

**Reprint
as at 1 January 2011**



**Takeovers Code (Abano Healthcare
Group Limited) Exemption Notice
2009**

(SR 2009/269)

Takeovers Code (Abano Healthcare Group Limited) Exemption Notice 2009:
expired, on 1 January 2011, 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).

Contents

	Page
1 Title	2
2 Application	2
3 Expiry	2
4 Interpretation	2
5 Exemption from rule 7(c) of Code	3
6 Exemption from rule 15(b) of Code	4
7 Conditions of exemptions in clauses 5 and 6 relating to particulars of voting securities to be contained in notice of meeting	4
8 Additional conditions relating to notice of meeting	5

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.

9 Application of exemptions in clauses 5 and 6 6

Notice

1 Title

This notice is the Takeovers Code (Abano Healthcare Group Limited) Exemption Notice 2009.

2 Application

This notice applies to acts or omissions occurring on or after 24 September 2009.

3 Expiry

This notice expires on the close of 31 December 2010.

4 Interpretation

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

Abano means Abano Healthcare Group Limited

Act means the Takeovers Act 1993

Code means the Takeovers Code under the Act

exempted persons means the nominee company, the trusts, Healthcare, and Abano

Healthcare means Healthcare Industry Limited, a company controlled by the trusts

HHL means Hearing Holdings Limited, a wholly owned subsidiary of NHC(NZ)

loan agreement means a loan agreement that may be entered into by NHC(NZ), Abano, the trusts, NHC, and HHL as part of the proposed transaction

meeting means the meeting of the shareholders of Abano to be held on or about 8 October 2009 to consider, among other things, whether to approve the proposed transaction and entry into, and enforcement of rights under, the loan agreement and the security arrangements

NHC means NHC Group Pty Limited, a company incorporated in Australia

NHC(NZ) means National Hearing Care (New Zealand) Limited, a wholly owned subsidiary of NHC

nominee company means ABA Nominee Limited, a company that was incorporated for the purposes of the proposed transaction

notice of meeting means the notice of meeting to be sent to the shareholders of Abano in respect of the meeting

proposed transaction means the acquisition by the nominee company of up to 4 534 998 voting securities held by HHL, which may be required in order to facilitate NHC(NZ)'s acquisition of all of the shares in Bay Audiology Limited

security arrangements means the security over up to 4 534 998 voting securities held by HHL under a Specific Security Deed that may be entered into by the nominee company, HHL, NHC(NZ), NHC, Healthcare, and Abano as part of the proposed transaction

trusts means—

- (a) Peter Lionel Hutson, Anya Lee Hutson, and Lewis Thomas Grant as trustees of the Praxis Trust; and
- (b) Scott Eric Wright, Alison McRae Wright, and Kevin David Pitfield as trustees of the Scott and Alison Wright Family Trust; and
- (c) Lewis Thomas Grant, Peter Lionel Hutson, and Anya Lee Hutson as trustees of the Anya Hutson Trust

voting securities means voting securities in Abano.

- (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 Abano.
- (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(c) of Code

The nominee company, the trusts, Healthcare, and Abano are exempted from rule 7(c) of the Code in respect of any increase in their voting control that results from the proposed transaction and the entry into, and enforcement of rights under, the loan agreement and the security arrangements, to the extent

that the notice of meeting does not comply with rule 15(b) of the Code.

6 Exemption from rule 15(b) of Code

Abano is exempted from rule 15(b) of the Code in respect of the notice of meeting.

