

**Reprint
as at 1 January 2013**



**Takeovers Code (Open Country
Dairy Limited) Exemption Notice
2012**

(SR 2012/29)

Takeovers Code (Open Country Dairy Limited) Exemption Notice 2012:
expired, on 1 January 2013, 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).

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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.

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Notice

1 Title

This notice is the Takeovers Code (Open Country Dairy Limited) Exemption Notice 2012.

2 Application

This notice applies to acts or omissions occurring on or after 15 February 2012.

3 Expiry

This notice expires on the close of 31 December 2012.

4 Interpretation

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

Act means the Takeovers Act 1993

allotment period means the period starting on the date of the meeting and ending on the date of the last allotment under a specified transaction

calculation date means the date, identified in the notice of meeting, used for determining the number and percentages of voting securities disclosed in the notice of meeting

Code means the Takeovers Code under the Act

meeting means the meeting of OCD shareholders that is to be held on or about 7 March 2012 to consider, among other things, whether or not to approve, for the purposes of rule 7(d) of the Code,—

- (a) the allotment of voting securities to Olam under the rights offer; and
- (b) the allotment of voting securities to Olam under the Olam OIO share placement; and
- (c) the allotment of voting securities to Olam under the residual share placement

notice of meeting means the notice of meeting (including explanatory materials) that is to be sent to OCD shareholders in respect of the meeting

OCD means Open Country Dairy Limited

Olam means Olam International Limited, a company incorporated in Singapore

Olam OIO share placement means the allotment of up to a maximum of 3 809 634 voting securities to Olam if Olam is unable to take up its full pro rata entitlement under the rights offer due to Overseas Investment Act 2005 restrictions

residual share placement means the allotment, to be approved by unanimous agreement of the directors of OCD, of voting securities to shareholders or other persons in a number equal to the number of voting securities not taken up under the rights offer, less any voting securities allotted in the Olam OIO share placement

rights offer means the pro rata rights offer to existing shareholders of OCD to be conducted prior to the specified transactions

specified transaction means either or both of the following:

- (a) the Olam OIO share placement;
- (b) the residual share placement

voting security means a voting security in OCD.

- (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 OCD.
- (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 7(d) of Code

Olam is exempted from rule 7(d) of the Code, to the extent that rule 7(d) requires the notice of meeting to comply with rule 16(b) of the Code, in respect of any increase in Olam's voting control that results from the allotment of voting securities to Olam under a specified transaction.

6 Exemption from rule 16(b) of Code

OCD is exempted from rule 16(b) of the Code in respect of the notice of meeting so far as it relates to the particulars of voting securities to be allotted to Olam under a specified transaction.

7 Conditions of exemptions in clauses 5 and 6 relating to notice of meeting

- (1) The exemptions in clauses 5 and 6 are subject to the conditions that—
- (a) the notice of meeting contains, or is accompanied by, the following particulars of the voting securities that could be allotted to Olam under the specified transactions:
 - (i) the maximum number of voting securities that could be allotted to Olam;
 - (ii) that number expressed as a percentage of all voting securities on issue after the allotment;
 - (iii) the maximum percentage of all voting securities on issue that could be held or controlled by Olam on completion of the allotment of voting securities to Olam;
 - (iv) the maximum percentage of all voting securities on issue that Olam and its associates could hold or control in aggregate on completion of the allotment; and
 - (b) the number and percentages referred to in paragraph (a) are disclosed separately in the notice in respect of each of the following:
 - (i) the Olam OIO share placement;
 - (ii) the residual share placement;
 - (iii) the Olam OIO share placement and the residual share placement in aggregate; and
 - (c) the notice of meeting contains, or is accompanied by, a statement of the assumptions on which the particulars referred to in paragraphs (a) and (b) are based, which must include—
 - (i) the assumptions referred to in subclause (2); and
 - (ii) the calculation date.

- (2) The number and percentages for the purposes of subclause (1)(a) must be calculated on the following assumptions:
- (a) with respect to the rights offer,—
 - (i) that the voting securities have been allotted under the rights offer; and
 - (ii) that Olam has received Overseas Investment Office approval prior to the allotment of voting securities in the rights offer and has participated in the rights offer and taken up all of its rights, but no other person has taken up that person's rights; and
 - (b) with respect to the specified transactions,—
 - (i) that OCD has received the minimum \$40.8 million in the rights offer, reflecting the commitments of AFFCO Holdings Limited, Talley's Group Limited, and Olam prior to receiving Overseas Investment Office approval; and
 - (ii) that Olam was prevented from taking up its full pro rata entitlement under the rights offer because it did not receive approval for the transaction from the Overseas Investment Office prior to the allotment of voting securities in the rights offer; and
 - (iii) that Olam is allotted the maximum of 3 809 634 voting securities in the Olam OIO share placement; and
 - (iv) that Olam subscribes for 4 489 934 voting securities in the residual share placement and no other person subscribes for voting securities in the residual share placement; and
 - (v) that there is no change in the total number of voting securities on issue as at the calculation date other than as a result of the rights offer and the specified transactions; and
 - (c) in relation to subclause (1)(a)(iv), Olam and Olam's associates are allotted the maximum number of voting securities under the rights offer and specified transactions on the basis described in paragraphs (a) and (b), (which must be read for this purpose as if the references to

- Olam were references to Olam and its associates and with any other necessary modifications); and
- (d) any other assumptions that are reasonably necessary to ensure that the shareholders of OCD are provided with the material information required for them to be able to determine whether to approve the relevant resolution.

