



Takeovers Code (Class Exemptions) Notice (No 2) 2001 Amendment Notice (No 3) 2017

Pursuant to sections 45 and 45A(3) of the Takeovers Act 1993, the Takeovers Panel, being satisfied of the matters set out in section 45(6) of that Act, gives the following notice.

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New Schedule 1AA inserted	

Notice

1 Title

This notice is the Takeovers Code (Class Exemptions) Notice (No 2) 2001 Amendment Notice (No 3) 2017.

2 Commencement

This notice comes into force on 15 September 2017.

3 Principal notice

This notice amends the Takeovers Code (Class Exemptions) Notice (No 2) 2001 (the **principal notice**).

4 New clause 3A inserted (Transitional, savings, and related provisions)

After clause 3, insert:

3A Transitional, savings, and related provisions

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

5 Clause 8B replaced (Exemption for allotments pursuant to certain offers with excluded overseas shareholders: increased voting control eliminated within 6 months after increase)

Replace clause 8B with:

8B Exemption for allotments pursuant to certain offers with excluded overseas shareholders: increased voting control eliminated within 6 months after increase

- (1) This clause applies if a code company makes an allotment of voting securities pursuant to an offer that would be of the kind described in clause 8(1)(a) or 8A(1) except that—
 - (a) the offer is not made to 1 or more overseas shareholders; or
 - (b) the terms of the offer prevent 1 or more overseas shareholders from accepting their pro rata share of the rights or securities offered.
- (2) Except as set out in subclause (6), every person who increases voting control as a result of the allotment is exempted from rule 6(1) of the Code in respect of that increase in voting control.
- (3) The exemption is subject to—
 - (a) the condition that the terms of the offer comply with subclause (4); and
 - (b) conditions A, B, and C in clause 8(4) to (6) (but *see* subclause (5) of this clause in applying condition B).
- (4) The terms of the offer must include statements to the effect—
 - (a) that the code company—
 - (i) has appointed an NZX trading and advising firm, or a related company of an NZX trading and advising firm, to, as soon as practicable and consistent with the terms of the offer, sell the relevant rights or the voting securities to which the relevant rights relate; and

(ii) will ensure that each excluded overseas shareholder is paid that shareholder's pro rata share of the net proceeds of those sales; and

(b) that, to the best of the code company's knowledge, the appointed NZX trading and advising firm or related company (as relevant) is not being prosecuted for any offence.

(5) In applying condition B, if, under the terms of the offer, 1 or more persons are allotted voting securities up to 2 months earlier than other persons, references in condition B to a control percentage or percentages immediately before the increase in voting control must be read as references to a control percentage or percentages immediately before the first allotment is made under the offer.

(6) The exemption in subclause (2) does not apply to an increase in voting control acquired pursuant to the rights or voting securities sold by the appointed NZX trading and advising firm or related company.

(7) In this clause,—

excluded overseas shareholders means, in respect of an offer, the 1 or more overseas shareholders—

(a) to whom the offer is not made; or

(b) who are prevented by the terms of the offer from accepting their pro rata share of the rights or voting securities offered

NZX trading and advising firm means an NZX Trading and Advising Firm within the meaning of the NZX Participant Rules made by NZX Limited

relevant rights means, in respect of an offer, the aggregate pro rata share of rights or voting securities that the excluded overseas shareholders—

(a) would have been offered (in addition to, and not as a portion of, those rights or securities offered to the shareholders who received the offer) had the offer been of the kind described in clause 8(1)(a) or 8A(1); or

(b) are prevented from accepting by the terms of the offer

rights means rights to acquire voting securities.

6 Clause 9 amended (Exemption for increased voting control within 6 months after allotments pursuant to clauses 8 to 8C offer or scheme result in reduced control percentage)

Replace clause 9(1)(c) with:

(c) an offer of the kind described in clause 8B; or

7 New Schedule 1AA inserted

Insert the Schedule 1AA set out in the Schedule of this notice as the first schedule to appear after the last clause of the principal notice.

Schedule

New Schedule 1AA inserted

cl 7

Schedule 1AA

Transitional, savings, and related provisions

cl 3A

Part 1

Provision relating to Takeovers Code (Class Exemptions) Notice (No 2) 2001 Amendment Notice (No 3) 2017

1 Transitional provision relating to offers made before amendments commence

Clauses 8B and 9(1)(c), as in force immediately before the amendments made by clauses 5 and 6 of the Takeovers Code (Class Exemptions) Notice (No 2) 2001 Amendment Notice (No 3) 2017, continue to apply in relation to offers that are made before the commencement of those amendments as if those amendments had not been made.

Dated at Auckland this 8th day of September 2017.

Richard Andrew Coupe,
Chairperson.

Statement of reasons

This note is not part of the notice, but is intended to indicate its general effect.

This notice, which comes into force on 15 September 2017, amends clauses 8B and 9 of the Takeovers Code (Class Exemptions) Notice (No 2) 2001 (the **principal notice**) and inserts a transitional provision that relates to the amendments. Clause 8B provides an exemption for allotments of voting securities under certain offers from which 1 or more overseas shareholders are excluded from direct participation. The amendments to clause 8B include—

- a change to the description of the offer to which the clause relates;
- removing the condition requiring the appointment of a registered financial service provider on behalf of the overseas shareholders who are excluded from the offer;

- broadening the condition relating to the appointment of an NZX trading and advising firm so that a related company of an NZX trading and advising firm can instead be appointed;
- permitting the appointment of an NZX trading and advising firm or related company who is under investigation by the FMA or NZX Limited (but retaining, and expanding, the requirement that the appointee is not, to the best of the code company's knowledge, being prosecuted).

The amendment to clause 9 is consequential.

The Takeovers Panel (the **Panel**) considers it appropriate to amend the principal notice because the amendments—

- ensure that the exemption in clause 8B aligns with market practice, and that compliance with the conditions of that exemption is practicable;
- fit within current Panel policy settings for the capital markets;
- maintain a proper relationship between the costs of compliance with the Code and the benefits resulting from it;
- are consistent with the principle of providing equal consideration to all shareholders of the same class.

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 14 September 2017.

This notice is administered by the Takeovers Panel.