

**Reprint
as at 1 October 2011**



**Takeovers Code (Ormiston
Surgical & Endoscopy Limited)
Exemption Notice 2011**

(SR 2011/237)

Takeovers Code (Ormiston Surgical & Endoscopy Limited) Exemption Notice 2011: expired, on 1 October 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).

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Notice

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.

1 Title

This notice is the Takeovers Code (Ormiston Surgical & Endoscopy Limited) Exemption Notice 2011.

2 Application

This notice applies to acts or omissions occurring on or after 28 June 2011.

3 Expiry

This notice expires on the close of 30 September 2011.

4 Interpretation

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

Act means the Takeovers Act 1993

agreement means the Ormiston Shareholders' Agreement to which all of the shareholders of Ormiston are a party

allotment means the proposed allotment of 865 782 voting securities in Ormiston to Southern Cross

Code means the Takeovers Code under the Act

notice of meeting means the notice of meeting to be sent to the shareholders of Ormiston in respect of the meeting to be held on or about 28 June 2011 to consider whether to approve, for the purposes of rule 7(d) of the Code, the allotment

ordinary resolution means the ordinary resolution required by rule 7(d) of the Code in respect of the allotment

Ormiston means Ormiston Surgical & Endoscopy Limited

Southern Cross means Southern Cross Hospitals Limited

specified shareholder means an Ormiston shareholder specified in the Schedule.

(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.

5 Exemption from rule 17(2) of Code

Each specified shareholder is exempted from rule 17(2) of the Code in respect of voting on the ordinary resolution to the

extent that the specified shareholder is an associate of Southern Cross by virtue only of the agreement.

6 Conditions of exemption in clause 5

The exemption in clause 5 is subject to the conditions that—

- (a) any special resolution that may be passed to approve the allotment under the terms of the agreement is made conditional on the passing of the ordinary resolution; and
- (b) the notice of meeting—
 - (i) includes a statement that, despite the terms of the agreement, the specified shareholders who are not associates of Southern Cross, whether by virtue of the agreement or for any other reason, are free to vote on the ordinary resolution as they think fit; and
 - (ii) includes an explanation of the exemption and of the need to terminate the agreement due to issues regarding association; and
 - (iii) is in a form approved by the Panel.

Schedule
Specified shareholders

cl 4(1)

East Care Limited
Praxis Limited
Edwards, John Lewis
Edwards, Margaret Virginia
Weatherston, Murray David
McArthur, Clare Anne
Curex Limited
Lee, Donna Patricia
Lee, Denis Kai Fong
ETHC Community Care Limited
Poole, Garth Harcourt
Gunn, Kerry Nevyne

Gunn, Bronwyn Rachel
Booth, Christopher Roy
French, John Gary
Sealy, Christopher Mark
Walthall, David
Faulkner, Ross McElwain
Faulkner, Ann Susan
Nixon, Christopher
Clarke, David John
Cooper, Michael Hymie
Cooper, Angela Joy
ENT-Care Limited
Why Anaesthesia Limited
Casey, Paul Maurice
Young, Lora Sluman
Casey, Catherine Non Kwan
Desai, Heena Shashame
Desai, Shashank Rasiklal
Gerred, Stephen John
Riley, Andrew Francis
Cowie, Kirstie Dale
Jenkins, Diana Jane
Chambers, Christopher John Wesley
Abraham, John Zeyad
Abraham, Ban Munier
Reddy, Mark Campbel
Lal, Dinesh
Duan, Hong Fang
He, Mike Yi
Dai, Shuan Huai
Panacea Growth Solutions Limited
Greenfield, Sandra May
Greenfield Clovelly Trustee Limited
Persson, Stephen Timothy

