

**Reprint
as at 1 June 2013**



**Takeovers Code (Class
Exemptions—Partial Offers)
Amendment Notice 2011**

(SR 2011/271)

Takeovers Code (Class Exemptions—Partial Offers) Amendment Notice 2011:
revoked, on 1 June 2013, by regulation 36 of the Takeovers Code Approval
Amendment Regulations 2013 (SR 2013/120).

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 (Class Exemptions—Partial Offers) Amendment Notice 2011.
- 2 Commencement**
This notice comes into force on 12 August 2011.
- 3 Principal notice amended**
This notice amends the Takeovers Code (Class Exemptions) Notice (No 2) 2001.
- 4 New clause 26 inserted**
The following clause is inserted after clause 25:
“**26 Exemption for certain oversubscribed partial offers**
“(1) Every offeror who makes a partial offer is exempted from rules 12 and 13 of the Code in respect of voting securities that are identified in a certificate that—
“(a) complies with clause 4 of Schedule 3; and
“(b) is provided to the offeror by an offeree who is a custodian (as defined in clause 1 of Schedule 3).
“(2) The exemption is subject to the conditions in Schedule 3.”
- 5 New Schedule 3 added**
The Schedule 3 set out in the Schedule of this notice is added.

Schedule
New Schedule 3 added

cl 5

Schedule 3
Conditions of exemption for certain
oversubscribed partial offers

cl 26(2)

- 1 Interpretation**
In this schedule, unless the context otherwise requires,—
custodian means an offeree under a partial offer that is—
(a) a trustee corporation or nominee company that holds voting securities by reason of acting, directly or indi-

Schedule 3—*continued*

rectly, on behalf of a client in the ordinary course of the trustee corporation's or nominee company's business;
or

- (b) a person who holds voting securities as the bare trustee of a trust to which the voting securities are subject

relevant client means a client of a custodian on whose behalf, directly or indirectly, and through whatever arrangements, the custodian holds voting securities

voting security means a voting security in the target company.

2 Offer document

The offer document must include—

- (a) a statement that, if the offer is accepted in respect of more voting securities than are sought by the offeror, the offeror intends to rely on the exemption in clause 26 of the Takeovers Code (Class Exemptions) Notice (No 2) 2001; and
- (b) the specified summary set out in clause 3; and
- (c) a request that any offeree who holds voting securities as a custodian provides, no later than the close of the last day of the offer period, a certificate that complies with clause 4 to—
 - (i) the offeror; and
 - (ii) the person who administers the target company's share register.

3 Content of specified summary

The specified summary must be as follows:

“The exemption in clause 26 of the Takeovers Code (Class Exemptions) Notice (No 2) 2001 addresses anomalies that can arise under the scaling formulas contained in rules 12 and 13 of the Code. The formulas apply when a partial offer for voting securities in a target company is oversubscribed.

“The scaling formulas do not take into account the underlying beneficial ownership of voting securities. They treat any trustee corporation, nominee company, or bare trustee

Schedule 3—*continued*

recorded on the share register (a **custodian**) as a single offeree, even though a custodian may hold voting securities on behalf of multiple beneficial owners.

“As a result, the scaling formulas can produce materially different scaling outcomes for beneficial owners of voting securities who hold securities through a custodian compared with the outcomes that would be achieved if the beneficial owners held their voting securities directly.

“The exemption in clause 26 of the notice enables the offeror to avoid these anomalies by, in effect, scaling acceptances relating to beneficial owners who hold their voting securities through a custodian on the same basis as beneficial owners who hold their voting securities directly.

“Under this offer, the offeror has volunteered to rely on the exemption in clause 26. The effect of the exemption will be that beneficial owners who have accepted for more than the specified percentage of voting securities sought by the offeror under the offer may have fewer of their voting securities taken up under the scaling process than if the exemption did not apply.”

4 Requirements of certificate

A certificate provided under clause (2)(c) must—

- (a) state the date of the certificate; and
- (b) include a statement that the offeree holds voting securities as a custodian on behalf of relevant clients; and
- (c) state the total number and class of voting securities that are held by the offeree on behalf of relevant clients; and
- (d) state the number of relevant clients on whose behalf the offeree holds those voting securities; and
- (e) identify as **Pool A**—
 - (i) the number of relevant clients who have not accepted any voting securities under the offer, along with the number and class of voting securities held by the custodian on behalf of each such relevant client; and
 - (ii) the number of relevant clients who have accepted the offer for the specified percentage, or

Schedule 3—*continued*

any smaller percentage, of voting securities that are held by the custodian on behalf of each such relevant client, along with the number and class of voting securities that are held by the custodian on behalf of each such relevant client and to which the acceptance relates; and

- (f) identify as **Pool B** the number of relevant clients who have accepted the offer in relation to more than the specified percentage of voting securities that are held by the custodian on behalf of each such relevant client, along with the number and class of voting securities that are held by the custodian on behalf of each such relevant client and to which that acceptance relates; and
- (g) state the total number of voting securities and acceptance in each of Pool A and Pool B.

5 Offeror's obligations on receiving certificate

- (1) An offeror who receives a certificate that complies with clause 4 must,—
 - (a) in relation to Pool A, take up all the voting securities accepted; and
 - (b) in relation to Pool B, take up all the voting securities accepted, as if each relevant client in pool B were an offeree, in accordance with rules 12 and 13 of the Code.
- (2) Subclause (1) does not require an offeror to take up voting securities directly from a relevant client, but the offeror must instead take up the voting securities from the custodian that provided the certificate.

Dated at Wellington this 4th day of August 2011.

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

[Seal]

D O Jones,
Chairperson.

Statement of reasons

This notice, which amends the Takeovers Code (Class Exemptions) Notice (No 2) 2001, comes into force on 12 August 2011.

If a partial offer for voting securities in a target company is oversubscribed, the Takeovers Code (the **Code**) requires acceptances to be scaled in accordance with the formula in rules 12 and 13 of the Code. The rules take no account of the beneficial ownership of voting securities held by trustee corporations, nominee companies, or bare trustees (**custodians**), who are offerees for the purposes of the Code because they are named on the share register of the target company. This may lead to a materially different result than if voting securities were held by the beneficial owners directly.

The notice exempts offerors from rules 12 and 13 where partial offers are oversubscribed. A condition of the exemption is that the offer document must include a request that custodians provide a certificate identifying the number of voting securities held by each relevant client for whom they are a custodian. The certificate must be provided no later than the close of the last day of the offer period. It is intended that, to enable the offeror to comply with its obligation to notify 1% increments in acceptances, custodians will provide acceptance forms on a progressive basis as they receive instructions to accept the offer from relevant clients.

If a certificate is received, the offeror must then, in effect, apply rules 12 and 13 as if the voting securities were held directly by the clients, in accordance with the numbers provided in the certificates, rather than on the basis that they are held by the custodian.

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

- if offerors choose to rely on the exemption, and if custodians comply with the offeror's request for a certificate, the owners

of voting securities that are not held by a custodian would be treated fairly in comparison with the owners of voting securities held by a custodian when acceptances of a partial offer are subject to scaling:

- the exemption provides an opportunity for more equitable scaling to be undertaken than that which occurs on a literal interpretation of rules 12 and 13 of the Code.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 11 August 2011.

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Notes

1 General

This is a reprint of the Takeovers Code (Class Exemptions—Partial Offers) Amendment Notice 2011. The reprint incorporates all the amendments to the notice as at 1 June 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 Approval Amendment Regulations 2013 (SR 2013/120): regulation 36
