



Takeovers Code Approval Amendment Regulations 2014

Jerry Mateparae, Governor-General

Order in Council

At Wellington this 3rd day of November 2014

Present:

His Excellency the Governor-General in Council

Pursuant to section 19(1) of the Takeovers Act 1993, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council and on the recommendation of the Minister of Commerce and Consumer Affairs formulated and made in accordance with Part 2 of that Act, makes the following regulations.

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Regulations

- 1 Title**
These regulations are the Takeovers Code Approval Amendment Regulations 2014.
- 2 Commencement**
These regulations come into force on 1 December 2014.
- 3 Takeovers Code amended**
These regulations amend the Takeovers Code set out in the Schedule of the Takeovers Code Approval Order 2000.

4 Rule 3 amended (Interpretation)

- (1) In rule 3(1), definition of **custodian**, replace “securities” with “financial products” in each place.
- (2) In rule 3(1), insert in their appropriate alphabetical order:
 - “**derivative** has the meaning set out in section 8(4) of the Financial Markets Conduct Act 2013
 - “**financial product**, in relation to a code company,—
 - “(a) means—
 - “(i) an equity security within the meaning of section 8 of the Financial Markets Conduct Act 2013, whether or not the security carries voting rights:
 - “(ii) a debt security, within the meaning of section 8 of the Financial Markets Conduct Act 2013, that carries the right to vote at any annual or general meeting of the code company:
 - “(iii) a managed investment product, within the meaning of section 8 of the Financial Markets Conduct Act 2013, that carries the right to vote at any annual or general meeting of the code company; and
 - “(b) includes a financial product that is convertible, at the option of the product holder, into a financial product of the type referred to in paragraph (a)(i), (ii), or (iii)
 - “**licensed market** has the meaning set out in section 6(1) of the Financial Markets Conduct Act 2013
 - “**licensed market operator** has the meaning set out in section 6(1) of the Financial Markets Conduct Act 2013
 - “**listed issuer** has the meaning set out in section 6(1) of the Financial Markets Conduct Act 2013
 - “**minimum acceptance condition** means—
 - “(a) a condition referred to in rule 23; or
 - “(b) any condition to which an offer is subject that relates to the offeror receiving a specified minimum level of acceptances in respect of voting securities
 - “**quoted**, in relation to financial products of a person, means financial products of the person that are approved for trading on a licensed market (and, to avoid doubt, financial products

do not cease to be quoted merely because trading in those financial products is suspended)

“**relevant interest** has the meaning set out in sections 235 to 238 of the Financial Markets Conduct Act 2013

“**stock exchange** has the meaning set out in section 2(1) of the Companies Act 1993

“**underlying** has the meaning set out in section 6(1) of the Financial Markets Conduct Act 2013”.

- (3) In rule 3(1), definition of **director**, paragraph (d), after “in the body corporate” insert “or unincorporate”.
- (4) In rule 3(1), definition of **equity security**, paragraph (c), replace “securities” with “financial products”.
- (5) In rule 3(1), revoke the definitions of **listed**, **registered exchange**, and **registered exchange’s securities market**.
- (6) In rule 3(1), definition of **offer**, replace “other securities” with “other financial products”.
- (7) In rule 3(1), definition of **offeree**, paragraph (a), replace “securities” with “financial products” in each place.
- (8) In rule 3(1), definition of **voting right**, replace “security holders” with “financial product holders”.
- (9) In rule 3(1), definition of **voting right**, paragraphs (a) and (b), replace “security” with “financial product”.
- (10) In rule 3(4)(a), replace “securities” with “financial products”.

5 Rule 3A amended (Meaning of code company)

- (1) Replace rule 3A(1)(a) with:

“(a) is a listed issuer that has financial products that confer voting rights quoted on a licensed market; or”.
- (2) In rule 3A(3), replace “security” with “financial product”.

6 Rule 4A replaced (Provisions affecting application of amendments to this code)

Replace rule 4A with:

“4A Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in Schedule 1AA have effect according to their terms.”