Mellor, Bruce Fox
Duncan, William Anthony
Watkins, Jaqueline
Watkins, Lionel Robert
Farrant, Bridget Joon
Edwards, Mark Lewis
Heiss-Dunlop, Shelley Anne
Vallant Hooker Trustees Limited
Heiss-Dunlop, Wolfgang
Donaldson, Mark Liston
Donaldson, Natalie Jane
Richardson, Anthony Murray
McAuslan, Alexander Norval Murray
Gillies, James Neil
Gillies, Rachel Ellen
Patel, Maheshkumar Bhikhubhai
Patel, Radhika Mahesh
K.D. Trustees Limited
Patel, Anit
Galgali, Pramod
Galgali, Geetha
Vamanamurthy, Ratna
Yogakumar, Aramugarajah
Yogakumar, Anju Shanthini
Patel, Ranjna
Paul, Gardiner John
Harrison, John Andrew
Penniall, Kenneth Trevor
Penniall, Roma Beatrice
Curteis, Ronald Andrew
Lumsden, Rachelle Fay
Waymouth, Benjamin Newcome
Jamieson, Kim Ann
Jamieson, Craig Bruce

Walker, Bruce Edward
Walker, Rosemarie Dawn
Devarajah Medical Services Limited
Clark, Matthew Alfred
Bruce Peat Plastic Surgery Limited
Hartman, Beryl Myrtle
Ducat, Charles Middleton
Gaia Medical Limited
Rahman, Nazra Begum
Rahman, Habibur
Johnston, Richard Anthony
Lorimer, Michael Robert
Lorimer, Michelle Mary
McMurray, Catherine Jane
KW Trustees 2008 Limited
Flint, David John
MN Flint Orthopaedics Limited
Moazzam, Amber

Dated at Auckland this 28th day of June 2011.

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 28 June 2011 and expires on the close of 30 September 2011.

Ormiston Surgical & Endoscopy Limited (**Ormiston**) proposes to issue 865 782 voting securities in Ormiston (the **proposed allotment**) to Southern Cross Hospitals Limited (**Southern Cross**). As Southern Cross currently holds or controls more than 20% of the voting rights in Ormiston, it can only increase its voting control in Ormiston through the proposed allotment if shareholders first approve the proposed allotment by an ordinary resolution in accordance with rule 7(d) of the Takeovers Code (the **Code**).

However, rule 17(2) of the Code prohibits the allottee and its associates from voting on a resolution for the approval of an allotment. Ormiston's shareholders may all be associates of Southern Cross by virtue of being parties to the Ormiston Shareholders' Agreement (the **agreement**), which, amongst other things, contains clauses concerning voting on board representation and pre-emptive rights. In the absence of an exemption, the shareholders of Ormiston may therefore not be able to vote on the resolution to approve the proposed allotment.

The Takeovers Panel (the **Panel**) has granted an exemption from rule 17(2) of the Code for the shareholders of Ormiston other than Southern Cross, to the extent that they are associates of Southern Cross by virtue solely of the agreement.

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

- all current shareholders of Ormiston may be associates for the purposes of the Code due to their participation in the agreement and, as such, the mechanisms provided in the Code for the approval of Southern Cross's proposed increase of voting securities in Ormiston through the proposed allotment are unworkable; and
- Ormiston has provided a detailed enforceable undertaking under section 31T of the Takeovers Act 1993 to use all reasonable endeavours to seek the effective termination of the agreement as soon as practicable after the proposed allotment has taken place; and

- the exemption provides Ormiston with the opportunity to make a reasonable transition to full compliance with the Code; and
 - Ormiston's shareholders will have the opportunity to vote (on a fully informed basis) to approve Southern Cross's voting control increase; and
 - the exemption maintains a proper relationship between the costs of complying with the Code and the benefits resulting from it.
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Reprinted as at **Takeovers Code (Ormiston Surgical &
1 October 2011 Endoscopy Limited) Exemption Notice 2011**

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 30 June 2011.

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Notes

1 *General*

This is a reprint of the Takeovers Code (Ormiston Surgical & Endoscopy Limited) Exemption Notice 2011. The reprint incorporates all the amendments to the notice as at 1 October 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 (Ormiston Surgical & Endoscopy Limited) Exemption Notice 2011 (SR 2011/237): clause 3
