

**Reprint  
as at 1 June 2011**



**Takeovers Code (Cynotech  
Holdings Limited) Exemption  
Notice 2005**

(SR 2005/127)

Takeovers Code (Cynotech Holdings Limited) Exemption Notice 2005: revoked, on 1 June 2011, by clause 3 of the Takeovers Code (Revocation of Exemptions) Notice 2011 (SR 2011/191).

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.**

## Notice

### 1 Title

This notice is the Takeovers Code (Cynotech Holdings Limited) Exemption Notice 2005.

### 2 Application

This notice applies to acts or omissions occurring on or after 21 April 2005.

### 3 Interpretation

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

**Act** means the Takeovers Act 1993

**CHL** means Cynotech Holdings Limited

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

**CSL** means Cynotech Securities Limited

**notice of meeting** means the notice of the shareholders' meeting that has been sent to CHL shareholders

**NSL** means Newmarket Securities Limited

**shareholders' meeting** means the annual meeting of CHL shareholders (to be held on or about 12 May 2005) to consider whether or not to approve, for the purposes of rule 7(d) of the Code, the allotment of voting securities in CHL—

(a) to each of CSL and NSL, on the conversion of 7 975 286 convertible notes into 7 975 286 fully paid ordinary shares in CHL; and

(b) to the trustees of the Cleveland Trust,—

(i) on the conversion of 173 333 convertible notes into 866 666 fully paid ordinary shares in CHL; and

(ii) on the allotment of 866 666 shares at an issue price of 5 cents per share, in terms of the non-tradeable rights attached to the convertible notes; and

(iii) on the allotment of 78 789 shares at an issue price of 15 cents per share, in satisfaction of CHL's obligation to pay interest on the convertible notes

**trustees of the Cleveland Trust** means Richard Hugh Cleveland Guy and Lynda Katrina Moore (acting in their capacity as trustees of the Cleveland No 3 Trust).

- (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**

CSL, NSL, and the trustees of the Cleveland Trust are exempted from rule 7(d) of 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.

**5 Exemption from rule 16(b) of Code**

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

**6 Conditions of exemptions in clauses (4) and (5)**

- (1) The exemptions in clauses 4 and 5 are subject to the condition that the notice of meeting contains particulars of—
- (a) the voting securities in CHL that may be allotted to CSL, NSL, and the trustees of the Cleveland Trust, including the maximum number of shares that could be allotted if—
    - (i) CHL shareholders approved the resolution to allot shares to CSL and NSL but did not approve the resolution to allot shares to the trustees of the Cleveland Trust (**Assumption A**); and
    - (ii) CHL shareholders approved the resolution to allot shares to the trustees of the Cleveland Trust but did not approve the resolution to allot shares to CSL and NSL (**Assumption B**); and
    - (iii) CHL shareholders approved the resolutions to allot shares to CSL, NSL, and the trustees of the Cleveland Trust (**Assumption C**); and
  - (b) the percentage of the aggregate of the following that each of the maximum numbers in Assumption A, Assumption B, and Assumption C represents:
    - (i) all existing voting securities; and

- (ii) all the voting securities that could be allotted; and
  - (c) the percentage of all voting securities that could be held or controlled by each of CSL, NSL, and the trustees of the Cleveland Trust after the completion of the allotment of the maximum numbers of voting securities in each of Assumption A, Assumption B, and Assumption C; and
  - (d) the total percentage of all voting securities in CHL that could be held or controlled by CSL, NSL, and the trustees of the Cleveland Trust, and by all the associates of CSL, NSL, and the trustees of the Cleveland Trust, after the completion of the allotment of the maximum numbers of voting securities in each of Assumption A, Assumption B, and Assumption C.
- (2) The matters referred to in subclause (1)(a) to (d) must be calculated on the basis that there are no changes to the share capital of CHL.
- (3) The exemptions in clauses 4 and 5 are subject to the conditions that—
- (a) the securities are allotted to CSL, NSL, and the trustees of the Cleveland Trust on or before 31 October 2009; and
  - (b) a full copy of the independent adviser's report (and not a summary of that report) is provided to CHL shareholders along with the notice of meeting.

Dated at Auckland this 17th day of May 2005.

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

[Seal]

D O Jones,  
Deputy Chairperson.

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### **Statement of reasons**

This notice applies to acts or omissions occurring on or after 21 April 2005.

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

- Cynotech Securities Limited (**CSL**), Newmarket Securities Limited (**NSL**), and Richard Hugh Cleveland Guy and Lynda Katrina Moore (**trustees of the Cleveland Trust**) in respect of rule 7(d) of the Code; and
- Cynotech Holdings Limited (**CHL**) in respect of rule 16(b).

The exemptions relate to the increase in the voting control of CSL, NSL, and the trustees of the Cleveland Trust in CHL that would result from the allotment of shares to CSL, NSL, and the trustees (in some cases because of the conversion of certain convertible notes).

The Panel considered that it was appropriate to grant exemptions to CHL, CSL, NSL, and the trustees of the Cleveland Trust because—

- it is impossible for the notice of meeting to state the actual numbers of shares to be allotted and the relevant percentages required by rule 16(b) because these numbers and percentages are dependent upon unknown future events. Those events include—
  - whether there are any changes to the share capital of CHL; and
  - whether other resolutions are approved by shareholders (which would affect the resulting total number of shares CHL has on issue); and
  - if CHL shareholders approve the maximum increase in the percentage of voting rights held or controlled by CSL, NSL, and the trustees of the Cleveland Trust, then, by implication, they can also be taken to approve lesser increases; and
  - the issue of convertible notes is an accepted market practice and the Panel should facilitate this practice by the grant of appropriate exemptions.

The Panel considered that the exemptions were consistent with the objectives of the Code because the non-associated shareholders of CHL will have an opportunity to vote on the allotment of voting securities to CSL, NSL, and the trustees of the Cleveland Trust.

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Issued under the authority of the Acts and Regulations Publication Act 1989.  
Date of notification in *Gazette*: 19 May 2005.

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## **Notes**

### **1 *General***

This is a reprint of the Takeovers Code (Cynotech Holdings Limited) Exemption Notice 2005. The reprint incorporates all the amendments to the notice as at 1 June 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 (Revocation of Exemptions) Notice 2011 (SR 2011/191):  
clause 3

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