- 7 Rule 5 amended (No contracting out of code)**
 In rule 5, replace “security holders” with “financial product holders”.
- 8 Rule 10 amended (When offeror does not hold or control more than 50% of voting rights)**
 In rule 10(1A), definition of **entitled voters**, paragraph (a), replace “securities register” with “financial products register”.
- 9 Rule 11 amended (Excess acceptances: application)**
 In rule 11, replace “securities” with “voting securities”.
- 10 Rule 14 amended (Voting securities subject to disposition)**
 In rule 14, replace “securities register” with “financial products register”.
- 11 Rule 17 amended (Voting restrictions)**
 In rule 17(1), replace “securities” with “voting securities”.
- 12 Rule 23 amended (Minimum acceptance condition)**
 Replace the heading to rule 23 with “**Minimum acceptance condition if offeror does not hold or control more than 50% of voting rights**”.
- 13 Rule 24C amended (Extension of offer period if minimum acceptance condition satisfied or waived in final week)**
 In rule 24C(1)(a), delete “referred to in rule 23”.
- 14 Rule 26 amended (Withdrawal or lapse of offer)**
 Replace rule 26(2)(c) with:
 “(c) the licensed market operator (if any voting securities of the target company are quoted on a licensed market operated by the operator).”
- 15 Rule 28 amended (Variation notice)**
 Replace rule 28(1)(d) with:

“(d) the licensed market operator (if any voting securities of the target company are quoted on a licensed market operated by the operator).”

16 Rule 30 amended (Further reports required for certain variations)

In rule 30(1)(d), replace “securities” with “financial products”.

17 Rule 33 amended (Offer to specify date for payment of consideration)

In rule 33(1), replace “securities” with “financial products”.

18 Rule 34 amended (Withdrawal of acceptance for non-payment of consideration)

In rule 34(1), replace “securities” with “financial products”.

19 Rule 36 amended (Acquisitions)

Replace rule 36(2)(a) with:

“(a) be given no later than the day after the date of acquisition,—

“(i) if any of the offeror, any holding company of the offeror, or the target company is a listed issuer, to the target company, the licensed market operator, and the Panel; or

“(ii) if none of the offeror, any holding company of the offeror, or the target company is a listed issuer, to the target company and the Panel; and”.

20 Rule 41 amended (Takeover notice)

(1) In rule 41(2), replace “an offer of securities to which the Securities Act 1978 applies” with “a regulated offer under the Financial Markets Conduct Act 2013”.

(2) Replace rule 41(3) with:

“(3) In subclause (2), **every relevant document** means every product disclosure statement or other document that must be registered or lodged with, or produced to, any of the following persons or bodies for the offer to comply with the Financial Markets Conduct Act 2013 (including any exemption granted

under that Act or any mutual recognition scheme established under that Act) or with the laws of any overseas jurisdiction in which the offer of the financial products is to be made:

- “(a) the Registrar of Financial Service Providers (including any equivalent person or body in an overseas jurisdiction):
- “(b) any regulatory body (including a regulator in an overseas jurisdiction):
- “(c) any offeree of the financial products.”

21 Rule 41A amended (Offeror’s notification obligations when takeover notice sent)

- (1) Replace rule 41A(1) with:
 - “(1) If the target company is a listed issuer, the offeror must send (electronically, if possible) to the licensed market operator a copy of the documents that the offeror is required to send under rule 41.”
- (2) In rule 41A(2), replace “registered exchange” with “licensed market operator”.

22 Rule 42 amended (Target company’s notification obligations when takeover notice received)

- (1) Replace rule 42(1) with:
 - “(1) If it is a listed issuer, the target company must, immediately on receipt of a takeover notice,—
 - “(a) notify the licensed market operator in writing that a takeover notice has been received; and
 - “(b) send (electronically, if possible) to the licensed market operator a copy of the notice and the documents that accompanied it under rule 41.”
- (2) In rule 42(2), replace “listed company” with “listed issuer”.