7 Conditions of exemptions in clauses 5 and 6 relating to particulars of voting securities to be contained in notice of meeting

- (1) The exemptions in clauses 5 and 6 are subject to the following conditions:
- (a) that the notice of meeting contains, or is accompanied by, the following particulars in relation to the proposed transaction:
 - (i) the maximum number of voting securities that could be acquired by each of the exempted persons; and
 - (ii) the percentage of all voting securities that each of those numbers represents; and
 - (iii) the maximum percentage of all voting securities that could be held or controlled by each of the exempted persons after the completion of the proposed transaction; and
 - (iv) the maximum aggregate of the percentages of all voting securities that could be held or controlled by each of the exempted persons and by that person's associates after the completion of the proposed transaction; and
 - (b) that the notice of meeting contains, or is accompanied by, the following particulars in relation to the entry into, and enforcement of rights under, the loan agreement and the security arrangements:
 - (i) the maximum number of voting rights in Abano that could be held or controlled by each of the exempted persons; and
 - (ii) the percentage of all voting rights in Abano that each of those numbers represents; and

- (iii) the maximum percentage of all voting rights in Abano that could be held or controlled by each of the exempted persons as a result of the entry into, and enforcement of rights under, the loan agreement and the security arrangements; and
 - (iv) the maximum aggregate of the percentages of all voting rights in Abano that could be held or controlled by each of the exempted persons and by that person's associates as a result of the entry into, and enforcement of rights under, the loan agreement and the security arrangements.
- (2) The numbers and percentages referred to in subclause (1) must be calculated on the basis—
 - (a) that after the completion of the proposed transaction, the nominee company is the registered holder of 4 534 998 voting securities; and
 - (b) of the number of voting securities on issue 7 days before the date of the notice of meeting; and
 - (c) that there is no change to the total number of voting securities on issue between the date that is 7 days before the date of the notice of meeting and the completion of the proposed transaction.

8 Additional conditions relating to notice of meeting

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

- (a) the notice of meeting contains a summary of the terms and conditions of the exemptions granted to the exempted persons by this notice; and
- (b) the notice of meeting displays, in a prominent position, a disclaimer stating that by exempting the nominee company, the trusts, Healthcare, and Abano from rule 7(c) of the Code and Abano from rule 15(b) of the Code, the Takeovers Panel is—
 - (i) neither endorsing nor supporting the accuracy or reliability of the contents of the notice of meeting; and
 - (ii) not implying that it has a view on the merits of the proposed transaction; and

- (c) the form of the notice of meeting is approved by the Takeovers Panel; and
- (d) at the same time that the notice of meeting is sent to the shareholders of Abano, Abano also sends to the Takeovers Panel, in hard copy and in electronic form, a copy of the notice and any document accompanying it that relates to the meeting; and
- (e) the notice of meeting complies in all other respects with rule 15 of the Code.

9 Application of exemptions in clauses 5 and 6

The exemptions in clauses 5 and 6 do not apply if—

- (a) during the period beginning on 24 September 2009 and ending on 31 December 2010, an exempted person increases his, her, or its voting control in Abano by any means other than—
 - (i) under the proposed transaction and entry into, and enforcement of rights under, the loan agreement and the security arrangements, as disclosed in the notice of meeting and approved by the shareholders of Abano; or
 - (ii) in a manner permitted by the Takeovers Code (Class Exemptions) Notice (No 2) 2001; or
- (b) immediately after an increase as set out in paragraph (a)(i) or (ii), the total percentage of voting securities held or controlled by the exempted persons and by their associates is greater than the maximum percentage of voting securities that could be held or controlled by those persons, as disclosed in the notice of meeting and approved by the shareholders of Abano.

Dated at Wellington this 23rd day of September 2009.

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

[Seal]

David J Quigg,
Member.

Statement of reasons

This notice applies to acts or omissions occurring on or after 24 September 2009 and expires on 31 December 2010.

The Takeovers Panel (the **Panel**) has granted exemptions, subject to specified conditions, for—

- ABA Nominee Limited (the **nominee company**), 3 trusts associated with Peter Hutson, Anya Hutson, and Scott Wright (the **trusts**), a company controlled by the trusts called Healthcare Industry Limited (**Healthcare**), and Abano Healthcare Group Limited (**Abano**) from rule 7(c) of the Takeovers Code (the **Code**) to the extent that the notice of meeting does not comply with rule 15(b) of the Code; and
- Abano from rule 15(b) of the Code in respect of the notice of meeting.

