

**Reprint
as at 1 January 2012**



**Takeovers Code (Cynotech
Holdings Limited) Exemption
Notice 2009**

(SR 2009/39)

Takeovers Code (Cynotech Holdings Limited) Exemption Notice 2009:
expired, on 1 January 2012, 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.

**Takeovers Code (Cynotech Holdings
Limited) Exemption Notice 2009**

Reprinted as at
1 January 2012

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Notice

1 Title

This notice is the Takeovers Code (Cynotech Holdings Limited) Exemption Notice 2009.

2 Application

This notice applies to acts or omissions occurring on or after 2 December 2008.

3 Expiry

This notice expires on the close of 31 December 2011.

4 Interpretation

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

Act means the Takeovers Act 1993

Code means the Takeovers Code under the Act

convertible preference shares means the convertible preference shares issued by Cynotech under a prospectus registered on 21 November 2007 (as amended by the Memorandum of Amendment dated 23 November 2007) and quoted on the NZSX under ticker symbol CYTPA

Cynotech means Cynotech Holdings Limited

final conversion date means 22 December 2010

final warrant exercise date means 27 June 2011

meeting means the special meeting of the shareholders of Cynotech held on 16 December 2008 to consider whether or not to approve, for the purposes of rule 7(d) of the Code, the allotment of voting securities to the specified persons resulting from the conversion of convertible preference shares and the exercise of warrants held by those persons

notice of meeting means the notice of meeting dated 2 December 2008 sent to the shareholders of Cynotech in respect of the meeting

NZSX means the securities market operated by NZX Limited under that name

specified person means a person specified in the Schedule

voting security means a voting security in Cynotech

warrants means the warrants issued by Cynotech under a prospectus registered on 20 May 2005 and quoted on the NZSX under ticker symbol CYTWA.

- (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 Cynotech.
- (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 Retrospective exemption from rule 7(d) of Code

Each of the specified persons is exempted from rule 7(d) of the Code in respect of any increase in that specified person's voting control resulting from the allotment of voting securities to that specified person as a result of the conversion of convertible preference shares and the exercise of warrants held by that specified person to the extent that rule 7(d) required the notice of meeting to be in accordance with rule 16(b) of the Code.

6 Retrospective exemption from rule 16(b) of Code

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

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

- (1) The exemptions in clauses 5 and 6 are subject to the condition that the notice of meeting contained, or was accompanied by, particulars of the voting securities that could be allotted to each of the specified persons as a result of the conversion of convertible preference shares and the exercise of warrants held by them, including—
 - (a) the maximum number of voting securities that could be allotted to each of the specified persons as a result of the conversion of all convertible preference shares held by them; and
 - (b) the maximum number of voting securities that could be allotted to each of the specified persons as a result of the conversion of all convertible preference shares held

- by them, expressed as a percentage of the total voting securities on issue after those allotments; and
- (c) the maximum percentage of the total voting securities on issue that could be held or controlled by each of the specified persons after the allotment of voting securities as a result of the conversion of all convertible preference shares held by them; and
 - (d) the maximum percentage of the total voting securities on issue that could be held or controlled by each of the specified persons and their associates (not including the other specified persons) after the allotment of voting securities as a result of the conversion of all convertible preference shares held by the specified persons; and
 - (e) the maximum number of voting securities that could be allotted to each of the specified persons as a result of the exercise of all warrants held by them; and
 - (f) the maximum number of voting securities that could be allotted to each of the specified persons as a result of the exercise of all warrants held by them, expressed as a percentage of the total voting securities on issue after those allotments; and
 - (g) the maximum percentage of the total voting securities on issue that could be held or controlled by each of the specified persons after the allotment of voting securities as a result of the exercise of all warrants held by them; and
 - (h) the maximum percentage of the total voting securities on issue that could be held or controlled by each of the specified persons and their associates (not including the other specified persons) after the allotment of voting securities as a result of the exercise of all warrants held by the specified persons; and
 - (i) the maximum number of voting securities that could be allotted to each of the specified persons as a result of both the conversion of all convertible preference shares and the exercise of all warrants held by them; and
 - (j) the maximum number of voting securities that could be allotted to each of the specified persons as a result of both the conversion of all convertible preference shares