23 Rule 42B amended (Target company must send offeror copy of securities register)

- (1) In the heading to rule 42B, replace “securities” with “financial products”.
- (2) In rule 42B, replace “securities register” with “financial products register”.

- (3) In rule 42B, replace “the securities” with “the financial products”.

24 Rule 43 amended (To whom offer must be sent)

- (1) In rule 43(1), replace “securities register” with “financial products register”.
- (2) In rule 43(1), replace “of securities” with “of financial products”.
- (3) In rule 43(2), replace “securities” with “financial products”.

25 Rule 44 amended (Offer document)

- (1) Replace rule 44(1)(d)(ii) with:
 - “(ii) any document required to accompany the takeover notice sent under rule 41(2) that is required by the Financial Markets Conduct Act 2013 or any other applicable law to be given in relation to, or to accompany, an offer of financial products; and”.
- (2) In rule 44(3), replace “security” with “financial product” in each place.

26 Rule 45 amended (Despatch notice)

- (1) In rule 45(1)(b), replace “registered exchange” with “licensed market operator”.
- (2) Replace rule 45(2) with:
 - “(2) Subclause (1)(b) applies only if the offeror’s or the target company’s voting securities are quoted on a licensed market that is operated by the licensed market operator.”

27 Rule 46 amended (Target company statement)

- (1) In rule 46(1)(a)(ii)(A), replace “securities register” with “financial products register”.
- (2) In rule 46(1)(a)(ii)(A), replace “of securities” with “of financial products”.
- (3) Replace rule 46(1)(a)(ii)(C) with:
 - “(C) the licensed market operator (if the voting securities of the target company or the of-

feror are quoted on a licensed market that is operated by the operator); and”.

- (4) In rule 46(2), replace “securities” with “financial products”.

28 Rule 47 amended (Documents that must be sent to Panel or that Panel may require)

In rule 47(3), replace “securities” with “financial products”.

29 Rule 49A amended (Offeror must notify Panel, etc, of increases in acceptances of offer)

Replace rule 49A(2) with:

- “(2) If the target company or the offeror or any holding company of the offeror is a listed issuer, the offeror must provide the licensed market operator with the same notification that is required under subclause (1).”

30 Rule 49B amended (Notice if rule 24C applies)

- (1) In rule 49B(1)(a), delete “the condition about”.
- (2) Replace rule 49B(2)(d) with:
- “(d) the licensed market operator (if any voting securities of the target company are quoted on a licensed market that is operated by the operator).”

31 Rule 49C amended (Notice of conditions to which offer subject 14 days before end of offer period)

- (1) In rule 49C(3), delete “minimum acceptance”.
- (2) Replace rule 49C(4)(c) with:
- “(c) the licensed market operator (if any voting securities of the target company are quoted on a licensed market that is operated by the operator).”

32 Rule 51 replaced (Notification of dominant ownership)

Replace rule 51 with:

“51 Notification of dominant ownership

If a person becomes a dominant owner in a code company, that person must immediately send a written notice of that fact to the code company, the Panel, and (if any voting securities

of the code company are quoted on a licensed market that is operated by a licensed market operator) the licensed market operator.”

33 Rule 54 amended (Acquisition notice)

Replace rule 54(4)(a) with:

“(a) sent immediately to the code company, the Panel, and (if the code company is a listed issuer) the licensed market operator; and”.

34 Rule 57 amended (Determination of consideration in other cases)

(1) Replace rule 57(5)(a) with:

“(a) immediately to the Panel and, if the target company is a listed issuer, to the licensed market operator; and”.

(2) Replace rule 57(6)(a) with:

“(a) immediately to the Panel and, if the target company is a listed issuer, to the licensed market operator; and”.

35 Rule 61 amended (Payment of consideration if documents not returned)

In rule 61(3), replace “securities” with “financial products” in each place.

