

Reprint

as at 6 November 2008

Takeovers Code (Just Water International Limited) Exemption Notice 2005

(SR 2005/350)

Takeovers Code (Just Water International Limited) Exemption Notice 2005: re-
voked, on 6 November 2008, by clause 3 of the Regulations Revocation Order
2008 (SR 2008/367).

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 eprint.

A general outline of these changes is set out in the notes at the end of this eprint, together
with other explanatory material about this eprint.

This notice is administered by the Takeovers Panel.

1 Title

This notice is the Takeovers Code (Just Water International Limited) Exemption Notice 2005.

2 Application

This notice applies to acts or omissions occurring on or after 25 November 2005.

3 Interpretation

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

acquisitions means the acquisitions on 25 November 2005 of—

- (a) 16 000 000 shares in Just Water by Harvard from Anthony Edwin Falkenstein and Ian Donald Malcolm as trustees of The Edwin Trust; and
- (b) 16 000 000 shares in Just Water by Harvard from Heather Jeanette Falkenstein and Ian Donald Malcolm as trustees of The Jeanette Trust; and
- (c) 8 000 000 shares in Just Water by Harvard from Yada Holdings No. 1 Limited as trustee of the Leonard Trust

Act means the Takeovers Act 1993

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

distributions means the in specie distribution by Oldrec Limited (in liquidation) on 25 November 2005 of—

- (a) 17 268 000 shares in Just Water to Anthony Edwin Falkenstein and Ian Donald Malcolm as trustees of The Edwin Trust; and
- (b) 17 268 000 shares in Just Water to Heather Jeanette Falkenstein and Ian Donald Malcolm as trustees of The Jeanette Trust; and
- (c) 8 634 000 shares in Just Water to Yada Holdings No. 1 Limited as trustee of the Leonard Trust

Harvard means The Harvard Group Limited

Just Water means Just Water International Limited

Leonard Trust means the Leonard Trust established by deed of trust dated 30 June 1998

Malcolm Trust means the Malcolm Education and Lifestyle Trust established by deed of trust dated 1 April 2001

shareholders of Harvard means—

- (a) Anthony Edwin Falkenstein and Ian Donald Malcolm as trustees of The Edwin Trust; and
- (b) Heather Jeanette Falkenstein and Ian Donald Malcolm as trustees of The Jeanette Trust; and
- (c) Yada Holdings No. 1 Limited as trustee of the Leonard Trust; and
- (d) Ian Donald Malcolm, Pamela Joy Malcolm, and Barbara Kay Astill as trustees of the Malcolm Trust

The Edwin Trust means The Edwin Trust established by deed of trust dated 31 March 1994

The Jeanette Trust means The Jeanette Trust established by deed of trust dated 31 March 1994.

- (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 a code company.
- (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.

4 Exemptions

- (1) Anthony Edwin Falkenstein, Heather Jeanette Falkenstein, Ian Donald Malcolm, and Yada Holdings No. 1 Limited are exempted from rule 6(1) of the Code in respect of any increase in their voting control in Just Water as a result of the distributions.
- (2) Harvard is exempted from rule 6(1) of the Code in respect of any increase in its voting control in Just Water as a result of the acquisitions.
- (3) The shareholders of Harvard are exempted from rule 6(1) of the Code in respect of any increase in their voting control in Just Water as a result of the acquisitions.

5 Condition of exemption in clause 4(3)

The exemption in clause 4(3) is subject to the condition that Ian Donald Malcolm, Pamela Joy Malcolm, and Barbara Kay Astill as trustees of the Malcolm Trust have divested all of their shareholding in Harvard by the expiry of 7 days from the date of this notice.

Dated at Christchurch this 20th day of December 2005.

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

S Suckling,

Member.

[LS]

Statement of reasons

This notice applies to acts or omissions occurring on or after 25 November 2005.

