

**Reprint
as at 8 September 2015**



**Takeovers Code (The Warehouse Group Limited)
Exemption Notice (No 2) 2010
(SR 2010/303)**

Takeovers Code (The Warehouse Group Limited) Exemption Notice (No 2) 2010: expired, on 8 September 2015, 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).

Contents

	Page
1 Title	1
2 Application	1
3 Expiry	2
4 Interpretation	2
5 Exemption from rule 6(1) of Code for existing trustees	2
6 Exemptions from rule 6(1) of Code for future trustees	2

Notice

1 Title

This notice is the Takeovers Code (The Warehouse Group Limited) Exemption Notice (No 2) 2010.

2 Application

- (1) Clause 5 applies to acts or omissions occurring on or after 8 April 2010.
- (2) Clause 6 applies to acts or omissions occurring on or after 7 September 2010.

Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint. Note 4 at the end of this reprint provides a list of the amendments incorporated.

This notice is administered by the Takeovers Panel.

3 Expiry

This notice expires on the close of 7 September 2015.

4 Interpretation

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

Act means the Takeovers Act 1993

Code means the Takeovers Code under the Act

Foundation means The Tindall Foundation, a charitable trust established by the trust deed

trust deed means The Tindall Foundation deed of trust dated 6 December 2007

voting security means a voting security in The Warehouse Group Limited.

- (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 voting rights in The Warehouse Group Limited.
- (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.

5 Exemption from rule 6(1) of Code for existing trustees

- (1) Stephen Robert Tindall, Margaret Maria Tindall, and Jennifer Mary Casey, as trustees of the Foundation, are exempted from rule 6(1) of the Code in respect of any increase in their voting control resulting from the retirement of Peter Francis Menzies as a trustee of the Foundation on 8 April 2010.
- (2) Joan Withers is exempted from rule 6(1) of the Code in respect of any increase in her voting control resulting from her appointment as a trustee of the Foundation on 21 June 2010.

6 Exemptions from rule 6(1) of Code for future trustees

Every person who is appointed as a trustee of the Foundation in accordance with the trust deed is exempted from rule 6(1) of the Code in respect of—

- (a) any increase in that person's voting control resulting from the appointment; and
- (b) any increase in that person's voting control resulting from the retirement, at any time, of another person as a trustee of the Foundation.

Dated at Auckland this 3rd day of September 2010.

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

[Seal]

D O Jones,
Chairperson.

Statement of reasons

Clause 5 of this notice applies to acts or omissions occurring on or after 8 April 2010. *Clause 6* applies to acts or omissions occurring on or after 7 September 2010. The notice expires on the close of 7 September 2015.

The Tindall Foundation (the **Foundation**) is a charitable trust, the trustees of which have been incorporated as a board under the Charitable Trusts Act 1957. The board of the Foundation, as a body corporate, holds more than 20% of the voting rights in The Warehouse Group Limited (**The Warehouse**), a code company, and the trustees control the voting rights in The Warehouse held by the board.

The Takeovers Panel (the **Panel**) has granted exemptions from rule 6(1) of the Code for—

- Stephen Robert Tindall, Margaret Maria Tindall, and Jennifer Mary Casey, as trustees of the Foundation, in respect of any increase in their voting control in The Warehouse resulting from the retirement of Peter Francis Menzies as a trustee of the Foundation on 8 April 2010;
- Joan Withers in respect of any increase in her voting control in The Warehouse as a result of her appointment as a trustee of the Foundation on 21 June 2010.

By the operation of rule 6(2)(c) of the Code, when Mr Menzies retired as a trustee the remaining trustees of the Foundation increased the extent to which they shared as associates in the controlling of voting rights in The Warehouse held by the board of the Foundation and were deemed to have become the controllers of an increased percentage of the voting rights.

By the operation of rule 6(2)(b) of the Code, when Joan Withers was appointed a trustee she joined the existing trustees as an associate in the controlling of the voting rights in The Warehouse held by the board of the Foundation, and was deemed to have become the controller of more than 20% of the voting rights in The Warehouse.

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

- the shareholders of The Warehouse would not have been disadvantaged in not having an opportunity to vote on the change of trustees at a meeting of shareholders because the change had no real effect on those shareholders:

- the appointment was in relation to the organisation of a charitable trust and the Code is not intended to inhibit the arrangement of such affairs:
- unnecessary compliance costs would have been incurred if the exemptions had not been granted:
- any breach of the Code appears to have been inadvertent.

The Panel has also, in *clause 6*, granted exemptions to any person who is appointed a trustee of the Foundation and who, as a result of that appointment, or as a result of another trustee of the Foundation retiring at any time, becomes the holder or controller of an increased percentage of voting rights in The Warehouse.

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

- every person who is appointed as a trustee of the Foundation exercises voting control over the voting rights in The Warehouse held by the board of the Foundation, in his or her capacity as trustee, and is subject to the duties and obligations arising from the Foundation's trust deed and at law:
- the Code is not intended to inhibit changes in the governance arrangements of charitable trusts made in accordance with that trust's deed of trust:
- the shareholders of The Warehouse would not be disadvantaged by not having the opportunity to vote on the appointment of a new trustee of the Foundation, or the retirement of a trustee, at a meeting of the shareholders of the company because that appointment or retirement would have no real effect on those shareholders.

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*: 9 September 2010.

Reprints notes

1 *General*

This is a reprint of the Takeovers Code (The Warehouse Group Limited) Exemption Notice (No 2) 2010 that incorporates all the amendments to that notice as at the date of the last amendment to it.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Takeovers Code (The Warehouse Group Limited) Exemption Notice (No 2) 2010 (SR 2010/303): clause 3