36 Part 9 revoked

Revoke Part 9.

37 Schedule 1AA replaced

Replace Schedule 1AA with the Schedule 1AA set out in the Schedule of these regulations.

38 Schedule 1, clause 4 amended

In Schedule 1, clause 4, replace “securities” with “financial products”.

39 Schedule 1, clause 5A amended

In Schedule 1, clause 5A(1), in the table, delete “minimum acceptance”.

40 Schedule 1, clause 6 amended

In Schedule 1, after clause 6(2), insert:

- “(3) For the purposes of this clause, if a person has a relevant interest in a derivative for which the underlying is 1 or more equity securities of the target company, the person must be treated as holding or controlling the number of the underlying equity securities that is determined under clause 7C.”

41 Schedule 1, clause 7 amended

In Schedule 1, after clause 7(3), insert:

- “(4) For the purposes of subclauses (1)(a) and (2),—
- “(a) if a person (A) has acquired or disposed of a relevant interest in a derivative for which the underlying is 1 or more equity securities of the target company, A must be treated as having acquired or disposed of the number of the underlying equity securities that is determined under clause 7C; and
 - “(b) A must be treated as having acquired or disposed of those underlying equity securities on the same day on which A acquires or disposes of the relevant interest in the derivative; and
 - “(c) **disposed of**, in relation to a relevant interest in a derivative, does not include A ceasing to have a relevant interest in a derivative because the relevant agreement has expired.
- “(5) Nothing in subclause (4) applies to subclause (1)(b) or (c).”

42 Schedule 1, new clauses 7A to 7C inserted

In Schedule 1, after clause 7, insert:

“7A Composition of non-derivative and derivative holdings

- “(1) This clause applies if—
- “(a) a person (A) referred to in clause 6(1) has a relevant interest in a derivative as referred to in clause 6(3); or

- “(b) a person (**B**) referred to in clause 6(1)(a) to (d) has, during the 6-month period referred to in clause 7(3), acquired or disposed of a relevant interest in a derivative as referred to in clause 7(4).
- “(2) If this clause applies, it applies to—
 - “(a) each statement made under clause 6(1) for A in which the number of equity securities includes a number of equity securities that A is treated as holding or controlling under clause 6(3) (including where the number that A is treated as holding or controlling is 0); and
 - “(b) each statement made under clause 7(1)(a) for B in which the number of equity securities includes a number of equity securities that B is treated as having acquired or disposed of under clause 7(4) (including where the number that B is treated as having acquired or disposed of is 0).
- “(3) For each statement made under clause 6(1) for A, a further statement that discloses for each number of each class of equity securities of the target company held or controlled by A—
 - “(a) the number, designation, and percentage of the class of equity securities held or controlled by A before applying clause 6(3); and
 - “(b) the number that A is treated as holding or controlling under clause 6(3); and
 - “(c) for each derivative, the details in clause 7B.
- “(4) For each statement made under clause 7(1)(a) for B, a further statement that discloses for each total number of each class of equity securities of the target company acquired or disposed of by B—
 - “(a) the total number and the designation of the class of equity securities acquired or disposed of by B before applying clause 7(4); and
 - “(b) the total number that B is treated as having acquired or disposed of under clause 7(4); and
 - “(c) for each derivative,—
 - “(i) the date on which the derivative was entered into; and
 - “(ii) the details in clause 7B.

“7B Disclosure about derivatives

For the purposes of clause 7A, the details of the derivative to be disclosed are—

- “(a) the type of derivative (for example, option or swap agreement); and
- “(b) the full names of the parties to the derivative; and
- “(c) if the person to whom the statement relates is not a party to the derivative, the nature of the relevant interest in the derivative; and
- “(d) the notional value of the derivative (if any) (which is the face value or the notional amount in respect of the derivative as at the date on which the relevant agreement is entered into) or the notional number of underlying equity securities; and
- “(e) whether the derivative is cash settled or physically settled; and
- “(f) the maturity date of the derivative (if any); and
- “(g) the expiry date of the derivative (if any); and
- “(h) the prices specified in the terms of the derivative (if any) (for example, the strike price of an option or the price at which a contract for difference was acquired); and
- “(i) any other details needed to understand how the amount of the consideration payable under the derivative or the value of the derivative is affected by the value of the underlying equity securities.

