assumption A; and
 - (ii) that could be allotted to the Pharmacy Group under Assumption B; and
 - (e) the total percentage of the aggregate of the following that the maximum numbers in Assumption A and Assumption B represent:
 - (i) all existing voting securities; and
 - (ii) all voting securities that could be allotted to the Pharmacy Group; and
 - (f) the total percentage of all voting securities that could be held or controlled by the Pharmacy Group after the completion of the allotment of the maximum numbers of voting securities in Assumption A and Assumption B; and
 - (g) the total percentage of all voting securities that could be held or controlled by the Pharmacy Group and all of the Pharmacy Group's associates who are shareholders of BDO before the transaction, after the completion of the allotment of the maximum numbers of voting securities in Assumption A and Assumption B.
- (2) The exemptions in clauses 4 and 5 are subject to the further condition that any incentive shares are allotted to the investors on or before the dates specified in the Schedule.
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**Schedule
Investors**

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Name	Date by which incentive shares must be allotted
K L Lischner	30 June 2006
F B H Walker, B A Walker, and N J Comerford as trustees of the Walker Family Trust	30 June 2005
S L Thompson and A C Garner as trustees of the Blue Jay Way Trust	30 June 2006
B A Fordyce, F Dragicevich, and C L Hutton as trustees of the Bota Family Trust	30 June 2006
I N Letica, M G Beckman, and BBR Trustee Company Limited as trustees of the Letica Investment Trust	30 June 2005
J S Begovic, K E Begovic, and K M Palin as trustees of the Begovic Family Trust	30 June 2006
N C Bullock	30 June 2005
M E Bullock	30 June 2005
M J Fleet	30 June 2006
A Yee	30 June 2005
T Lai, C Lai, and K Yee as trustees of the Thomas and Carolyn Lai Family Trust	30 June 2006

Name	Date by which incentive shares must be allotted
R T Roper, J J Roper, and R M Toplis as trustees of the Belmont Trust	30 June 2006
Calderpharm Limited	30 June 2005
D S Milne, J M Milne, and L W Lamberg as trustees of the S & J Milne Family Trust	30 June 2005
Date by which incentive	
M S Vuksich, F A Vuksich, and W M G Yovich as trustees of the Mark and Frances Vuksich Family Trust	30 June 2006
E A McAulay	31 May 2005
A H McAulay	31 May 2005
FM Trustees 200 Limited	30 September 2005
J P Guthrie	30 September 2005
P J Guthrie	30 September 2005
G K Ritson	Part on 30 June 2005, part on 30 June 2006, and part on 30 November 2006 (in respect of different businesses)
Ganet Investments Limited	Part on 30 June 2005 and the balance on 30 June 2006 (in respect of different businesses)
Life Pharmacy Limited	30 June 2005

Dated at Wellington this 25th day of January 2005.

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

D M D Rawstorne,
Member.
[LS]

Statement of reasons

This notice applies to acts or omissions occurring on or after 20 December 2004.

The Takeovers Panel has granted exemptions to—

- Life Pharmacy Limited (LPL) and certain specified persons (investors) in connection with rule 7(d) of the Takeovers Code (the Code); and
- Beauty Direct and Online Limited (BDO) in connection with rule 16(b) of the Code.

The exemptions relate to a proposed transaction between BDO, LPL, and the investors (the transaction) that is to be considered at a meeting of BDO's shareholders to be held on or about 14 February 2005. The transaction provides for the issue of up to 592 912 352 shares to LPL and the investors, including the issue of up to 54 598 909 shares (incentive shares) by way of earn-out based on the achievement of certain earnings before interest, tax, depreciation, and amortisation or turnover targets.

The Takeovers Panel considered that it was appropriate to grant the exemptions because—

- (a) it is impossible for the actual numbers of shares to be allotted and the relevant percentages required by rule 16(b)(i), (ii) and (iii) to be stated in the notice of meeting. These numbers and percentages are dependent upon a contractual arrangement entered into by BDO, LPL, and the investors which is subject to an earn-out provision. This provision requires that a portion of the number of shares to be issued to each investor would be based on each investor achieving certain performance criteria specified in the relevant sale agreement (or those targets being met in aggregate by all the pharmacies eligible for earn-out shares in a given year); and
- (b) if BDO shareholders approve the maximum increase in the percentage of voting rights by the allottees, then by implica-

tion, they can be taken to also approve that the allottees may increase their percentage of voting rights by a lesser amount. The Takeovers Panel considered that the exemption was consistent with the objectives of the Code because the non-associated shareholders of BDO will have an opportunity to vote on the allotment of voting securities to LPL and the investors.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 27 January 2005.

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Notes

1 *General*

This is an eprint of the Takeovers Code (Beauty Direct and Online Limited) Exemption Notice 2005. It incorporates all the amendments to the notice as at 6 November 2008. The list of amendments at the end of these notes specifies all the amendments incorporated into this eprint since 3 September 2007. Relevant provisions of any amending enactments that contain transitional, savings, or application provisions are also included, after the Principal enactment, in chronological order.

2 *About this eprint*

This eprint has not been officialised. For more information about officialisation, please see “Making online legislation official” under “Status of legislation on this site” in the About section of this website.

3 *List of amendments incorporated in this eprint (most recent first)*

Regulations Revocation Order 2008 (SR 2008/367): clause 3