- and the exercise of all warrants held by them, expressed as a percentage of the total voting securities on issue after those allotments; and
- (k) the maximum percentage of the total voting securities on issue that could be held or controlled by each of the specified persons after the allotment of voting securities as a result of both the conversion of all convertible preference shares and the exercise of all warrants held by them; and
 - (l) the maximum percentage of the total voting securities on issue that could be held or controlled by each of the specified persons and their associates (not including the other specified persons) after the allotment of voting securities as a result of both the conversion of all convertible preference shares and the exercise of all warrants held by the specified persons.
- (2) The maximum numbers and percentages in subclause (1)(a) to (d) must have been calculated on the basis that—
- (a) no other person (including any other specified person) would convert his or her convertible preference shares; and
 - (b) there would be no change to the total number of voting securities on issue between the date of the notice of meeting and the final conversion date, other than through the conversion of convertible preference shares held by the specified persons.
- (3) The maximum numbers and percentages in subclause (1)(e) to (h) must have been calculated on the basis that—
- (a) no other person (including any other specified person) would exercise his or her warrants; and
 - (b) there would be 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 through the exercise of warrants held by the specified persons.
- (4) The maximum numbers and percentages in subclause (1)(i) to (l) must have been calculated on the basis that—

- (a) no other person (including any specified person) would convert his or her convertible preference shares or exercise his or her warrants; and
- (b) there would be 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 through the conversion of convertible preference shares and the exercise of warrants held by the specified persons.

8 Further condition of exemptions in clauses 5 and 6 relating to particulars of voting securities contained in notice of meeting

- (1) The exemptions in clauses 5 and 6 are subject to the further condition that the notice of meeting contained, or was accompanied by, particulars of the voting securities that could be allotted to the specified persons, in aggregate, as a result of the conversion of convertible preference shares and the exercise of warrants held by them, including—
 - (a) the maximum number of voting securities that could be allotted to the specified persons, in aggregate, as a result of the conversion of all convertible preference shares held by them; and
 - (b) the maximum number of voting securities that could be allotted to the specified persons, in aggregate, as a result of the conversion of all convertible preference shares held by them, expressed as a percentage of the total voting securities on issue after those allotments; and
 - (c) the maximum percentage of the total voting securities on issue that could be held or controlled by the specified persons, in aggregate, after the allotment of voting securities as a result of the conversion of all convertible preference shares held by them; and
 - (d) the maximum percentage of the total voting securities on issue that could be held or controlled by the specified persons and their associates, in aggregate, after the allotment of voting securities as a result of the conversion of all convertible preference shares held by the specified persons; and

- (e) the maximum number of voting securities that could be allotted to the specified persons, in aggregate, as a result of the exercise of all warrants held by them; and
- (f) the maximum number of voting securities that could be allotted to the specified persons, in aggregate, as a result of the exercise of all warrants held by them, expressed as a percentage of the total voting securities on issue after those allotments; and
- (g) the maximum percentage of the total voting securities on issue that could be held or controlled by the specified persons, in aggregate, after the allotment of voting securities as a result of the exercise of all warrants held by them; and
- (h) the maximum percentage of the total voting securities on issue that could be held or controlled by the specified persons and their associates, in aggregate, after the allotment of voting securities as a result of the exercise of all warrants held by the specified persons; and
- (i) the maximum number of voting securities that could be allotted to the specified persons, in aggregate, as a result of both the conversion of all convertible preference shares and the exercise of all warrants held by them; and
- (j) the maximum number of voting securities that could be allotted to the specified persons, in aggregate, as a result of both the conversion of all convertible preference shares and the exercise of all warrants held by them, expressed as a percentage of the total voting securities on issue after those allotments; and
- (k) the maximum percentage of the total voting securities on issue that could be held or controlled by the specified persons, in aggregate, after the allotment of voting securities as a result of both the conversion of all convertible preference shares and the exercise of all warrants held by them; and
- (l) the maximum percentage of the total voting securities on issue that could be held or controlled by the specified persons and their associates, in aggregate, after the allotment of voting securities as a result of both the con-