“7C How to determine number of equity securities underlying derivatives

- “(1) In clauses 6 and 7, the number of equity securities that a person (A) must be treated, at a particular date, as holding or controlling, or as having acquired or disposed of, is determined as follows:
 - “(a) if the derivative gives A, in economic substance, the financial benefits of holding an ascertainable number of the equity securities for a period determined under the derivative and the derivative is a cash-settled derivative, that number of equity securities:
 - “(b) if the derivative is a cash-settled option to buy or sell an ascertainable number of equity securities at an agreed

- price on, or on or before, an agreed date and the derivative gives A a long position on those securities, the number that is equal to the ascertainable number of those securities multiplied by the delta of the derivative at the end of the most recent trading day:
- “(c) in any other case for which there is a framework or methodology issued under subpart 4 of Part 9 of the Financial Markets Conduct Act 2013 in relation to regulation 132 of the Financial Markets Conduct Regulations 2014, the number calculated in accordance with that framework or methodology.
- “(2) However, if A is a derivatives issuer, the offeror, in determining the number of equity securities that A must be treated as holding or controlling, or as having acquired or disposed of, must not take account of any number to the extent that—
- “(a) the number arises as a result of the application of clause 6(3) or 7(4) to derivatives entered into in the ordinary course of A’s derivatives-issuing business for the purpose of hedging A’s obligations under other derivatives entered into with 1 or more investors in a client-serving capacity; and
 - “(b) A and the investor or investors are not associated persons; and
 - “(c) the exemption in regulation 145 of the Financial Markets Conduct Regulations 2014 applies to A.
- “(3) Subclause (2) applies only to the extent that the offeror is aware of the matters referred to in that subclause.
- “(4) In this clause,—
- “(a) **ascertainable number**, in relation to the particular date referred to in subclause (1), means a number that is specified in, is determined in accordance with, or can be ascertained on that date under the terms of the derivative:
 - “(b) **associated person** has the meaning set out in section 12(1) of the Financial Markets Conduct Act 2013:
 - “(c) **dealing, derivatives issuer, FMA**, and **investor** have the meanings set out in section 6(1) of the Financial Markets Conduct Act 2013:
 - “(d) **financial benefit** means capital, earnings, or other financial returns.

- “(5) For the purposes of subclause (1)(b),—
- “(a) A will have a **long position** if, under the terms of the derivative, A may benefit if the price of the underlying equity securities increases (rather than decreases); and
 - “(b) the delta of the derivative must be calculated in accordance with accepted market practice for applying a delta calculation to determine how many equity securities a counterparty should hold at the end of the most recent trading day to hedge the counterparty’s obligations under the derivative (whether or not the counterparty chooses to hedge this way in practice).
- “(6) For the purposes of subclause (2)(a), a derivatives issuer acts in a **client-serving capacity** when it deals in derivatives by fulfilling orders received from an investor or responding to an investor’s request to trade (rather than dealing on its own behalf).”

43 Schedule 1, clause 17 amended

- (1) In Schedule 1, heading to clause 17, replace “**securities**” with “**financial products**”.
- (2) In Schedule 1, clause 17(1) and (2), replace “securities” with “financial products” in each place.

44 Schedule 2, clause 5 amended

In Schedule 2, after clause 5(2), insert:

- “(2A) For the purposes of subclause (1) and (2), and in clause 6(3), if a person has a relevant interest in a derivative for which the underlying is 1 or more equity securities of the target company, the person must be treated as holding or controlling the number of the underlying equity securities that is determined under clause 6C.”