Abano owns 70% of Bay Audiology Limited (**Bay**). The trusts own 30% of Bay. National Hearing Care (New Zealand) Limited (**NHC(NZ)**), a wholly owned subsidiary of NHC Group Pty Limited (**NHC**), wishes to acquire 100% of the shares in Bay. As part of this transaction, NHC(NZ) may enter into a loan agreement (the **loan agreement**) with Abano, the trusts, NHC, and Hearing Holdings Limited (**HHL**), a wholly owned subsidiary of NHC(NZ), under which Abano and the trusts would provide vendor finance to NHC(NZ) to facilitate NHC(NZ)'s acquisition of the shares in Bay. HHL holds 4 534 998 shares in Abano. As security for any advance made under the loan agreement, HHL's shares in Abano will be subject to a mortgage in favour of Abano and Healthcare and those shares will be acquired by the nominee company. HHL will be entitled to direct the nominee company as to voting of the shares, provided that NHC(NZ) complies with the terms of its loan agreement and the mortgage (the **security arrangements**). By virtue of the loan agree-

ment and the security arrangements, the nominee company, the trusts, Healthcare, and Abano may end up being associates for the purposes of the Code.

The nominee company, the trusts, Healthcare, and Abano intend to seek the approval of the Abano shareholders, in accordance with the Code, to the acquisition by the nominee company of HHL's Abano shares and to any increase in the voting control by the nominee company, the trusts, Healthcare, and Abano resulting from the entry into, and enforcement of rights under, the loan agreement and the security arrangements.

However, the notice of meeting in respect of the shareholder meeting cannot specify the particulars required by rule 15(b) of the Code because it is uncertain—

- how many shares in Abano will be acquired by the nominee company; and
- what the potential increase in voting control by the nominee company, the trusts, Healthcare, and Abano might be as a result of the entry into, and enforcement of rights under, the loan agreement and the security arrangements.

The Panel considers that it is appropriate and consistent with the objectives of the Code to grant the exemptions because—

- it is impossible for the actual percentages specified by rule 15(b) of the Code to be stated in the notice of meeting, as those percentages are dependent on a number of factors that will not be known with any certainty until after the notice of meeting is prepared; and
- if the Abano shareholders approve the maximum possible increase in the voting control of the nominee company, the trusts, Healthcare, and Abano resulting from the acquisition by the nominee company of HHL's Abano shares or from the loan agreement and the security arrangements, then, by implication, the shareholders may be taken to also approve any lesser percentage of voting control by those persons; and
- the non-associated shareholders will have an opportunity to vote on the maximum possible increase in the voting control of the nominee company, the trusts, Healthcare, and Abano resulting from the acquisition by the nominee company of HHL's

Abano shares or from the loan agreement and the security arrangements.

**Takeovers Code (Abano Healthcare Group
Limited) Exemption Notice 2009**

Reprinted as at
1 January 2011

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 25 September 2009.

Contents

- 1 General
 - 2 Status of reprints
 - 3 How reprints are prepared
 - 4 Changes made under section 17C of the Acts and Regulations Publication Act 1989
 - 5 List of amendments incorporated in this reprint (most recent first)
-

Notes

1 *General*

This is a reprint of the Takeovers Code (Abano Healthcare Group Limited) Exemption Notice 2009. The reprint incorporates all the amendments to the notice as at 1 January 2011, as specified in the list of amendments at the end of these notes. Relevant provisions of any amending enactments that contain transitional, savings, or application provisions that cannot be compiled in the reprint are also included, after the principal enactment, in chronological order. For more information, *see* <http://www.pco.parliament.govt.nz/reprints/>.

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/editorial-conventions/> or Part 8 of the *Tables of New Zealand 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 (Abano Healthcare Group Limited) Exemption Notice 2009
(SR 2009/269): clause 3