- version of all convertible preference shares and the exercise of all warrants held by the specified persons.
- (2) The maximum numbers and percentages in subclause (1)(a) to (d) must have been calculated on the basis that—
- (a) no person other than the specified persons would convert his or her convertible preference shares; and
 - (b) there would be no change to the total number of voting securities on issue between the date of the notice of meeting and the final conversion date, other than through the conversion of convertible preference shares held by the specified persons.
- (3) The maximum numbers and percentages in subclause (1)(e) to (h) must have been calculated on the basis that—
- (a) no person other than the specified persons would exercise his or her warrants; and
 - (b) there would be 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 through the exercise of warrants held by the specified persons.
- (4) The maximum numbers and percentages in subclause (1)(i) to (l) must have been calculated on the basis that—
- (a) no person other than the specified persons would convert his or her convertible preference shares or exercise his or her warrants; and
 - (b) there would be 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 through the conversion of convertible preference shares and the exercise of warrants held by the specified persons.

9 Further condition relating to contents of notice of meeting

The exemptions in clauses 5 and 6 are subject to the further condition that the notice of meeting contained, or was accompanied by, full particulars of the convertible preference shares and the warrants.

10 Further condition relating to contents of annual reports

The exemptions in clauses 5 and 6 are subject to the further condition that every annual report published by Cynotech before the last allotment of voting securities as a result of the conversion of convertible preference shares and the exercise of warrants held by the specified persons must include, in a prominent position, in a form approved by the Takeovers Panel,—

- (a) a summary of the terms of the convertible preference shares and the warrants; and
- (b) a summary of the terms and conditions of the exemptions granted by this notice; and
- (c) a statement, as at the end of the financial year to which the annual report relates, of—
 - (i) the number of voting securities allotted to each specified person as a result of both the conversion of convertible preference shares and the exercise of warrants held by them (whether the allotments were during the financial year or in an earlier financial year); and
 - (ii) the number of voting securities allotted to the specified persons, in aggregate, as a result of both the conversion of convertible preference shares and the exercise of warrants held by them (whether the allotments were during the financial year or in an earlier financial year); and
- (d) the maximum percentage of the total voting securities on issue that could be held or controlled by each of the specified persons after the allotment of voting securities as a result of both the conversion of all convertible preference shares and the exercise of all warrants held by them; and
- (e) the maximum percentage of the total voting securities on issue that could be held or controlled by the specified persons, in aggregate, after the allotment of voting securities as a result of both the conversion of all convertible preference shares and the exercise of all warrants held by them.

11 Further condition relating to change in effective control

The exemptions in clauses 5 and 6 are subject to the further condition that, in the period between 2 December 2008 and the last allotment of voting securities as a result of the conversion of all convertible preference shares and the exercise of all warrants held by the specified persons, there is no change in the effective control of Cynotech Securities Limited or Newmarket Securities Limited.

12 Application of exemption in clause 5

The exemption in clause 5 does not apply to a specified person if that person, in the period between 2 December 2008 and the date of completion of the last allotment of voting securities as a result of the conversion of all convertible preference shares and the exercise of all warrants held by the specified persons, increases his or her voting control (except as a result of the allotment of voting securities as a result of the conversion of convertible preference shares or the exercise of warrants held by that person).

Schedule
Specified persons

cl 4(1)

Alisondra Hawkins
Cody Hawkins
Dominic Hawkins
Glenn and Sonja Hawkins (as holders of convertible preference shares and warrants in their joint names)
Glenn Hawkins
Jared Hawkins
Laurel Anne Hawkins
Maree Dawn Hawkins
Mark Hawkins
Shannon Hawkins
Sophia Hawkins
Wayne Hawkins

Zane Hawkins
Cathy Hutchinson
Cynotech Securities Limited
Newmarket Securities Limited

Dated at Wellington this 9th day of March 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 and omissions occurring on or after 2 December 2008 and expires on 31 December 2011.

Cynotech Holdings Limited (**Cynotech**) is a code company. The Takeovers Panel (the **Panel**) has granted retrospective exemptions to—

- each person named in the *Schedule* (which includes Cynotech Securities Limited, Newmarket Securities Limited, 13 members of the Hawkins family, and Cathy Hutchinson (the **specified persons**)) from rule 7(d) of the Takeovers Code (the **Code**) in respect of the allotment of voting securities in Cynotech resulting from the conversion of convertible preference shares and the exercise of warrants held by the specified persons, to the extent that the notice of meeting

of shareholders of Cynotech to approve the allotment of the voting securities did not comply with rule 16(b) of the Code:

- Cynotech from rule 16(b) of the Code in respect of the notice of meeting.