45 Schedule 2, clause 6 amended

In Schedule 2, after clause 6(3), insert:

- “(4) For the purposes of subclauses (1)(a) and (2),—
- “(a) if a person (**A**) has acquired or disposed of a relevant interest in a derivative for which the underlying is 1 or more equity securities of the target company, A must be

treated as having acquired or disposed of the number of the underlying equity securities that is determined under clause 6C; and

“(b) A must be treated as having acquired or disposed of those underlying equity securities on the same day on which A acquires or disposes of the relevant interest in the derivative; and

“(c) **disposed of**, in relation to a relevant interest in a derivative, does not include A ceasing to have a relevant interest in a derivative because the relevant agreement has expired.

“(5) Nothing in subclause (4) applies to subclause (1)(b).”

46 Schedule 2, new clauses 6A to 6C inserted

In Schedule 2, after clause 6, insert:

“6A Composition of non-derivative and derivative holdings

“(1) This clause applies if a person (A) referred to in clause 5(1)—

“(a) has a relevant interest in a derivative as referred to in clause 5(2A); or

“(b) has, during the 6-month period referred to in clause 6(1), acquired or disposed of a relevant interest in a derivative as referred to in clause 6(4).

“(2) If this clause applies, it applies to—

“(a) each statement made under clause 5(1) for A in which the number of equity securities includes a number of equity securities that A is treated as holding or controlling under clause 5(2A) (including where the number that A is treated as holding or controlling is 0); and

“(b) each statement made under clause 6(1)(a) for A in which the number of equity securities includes a number of equity securities that A is treated as having acquired or disposed of under clause 6(4) (including where the number that A is treated as having acquired or disposed of is 0).

“(3) For each statement made under clause 5(1) for A, a further statement that discloses for each number of each class of equity securities of the target company held or controlled by A—

- “(a) the number, designation, and percentage of the class of equity securities held or controlled by A before applying clause 5(2A); and
 - “(b) the number that A is treated as holding or controlling under clause 5(2A); and
 - “(c) for each derivative, the details in clause 6B.
- “(4) For each statement made under clause 6(1)(a) for A, a further statement that discloses for each total number of each class of equity securities of the target company acquired or disposed of by A—
- “(a) the total number and the designation of the class of equity securities acquired or disposed of by A before applying clause 6(4); and
 - “(b) the total number that A is treated as having acquired or disposed of under clause 6(4); and
 - “(c) for each derivative,—
 - “(i) the date on which the derivative was entered into; and
 - “(ii) the details in clause 6B.

“6B Disclosure about derivatives

For the purposes of clause 6A, the details of the derivative to be disclosed are—

- “(a) the type of derivative (for example, option or swap agreement); and
- “(b) the full names of the parties to the derivative; and
- “(c) if the person to whom the statement relates is not a party to the derivative, the nature of the relevant interest in the derivative; and
- “(d) the notional value of the derivative (if any) (which is the face value or the notional amount in respect of the derivative as at the date on which the relevant agreement is entered into) or the notional number of underlying equity securities; and
- “(e) whether the derivative is cash settled or physically settled; and
- “(f) the maturity date of the derivative (if any); and
- “(g) the expiry date of the derivative (if any); and

- “(h) the prices specified in the terms of the derivative (if any) (for example, the strike price of an option or the price at which a contract for difference was acquired); and
- “(i) any other details needed to understand how the amount of the consideration payable under the derivative or the value of the derivative is affected by the value of the underlying equity securities.

