

**Reprint
as at 1 April 2013**



**Takeovers Code (Cynotech
Holdings Limited) Exemption
Notice (No 2) 2009**

(SR 2009/392)

Takeovers Code (Cynotech Holdings Limited) Exemption Notice (No 2) 2009:
expired, on 1 April 2013, 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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Notice

1 Title

This notice is the Takeovers Code (Cynotech Holdings Limited) Exemption Notice (No 2) 2009.

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.

2 Application

This notice applies to acts or omissions occurring on or after 8 January 2010.

3 Expiry

This notice expires on the close of 31 March 2013.

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 convertible preference shares issued by Cynotech Holdings

convertible securities means convertible preference shares and warrants

CSGL means Cynotech Securities Group Limited

Cynotech Holdings means Cynotech Holdings Limited

offer means a full takeover offer to be made by CSGL for all the equity securities in Cynotech Holdings, including all convertible securities

ordinary shares means the ordinary shares in Cynotech Holdings

specified security holders means Cynotech Securities Limited, Glenn Matthew Hawkins, Laurel Anne Hawkins, Newmarket Securities Limited, and Sonja Anne Hawkins

warrants means warrants issued by Cynotech Holdings that each give the right to subscribe for an ordinary share at a price of 30 cents per share exercisable on 27 June 2010 or 27 June 2011.

(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 Holdings.

(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 6(1) of Code

CSGL is exempted from rule 6(1) of the Code in respect of any increase in its voting control as a result of the conversion, after the offer becomes unconditional, of convertible securities acquired by it under the offer.

6 Exemption from rule 35 of Code

The specified security holders are each exempted from rule 35 of the Code in respect of the offer.

7 Condition of exemption in clause 6

The exemption in clause 6 is subject to the condition that none of the specified security holders, nor any person acting jointly or in concert with any of them, may dispose of any equity securities in Cynotech Holdings during the offer period other than to—

- (a) CSGL under the offer; or
- (b) an offeror under another offer that is made under the Code.

Dated at Wellington this 15th day of December 2009.

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

[Seal]

K J O'Connor,
Member.

Statement of reasons

This notice applies to acts or omissions occurring on or after 8 January 2010 and expires on 31 March 2013.

Cynotech Holdings Limited (**Cynotech Holdings**) is a code company under the Takeovers Code (the **Code**). Cynotech Securities Group Limited (**CSGL**) has given notice of its intention to make a full takeover offer for all of the equity securities of Cynotech Holdings (the **offer**).

Exemption from rule 6(1) of Code

Cynotech Holdings has the following 3 classes of equity securities on issue:

- ordinary shares:
- convertible preference shares:
- warrants.

Only the ordinary shares carry voting rights under the Code. The convertible preference shares are convertible by the holder to ordinary shares (on a 1-for-1 basis) on giving 30 days' written notice to Cynotech Holdings. Each warrant gives the right to subscribe for an ordinary share at a price of 30 cents per share, that right being exercisable on 27 June 2010 or 27 June 2011.

The Takeovers Panel (the **Panel**) has exempted CSGL from compliance with rule 6(1) of the Code in relation to the conversion, after the offer becomes unconditional, of convertible preference shares and warrants (together, the **convertible securities**) it acquires under the offer.

The Panel considers that it is appropriate and consistent with the objectives of the Code to grant the exemption from rule 6(1) of the Code for the following reasons:

- the increase will be the result of the exercise of rights attaching to the convertible securities obtained under the offer which, under the Code, CSGL will have been obliged to make an offer for; and
- the resulting increase will be the same as if the holders of the convertible securities had converted those convertible securities and then accepted the offer in respect of the resulting ordinary shares.

Exemption from rule 35 of Code

Cynotech Securities Limited, Glenn Matthew Hawkins, Laurel Anne Hawkins, Newmarket Securities Limited, and Sonja Anne Hawkins (the **specified security holders**) each hold equity securities in Cynotech Holdings. It is possible that the specified security holders may be acting jointly or in concert with CSGL for the purposes of the offer. Rule 35 of the Code prevents them from accepting the offer.

Rule 35 of the Code is intended to prevent an offeror, or persons acting jointly or in concert with an offeror, from selling shares in the target company other than to a competing bidder. However, rule 35 of the Code also prevents persons who are acting jointly or in concert with an offeror from accepting the offer made by that offeror in respect of any securities that they hold in the target company.

The Panel has granted an exemption from rule 35 of the Code to enable each of the specified security holders to accept the offer.

The Panel considers that it is appropriate and consistent with the objectives of the Code to grant the exemption from rule 35 of the Code for the following reasons:

- it would avoid an unintended consequence of the Code; and
- it would not disadvantage other security holders of Cynotech Holdings or prevent them from deciding the merits of the offer for themselves.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 17 December 2009.

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Notes

1 *General*

This is a reprint of the Takeovers Code (Cynotech Holdings Limited) Exemption Notice (No 2) 2009. The reprint incorporates all the amendments to the notice as at 1 April 2013, 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 (No 2) 2009 (SR 2009/392): clause 3