As at 2 December 2008, the specified persons collectively held 23.10% of the total voting securities in Cynotech on issue and each was an associate of the others for the purposes of the Code.

The specified persons also collectively held—

- 4 777 776 convertible preference shares in Cynotech (21.83% of the total preference shares on issue) and wanted to have the ability to convert all of their convertible preference shares into 4 777 776 fully paid ordinary shares between 16 December 2008 and the final conversion date of 22 December 2010; and
- 7 022 474 warrants in Cynotech (24.96% of the total warrants on issue) and wanted to have the ability to exercise their warrants on 1 or more of the exercise dates of 27 June 2009, 27 June 2010, and 27 June 2011.

As the specified persons collectively held more than 20% of the total voting rights on issue and the allotment of voting securities on the conversion of convertible preference shares or the exercise of the warrants by any of them would result in an increase in that person's holding or control above 20%, shareholder approval for the allotments had to be obtained under rule 7(d) of the Code.

A notice of meeting containing a proposed resolution in respect of an allotment of securities pursuant to rule 7(d) of the Code must contain, or be accompanied by, the information specified in rule 16 of the Code.

A notice of meeting was issued on 2 December 2008 seeking shareholder approval of the allotments under rule 7(d) of the Code.

Cynotech was unable to comply with rule 16(b) of the Code, in relation to the allotment of voting securities as a result of the conversion of convertible preference shares and the exercise of warrants held by the specified persons, because it was unable to state in the notice of meeting—

- the precise number of voting securities that would be allotted to each of the specified persons, as required by rule 16(b)(i):

- the percentage of the aggregate of all existing voting securities and all voting securities being allotted that that number represented, as required by rule 16(b)(ii):
- the percentage of all voting securities that would be held or controlled by the person to whom the voting securities were being allotted after completion of the allotment, as required by rule 16(b)(iii):
- the aggregate of the percentages of all voting securities that would be held by or controlled by the person to whom the voting securities were being allotted and by that person's associates after completion of the allotment, as required by rule 16(b)(iv).

Cynotech did not know the precise number of voting securities that might have been on issue, and therefore could not calculate the precise percentages required to be disclosed in the notice of meeting under rule 16(b) of the Code, because of the following:

- the possibility that shareholders may not have approved all of the resolutions to approve the proposed transactions:
- the lengthy periods during which the specified persons are able to convert their convertible preference shares and exercise their warrants (up to December 2010 and June 2011 respectively):
- the possibility that shareholders may have approved all the resolutions but that the specified persons might not exercise their rights to convert their convertible preference shares and exercise their warrants, or might not exercise those rights in relation to all convertible preference shares and warrants held by them:
- the possibility that other holders of convertible preference shares and warrants may exercise their rights to convert their convertible preference shares and exercise their warrants.

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

- it was impossible for the actual numbers of shares to be allotted and the relevant percentages required by rule 16(b) of the Code to be stated in the notice of meeting as those numbers and

percentages were dependent on a number of factors outside of Cynotech's control; and

- all non-associated shareholders had an opportunity to vote on the allotments of voting securities; and
- if the non-associated shareholders approved the potential maximum allotment of voting securities, then by implication the non-associated shareholders also approved any lesser percentage of voting securities that may be allotted; and
- the issue of convertible shares and warrants are acknowledged methods of providing incentives to shareholders to participate in and contribute to a company's growth as well as providing a company with a means of raising equity capital in New Zealand. The Panel should facilitate these arrangements by granting appropriate exemptions where necessary.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 12 March 2009.

Contents

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Notes**1 General**

This is a reprint of the Takeovers Code (Cynotech Holdings Limited) Exemption Notice 2009. The reprint incorporates all the amendments to the notice as at 1 January 2012, 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 (Cynotech Holdings Limited) Exemption Notice 2009 (SR 2009/39): clause 3