“6C How to determine number of equity securities underlying derivatives

- “(1) In clauses 5, 6, and 13A, the number of equity securities that a person (A) must be treated, at a particular date, as holding or controlling, or as having acquired or disposed of, is determined as follows:
 - “(a) if the derivative gives A, in economic substance, the financial benefits of holding an ascertainable number of the equity securities for a period determined under the derivative and the derivative is a cash-settled derivative, that number of equity securities:
 - “(b) if the derivative is a cash-settled option to buy or sell an ascertainable number of equity securities at an agreed price on, or on or before, an agreed date and the derivative gives A a long position on those securities, the number that is equal to the ascertainable number of those securities multiplied by the delta of the derivative at the end of the most recent trading day:
 - “(c) in any other case for which there is a framework or methodology issued under subpart 4 of Part 9 of the Financial Markets Conduct Act 2013 in relation to regulation 132 of the Financial Markets Conduct Regulations 2014, the number calculated in accordance with that framework or methodology.
- “(2) However, if A is a derivatives issuer, the target company, in determining the number of equity securities that A must be treated as holding or controlling, or as having acquired or disposed of, must not take account of any number to the extent that—
 - “(a) the number arises as a result of the application of clause 5(2A), 6(4), or 13A(5) to derivatives entered into in

- the ordinary course of A's derivatives-issuing business for the purpose of hedging A's obligations under other derivatives entered into with 1 or more investors in a client-serving capacity; and
- “(b) A and the investor or investors are not associated persons; and
- “(c) the exemption in regulation 145 of the Financial Markets Conduct Regulations 2014 applies to A.
- “(3) Subclause (2) applies only to the extent that the target company is aware of the matters referred to in that subclause.
- “(4) In this clause,—
- “(a) **ascertainable number**, in relation to the particular date referred to in subclause (1), means a number that is specified in, is determined in accordance with, or can be ascertained on that date under the terms of the derivative:
- “(b) **associated person** has the meaning set out in section 12(1) of the Financial Markets Conduct Act 2013:
- “(c) **dealing, derivatives issuer, FMA**, and **investor** have the meanings set out in section 6(1) of the Financial Markets Conduct Act 2013:
- “(d) **financial benefit** means capital, earnings, or other financial returns.
- “(5) For the purposes of subclause (1)(b),—
- “(a) A will have a **long position** if, under the terms of the derivative, A may benefit if the price of the underlying equity securities increases (rather than decreases); and
- “(b) the delta of the derivative must be calculated in accordance with accepted market practice for applying a delta calculation to determine how many equity securities a counterparty should hold at the end of the most recent trading day to hedge the counterparty's obligations under the derivative (whether or not the counterparty chooses to hedge this way in practice).
- “(6) For the purposes of subclause (2)(a), a derivatives issuer acts in a **client-serving capacity** when it deals in derivatives by fulfilling orders received from an investor or responding to an investor's request to trade (rather than dealing on its own behalf).”

47 Schedule 2, clause 13A amended

In Schedule 2, after clause 13A(4), insert:

- “(5) For the purposes of subclause (1), if a person has a relevant interest in a derivative for which the underlying is 1 or more equity securities of the target company, the person must be treated as holding or controlling the number of the underlying equity securities that is determined under clause 6C.”

48 Schedule 2, clause 18 amended

- (1) In Schedule 2, clause 18(6), definition of **annual report**, replace paragraph (a) with:

“(a) if any voting securities of the target company are quoted on a licensed market, the annual report and financial statements (including the auditor’s report on those financial statements) that the target company is required by the licensed market operator to send or make available to the target company’s equity security holders; or”.

- (2) In Schedule 2, clause 18(6), definition of **half-yearly report**, replace paragraph (a) with:

“(a) if any voting securities of the target company are quoted on a licensed market, the half-yearly report and half-yearly financial statements (including the auditor’s report on such financial statements, if any) that the issuer is required by the rules of the licensed market to send or make available to equity security holders of the issuer; or”.

