

Reprint

as at 6 November 2008

Takeovers Code (Auckland Energy Consumer Trust) Exemption Notice 2005

(SR 2005/226)

Takeovers Code (Auckland Energy Consumer Trust) 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.

1 Title

This notice is the Takeovers Code (Auckland Energy Consumer Trust) Exemption Notice 2005.

2 Application

This notice applies to acts or omissions occurring on or after 27 June 2005.

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 Vector Limited that a person holds or controls or is deemed to hold or control

offer means the initial public offer of ordinary shares in Vector Limited during July and August 2005

trustees means Michael Joseph Buczkowski, Shale Chambers, Warren James Kyd, and Karen Annette Sherry.

(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 Vector Limited.

(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.

4 Exemption from rule 6(1) of Code

The trustees are exempted from rule 6(1) of the Code in respect of any increase in their respective voting control as a result of an allotment of voting securities under the offer.

5 Conditions of exemption

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

- (a) the allotment is made within 1 month of the close of the offer; and
- (b) the offer complies with the Securities Act 1978; and

- (c) the prospectus and investment statement relating to the offer clearly state—
 - (i) the number of voting securities to be allotted to each of the trustees; and
 - (ii) the potential maximum aggregate of the control percentages of each of the trustees and their associates after the completion (and as a result) of allotments under the offer; and
- (d) the trustees do not increase their respective voting control in Vector Limited other than by way of the allotment of voting securities under the offer.

Dated at Auckland this 21st day of July 2005.

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

DO Jones,
Deputy Chairperson.
[LS]

Statement of reasons

This notice applies to acts or omissions occurring on or after 27 June 2005. The notice exempts each of Michael Joseph Buczkowski, Shale Chambers, Warren James Kyd, and Karen Annette Sherry (the **trustees**), who are 4 of the 5 current trustees of the Auckland Energy Consumer Trust (**AECT**), from compliance with rule 6(1) of the Takeovers Code (the **Code**) in respect of any increase in their voting control in Vector Limited (Vector) as a result of the allotment of voting securities under an initial public offer by Vector (the **offer**). The trustees intend to apply for shares in their personal or individual capacities. However, as a result of acting jointly as AECT trustees in accordance with their duties under the AECT's trust deed dated 27 August 1993, it is likely that they will be considered associates of the AECT trustees as a collective group (as well as associates of each other) under rule 4(1)(d) of the Code. Without this exemption, rule 6(1) of the Code would therefore preclude them from applying for shares under the offer as, upon allotment, they would be holders or

controllers (together with the 5 AECT trustees as a collective group) of more than 20% of the voting rights in Vector.

The Panel considers that it is appropriate to grant the exemption because—

- (a) Vector is a code company only because it lists its capital bonds on the NZDX (the debt security market operated by New Zealand Exchange Limited). The offer of ordinary shares under the offer is the first public offer of voting securities in Vector; and
- (b) clause 7 of the Takeovers Code (Class Exemptions) Notice (No 2) 2001 exempts every person who increases voting control as a result of an allotment of voting securities by a code company under an initial public offer from rule 6(1) of the Code in respect of that increase in voting control. One of the conditions of the class exemption is that the issuer must be a code company only because of entering into a listing agreement with a stock exchange in connection with the offer.

Vector is a code company only because it lists non-voting securities on the NZDX. The Panel therefore considers that this exemption is consistent with the existing class exemption; and

- (c) it is impossible for the trustees to have the allotment approved by an ordinary resolution of Vector under rule 7(d) of the Code because the trustees and their associates cannot vote on such a resolution and there are no shareholders in Vector other than the trustees and John Gregory Collinge, the fifth trustee of the AECT.

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

- (a) the exemption applies only to the initial public offer of voting securities in Vector and it is a condition of the exemption that the potential maximum aggregate of the control percentages of each of the trustees, and their associates, must be clearly stated in the prospectus and investment statement relating to the offer; and
- (b) the effect of the conditions of the exemption is that potential investors not associated with the trustees will have an opportunity to decide for themselves the merits of the potential al-

lotments to the trustees 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*: 11 August 2005.

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Notes**1 General**

This is an eprint of the Takeovers Code (Auckland Energy Consumer Trust) 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