The Takeovers Panel (the **Panel**) has granted exemptions in respect of rule 6(1) of the Takeovers Code (the **Code**) to—

- Anthony Edwin Falkenstein and Ian Donald Malcolm as trustees of The Edwin Trust (**The Edwin Trust**), Heather Jeanette Falkenstein and Ian Donald Malcolm as trustees of The Jeanette Trust (**The Jeanette Trust**), and Yada Holdings No. 1 Limited as trustee of the Leonard Trust (the **Leonard Trust**) (together the **Falkenstein Trusts**):
- Ian Donald Malcolm, Pamela Joy Malcolm, and Barbara Kay Astill as trustees of the Malcolm Education and Lifestyle Trust (the **Malcolm Trust**):
- The Harvard Group Limited (**Harvard**).

The exemptions granted relate to shareholders who increased their control percentage in Just Water International Limited (**Just Water**) through the following transactions (the **reorganisation transactions**) that took place on or around 25 November 2005, as part of the reorganisation of Falkenstein family interests:

- Harvard was incorporated on 21 October 2005 and shares in Harvard were transferred on that date to the trustees of The

Edwin Trust (as to 38%), the trustees of The Jeanette Trust (as to 38%), the trustee of the Leonard Trust (as to 19%), and the trustees of the Malcolm Trust (as to 5%):

- Oldrec Limited (in liquidation) distributed legal ownership of—
 - 17 268 000 shares in Just Water to the trustees of The Edwin Trust:
 - 17 268 000 shares in Just Water to the trustees of The Jeanette Trust:
 - 8 634 000 shares in Just Water to the trustee of the Leonard Trust:
- the trustees of The Edwin Trust transferred 16 000 000 shares in Just Water to Harvard:
- the trustees of The Jeanette Trust transferred 16 000 000 shares in Just Water to Harvard:
- the trustee of the Leonard Trust transferred 8 000 000 shares in Just Water to Harvard:
- the shareholders of Harvard acted jointly or in concert to acquire their shareholdings in Harvard, and also to procure Harvard's acquisition of 40 000 000 Just Water shares from the trustees of the Falkenstein trusts. Therefore, all of the trustees of the Falkenstein Trusts and the trustees of the Malcolm Trust (in other words, all of the shareholders of Harvard) were deemed to become the controllers, together, of Harvard's 60.21% holding of Just Water shares.

In each case, compliance with the Code was overlooked.

The Panel is satisfied that these breaches of the Code were inadvertent.

It is a condition of the exemption granted to the shareholders of Harvard that the trustees of the Malcolm Trust have divested their 5% shareholding in Harvard by the expiry of 7 days from the date of this notice. This condition promptly restores control of voting rights in the Just Water shares that are the subject of the reorganisation transactions, to 100% effective control by the trustees of the Falkenstein Trusts following the divestment.

The Panel considers that the granting of the exemptions is appropriate and consistent with the objectives of the Code because—

- although the reorganisation transactions resulted in an indirect change in the form of control of Just Water, the condition imposed will restore the effective control of voting rights in Just Water to the position prior to the reorganisation transactions; and
- shareholders of Just Water were not disadvantaged in not having the opportunity to vote on the reorganisation transactions at a meeting of shareholders, as those transactions (following the divestment by the trustees of the Malcolm Trust of their 5% shareholding in Harvard) had no real effect on those shareholders; and
- the breaches of the Code were inadvertent.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 22 December 2005.

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Notes

1 General

This is an eprint of the Takeovers Code (Just Water International Limited) Exemption Notice 2005. It incorporates all the amendments to the notice as at 6 November 2008. The list of amendments at the end of these notes specifies all the amendments incorporated into this eprint since 3 September 2007. Relevant provisions of any amending enactments that contain transitional, savings, or application provisions are also included, after the Principal enactment, in chronological order.

2 About this eprint

This eprint has not been officialised. For more information about officialisation, please see “Making online legislation official” under “Status of legislation on this site” in the About section of this website.

3 List of amendments incorporated in this eprint (most recent first)

Regulations Revocation Order 2008 (SR 2008/367): clause 3