49 Schedule 3, clause 4 amended

In Schedule 3, clause 4(2) and (3), replace “securities” with “financial products”.

r 37

Schedule

Schedule 1AA replaced

r 4A

Schedule 1AA

Transitional, savings, and related provisions

Transitional provisions relating to Takeovers
Code Approval Amendment Regulations 2014

1 Transitional provisions for matters before commencement of Takeovers Code Approval Amendment Regulations 2014

The takeovers code that is in force immediately before the commencement of the Takeovers Code Approval Amendment Regulations 2014 (the **pre-2014 amendment code**) continues to apply, and the takeovers code as amended by the Takeovers Code Approval Amendment Regulations 2014 does not apply, to—

- (a) any offer made pursuant to a takeover notice that has been sent to a target company before the commencement of the Takeovers Code Approval Amendment Regulations 2014;
- (b) any compulsory sale or voluntary sale pursuant to an acquisition notice that is sent by the dominant owner who becomes the dominant owner by reason of acceptances of an offer to which paragraph (a) applies;
- (c) any notice of meeting of shareholders to be held for the purposes of rule 7(c) or (d) of the pre-2014 amendment code that has been sent to shareholders before the commencement of the Takeovers Code Approval Amendment Regulations 2014.

2 Transitional provision relating to rule 41 (Takeover notice)

Rule 41(2) and (3), as in force immediately before the commencement of this clause, continues to apply to an offer of securities to which the Securities Act 1978 applies as if the Takeovers Code Approval Amendment Regulations 2014 had not been made.

Schedule 1AA—*continued***3 Transitional provision relating to rule 44 (Offer document)**

Rule 44(1)(d)(ii), as in force immediately before the commencement of this clause, continues to apply to an offer of securities to which the Securities Act 1978 applies as if the Takeovers Code Approval Amendment Regulations 2014 had not been made.

Michael Webster,
Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations, which come into force on 1 December 2014, amend the Takeovers Code (the **code**). The amendments arise out of changes to financial markets legislation and 2 sets of discussion papers issued by the Takeovers Panel (the **Panel**) and recommendations to the Minister of Commerce in August and November 2012 (relating to disclosure of equity derivative positions and technical amendments to the code). The discussion papers and recommendations are available on the Panel's website at www.takeovers.govt.nz. Principally, these regulations—

- make amendments that are consequential to the Financial Markets Conduct Act 2013 and the changes made to the Takeovers Act 1993 (the **Act**) by the Financial Markets (Repeals and Amendments) Act 2013;
- amend rule 24C of the code (which relates to the extension of an offer period if a minimum acceptance condition is satisfied or waived in the final week) so that it applies to any offers that are subject to a minimum acceptance condition, whether that condition is required by rule 23 or not. This amendment gives greater effect to the associated Panel recommendation in August 2012:

- amend Schedules 1 and 2, which relate to the information that must be contained in, or accompany, takeover notices, offer documents, and target company statements. The information provided under these schedules enhances transparency in a code-regulated takeover. Currently, the offeror and target company must disclose certain details of equity securities in the target company held or controlled by certain persons. But these schedules have not, in the past, required disclosure or the taking into account of any derivative positions in the target company, even though such positions can enable a person to increase the number of equity securities it holds in a target company.

Accordingly, amendments made to Schedules 1 and 2 by these regulations relate to derivatives for which the underlying is 1 or more equity securities in the target company (each, a **specified derivative**). Broadly, the effect of these amendments is that,—

- for most disclosure purposes, a person with a relevant interest in a specified derivative is generally treated the same as a person who holds or controls equity securities in the target company. The offeror or target company must treat that person as holding or controlling, or as having acquired or disposed of, a certain number of the underlying equity securities. This impacts both on the number of equity securities disclosed for a person, and the people for whom disclosure must be made:
- the offeror and target company must disclose both the total number of equity securities held or controlled (or treated as held or controlled) by a person and the composition of that total number; that is, of that total number, the number “actually” held or controlled, and the number treated as held or controlled. Similar disclosure requirements apply in relation to equity securities acquired or disposed of within a 6-month period leading up to the relevant notice, document, or statement:
- the offeror and target company must disclose certain details of specified derivatives. This enhances transparency about the nature of a person’s interest in the derivative and the underlying equity securities of the target company.

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**Takeovers Code Approval Amendment
Regulations 2014**

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These regulations are administered by the Ministry of Business, Innovation, and
Employment.
