

**Reprint
as at 1 September 2009**



**Takeovers Code (Life Pharmacy
Limited) Exemption Notice 2007**

(SR 2007/199)

Takeovers Code (Life Pharmacy Limited) Exemption Notice 2007: expired, on
1 September 2009, 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.

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Notice

1 Title

This notice is the Takeovers Code (Life Pharmacy Limited) Exemption Notice 2007.

2 Application

This notice applies to acts or omissions occurring on or after 15 June 2007.

3 Expiry

This notice expires on the close of 31 August 2009.

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

final option exercise date means the earlier of—

- (a) the date on which LPL Trustee holds or controls 50.01% of the voting rights in Life Pharmacy; and
- (b) the last day of the 2-year period beginning on the day after the date of the initial placement

initial placement means the allotment of 7 000 000 voting rights to LPL Trustee under the subscription agreement

Life Pharmacy means Life Pharmacy Limited

LPL Trustee means LPL Trustee Limited

meeting means the meeting of Life Pharmacy shareholders to be held on or about 26 July 2007 to consider whether or not to approve, for the purposes of rule 7(d) of the Code, the possible allotment of voting securities to LPL Trustee as a result of the exercise, or exercises, by LPL Trustee of the option

notice of meeting means the notice of meeting to be sent to Life Pharmacy shareholders in respect of the meeting

option means the option granted under the option deed to subscribe for voting securities in Life Pharmacy that would result in LPL Trustee holding or controlling up to 50.01% of the voting securities in Life Pharmacy

option deed means the option deed between Life Pharmacy and LPL Trustee dated 18 June 2007

Panel means the Takeovers Panel

subscription agreement means the subscription agreement between Life Pharmacy and LPL Trustee dated 18 June 2007

voting security means an ordinary share in Life Pharmacy.

- (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 Life Pharmacy.
- (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(d) of Code

LPL Trustee is exempted from rule 7(d) of the Code in respect of any increase in LPL Trustee's voting control resulting from the allotment of voting securities to LPL Trustee as a result of the exercise of the option to the extent that the notice of meeting does not comply with rule 16(b) and (d) of the Code.

6 Exemption from rule 16(b) and (d) of Code

Life Pharmacy is exempted, in respect of the notice of meeting, from rule 16(b) and (d) of the Code.

7 Conditions relating to particulars of voting securities to be contained in notice of meeting

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

- (a) the notice of meeting contains, or is accompanied by, the following particulars of the voting securities that may be allotted to LPL Trustee:

- (i) the maximum percentage of the total voting securities on issue that could be held or controlled by LPL Trustee after the allotment of the voting securities resulting from the full exercise of the option; and
 - (ii) the maximum percentage of the total voting securities on issue that could be held or controlled by LPL Trustee and LPL Trustee's associates after the allotment of the voting securities resulting from the full exercise of the option; and
 - (iii) the maximum number of voting securities that could be allotted to LPL Trustee as a result of the full exercise of the option; and
 - (iv) the maximum number of voting securities that could be allotted to LPL Trustee as a result of the full exercise of the option expressed as a percentage of the total voting securities on issue after the allotment of the voting securities resulting from the full exercise of the option; and
- (b) the numbers and percentages referred to in paragraph (a) are calculated on the basis that—
- (i) no option, warrant, convertible security, or other right to be allotted a voting security in the future is exercised by any person other than LPL Trustee; and
 - (ii) there is no change in the total number of voting securities on issue between the date of the notice of meeting and the final option exercise date other than as a result of the exercise of the option; and
 - (iii) there is no change in the total number of voting securities that would be allotted by Life Pharmacy if all options, warrants, convertible securities, and other rights to be issued Life Pharmacy voting securities became immediately exercisable and were immediately exercised.

8 Further conditions relating to contents of notice of meeting

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

- (a) the notice of meeting also contains, or is accompanied by,—
 - (i) full particulars of the securities to be allotted to LPL Trustee; and
 - (ii) a summary of the terms and conditions of the exemptions contained in this notice; and
- (b) the notice of meeting displays, in a prominent position, a disclaimer stating that, by exempting Life Pharmacy from rule 16(b) and (d) and LPL Trustee from rule 7(d), the Panel is—
 - (i) neither endorsing nor supporting the accuracy or reliability of the contents of the notice of meeting; and
 - (ii) not implying it has a view on the merits of the proposed issue of voting securities to LPL Trustee; and
- (c) the notice of meeting specifically and separately discloses—
 - (i) the terms and conditions of the option; and
 - (ii) the formula by which the consideration payable for the voting securities allotted on the exercise of the option is calculated; and
 - (iii) the date on which the consideration referred to in subparagraph (ii) becomes payable; and
- (d) the form of the notice of meeting is approved by the Panel.

9 Further condition relating to Life Pharmacy's annual report

The exemption in clause 5 is subject to the further condition that every annual report issued by Life Pharmacy from the date of the granting of the exemption until the final option exercise date includes, in a prominent position and in a form approved by the Panel,—

- (a) a summary of the terms of the option; and

- (b) a summary of the terms and conditions of the exemptions contained in this notice; and
- (c) a statement, as at the date of the annual report, of—
 - (i) the number of voting securities allotted to LPL Trustee as a result of the initial placement; and
 - (ii) the number of voting securities allotted to LPL Trustee as a result of the exercise of the option; and
 - (iii) the total percentage of voting rights on issue in Life Pharmacy held or controlled by LPL Trustee; and
 - (iv) the maximum percentage of total voting rights that could be held or controlled by LPL Trustee immediately following the full exercise of the option.

10 Further condition relating to LPL Trustee

The exemption in clause 5 is subject to the further condition that LPL Trustee does not become the holder or controller of an increased percentage of voting securities, except as a result of the exercise of the option as approved by shareholders at the meeting, until the earlier of—

- (a) the full exercise of the option; and
- (b) the final option exercise date.

11 Further condition relating to change of control in LPL Trustee

The exemption in clause 5 is subject to the further condition that there is no change in control of LPL Trustee until the earlier of—

- (a) the full exercise of the option; and
- (b) the final option exercise date.

12 Further condition relating to subscription agreement and option deed

The exemptions in clauses 5 and 6 are subject to the further condition that there is no change to the terms and conditions of the subscription agreement and the option deed.

13 Application of exemption in clause 5

The exemption in clause 5 does not apply to any increase in voting control resulting from the exercise of the option if, immediately after the completion of the allotment resulting from the exercise of the option, the total percentage of voting securities held or controlled by LPL Trustee is greater than the maximum percentage of voting securities that could be held or controlled by LPL Trustee as disclosed in the notice of meeting in accordance with clause 7(a)(i).

Dated at Auckland this 17th day of July 2007.

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

[Seal]

D O Jones,
Chairperson.

Statement of reasons

This notice applies to acts or omissions occurring on or after 15 June 2007 and expires on 31 August 2009.

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

- LPL Trustee Limited (**LPL Trustee**) from rule 7(d) of the Takeovers Code (the **Code**) to the extent that rule 7(d) requires the notice of meeting to be in accordance with rule 16(b) and (d) of the Code in respect of any increase in the percentage of voting rights held in Life Pharmacy Limited (**Life Pharmacy**) as a result of the exercise of an option granted to LPL

Trustee under an option deed entered into with Life Pharmacy on 18 June 2007; and

- Life Pharmacy from rule 16(b) and (d) of the Code in respect of the notice of meeting.

On 18 June 2007 Life Pharmacy and LPL Trustee entered into a subscription agreement and option deed, in terms of which—

- Life Pharmacy would allot 7 million voting securities to LPL Trustee for \$5.25 million (the **initial placement**); and
- LPL Trustee would be entitled to appoint 2 directors to the Life Pharmacy board; and
- Life Pharmacy would grant LPL Trustee an option (the **option**) to subscribe for an unspecified number of additional voting securities in Life Pharmacy that would result in LPL Trustee holding or controlling up to 50.01% of the voting rights in Life Pharmacy.

The option is exercisable in stages at the discretion of LPL Trustee. The issue price for the voting securities resulting from the exercise of the option is variable. For exercises until the first anniversary of the initial placement, the issue price is \$0.75 per voting security. For exercises from the first anniversary of the initial placement until the final option exercise date, the issue price is \$0.825 per voting security. At a special meeting of shareholders to be held on or about 26 July 2007, Life Pharmacy proposes to ask shareholders to approve the allotment of voting securities to LPL Trustee as a result of the exercise of the option. However, Life Pharmacy is unable to comply with rule 16(b) and (d) of the Code because Life Pharmacy is unable to specify—

- the exact number of Life Pharmacy voting securities that will be allotted pursuant to the exercise of the option, because the number of voting securities that will ultimately be allotted will not be known until the final option exercise date; and
- the exact percentage of the aggregate of all existing voting securities and all voting securities being allotted to LPL Trustee as a result of the exercise of the option, because that will depend on unknown variables; and
- the exact percentage of all voting securities that will be held or controlled by LPL Trustee and its associates after completion

of the allotment of voting securities, because that will depend on unknown variables; and

- the issue price for the voting securities to be allotted and when it is payable because that will depend on when the option is exercised (if at all), which will not be known until the final option exercise date.

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

- it is impossible for the actual number of voting securities to be allotted and the relevant percentages required by rule 16(b), and the issue price of the voting rights and when it is payable required by rule 16(d), to be stated in the notice of meeting, since these numbers and percentages are dependent on the extent to which the option is ultimately exercised and whether there is a change to the capital structure of Life Pharmacy before the expiry of the option; and
- all non-associated shareholders will have an opportunity to vote on the potential allotment of voting securities to LPL Trustee as a result of the exercise of the option; and
- if the non-associated shareholders approve the potential maximum allotment of voting securities to LPL Trustee, then, by implication, the shareholders also approve any lesser percentage of voting rights that may be acquired as a result of the exercise of the option by LPL Trustee.

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Notes**1 General**

This is a reprint of the Takeovers Code (Life Pharmacy Limited) Exemption Notice 2007. The reprint incorporates all the amendments to the notice as at 1 September 2009, as specified in the list of amendments at the end of these notes.

Relevant provisions of any amending enactments that have yet to come into force or that contain relevant transitional or savings provisions are also included, after the principal enactment, in chronological order.

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 (Life Pharmacy Limited) Exemption Notice 2007
(SR 2007/199): clause 3