8 Further conditions of exemptions in clauses 5 and 6 relating to notice of meeting

The exemptions in clauses 5 and 6 are subject to the further conditions that—

- (a) the notice of meeting also contains, or is accompanied by,—
 - (i) full particulars of the proposed allotment of voting securities to Olam, including particulars of—
 - (A) the rights offer; and
 - (B) the Olam OIO share placement; and
 - (C) the residual share placement; and
 - (ii) a statement, in addition to the statement required by rule 16(f) of the Code, that the disclosures made in the notice of meeting have been modified in reliance on this exemption notice; and
 - (iii) a summary of the terms and conditions of the exemptions granted to Olam and OCD by this exemption notice; and
- (b) the notice of meeting displays, in a prominent position, a disclaimer stating that, by exempting Olam from rule 7(d) of the Code and OCD from rule 16(b) of the Code, the Panel is—
 - (i) neither endorsing nor supporting the accuracy or reliability of the contents of the notice of meeting;
 - (ii) not implying that it has a view on the merits of the proposed allotment of voting securities to Olam; and
- (c) the form of the notice of meeting is approved by the Panel.

9 Condition relating to annual report disclosures

The exemptions in clauses 5 and 6 are subject to the condition that every annual report issued by OCD during the period beginning with the allotment of rights under the rights offer and ending with the date the first annual report is issued after the final allotment under a specified transaction states the following matters in a prominent position:

- (a) a summary of the terms of the rights offer, the Olam OIO share placement, and the residual share placement; and
- (b) a statement, in respect of the financial year to which the report relates, of—
 - (i) the number of voting securities allotted to Olam under the rights offer, the Olam OIO share placement, and the residual share placement during the year; and
 - (ii) the number of voting securities on issue that were held or controlled by Olam at the end of the year, and the percentage of all voting securities on issue that that number represented; and
 - (iii) the percentage of all voting securities on issue that were held or controlled, in aggregate, by Olam and Olam's associates at the end of the year; and
- (c) a statement of—
 - (i) the maximum percentage of all voting securities on issue that could be held or controlled by Olam on completion of—
 - (A) allotments under each of the rights offer, the Olam OIO share placement, and the residual share placement; and
 - (B) all the allotments specified in subparagraph (A); and
 - (ii) the maximum percentage of all voting securities on issue that could be held or controlled, in aggregate, by Olam and Olam's associates on completion of—
 - (A) each of the rights offer, the Olam OIO share placement, and the residual share placement; and

- (B) all the allotments specified in subsubparagraph (A); and
- (d) a statement of the assumptions on which the particulars referred to in paragraphs (b) and (c) are based.

10 Condition relating to Internet site disclosures

- (1) The exemptions in clauses 5 and 6 are subject to the condition that, from the date of the issue of the first annual report after the allotment of rights under the rights offer to the date of issue of OCD's first annual report after the final allotment under a specified transaction, OCD must, if OCD has an Internet site,—
 - (a) disclose on its Internet site the information required to be disclosed in its annual report under clause 9; and
 - (b) announce on its Internet site any aggregate increase of 1% or more in the voting securities held or controlled by Olam since the date of the last annual report or notice published on the Internet site under this subclause or, where no prior disclosure has been made, since the date of the first aggregate increase of 1% or more in the voting securities held by Olam; and
 - (c) maintain the information in paragraph (a) and every announcement referred to in paragraph (b) on the Internet site in a prominent position.
- (2) The announcement referred to in subclause (1)(b) must be made as soon as OCD is aware, or ought to be aware, that the relevant increase has occurred.

11 Condition relating to other increases in voting control by Olam

- (1) The exemptions in clauses 5 and 6 are subject to the condition that, during the allotment period, Olam must not increase its voting control (other than by way of the rights issue, the Olam OIO share placement, or the residual share placement) unless the increase in voting control (the **other-means increase**) is—
 - (a) by an acquisition of voting securities approved in accordance with rule 7(c) of the Code; or
 - (b) by an allotment of voting securities approved in accordance with rule 7(d) of the Code; or

- (c) permitted by another exemption granted by the Panel under section 45 of the Act.
- (2) If approval of the shareholders of OCD is required for the purposes of subclause (1)(a) or (b), the notice of meeting containing the resolution to approve the other-means increase must contain or be accompanied by the following:
 - (a) a summary of the terms of each of the specified transactions, as approved at the meeting at which approval for the allotments of voting securities under the specified transaction was given:
 - (b) a statement, as at the date of the notice of meeting containing the resolution to approve the other-means increase, of the following particulars:
 - (i) the number and percentages referred to in clause 7(1)(a):
 - (ii) the maximum percentage of all voting securities on issue that could be held or controlled by Olam after the other-means increase and the completion of both of the specified transactions:
 - (iii) the maximum percentage of all voting securities on issue that could be held or controlled by Olam and Olam's associates after the other-means increase and the completion of both of the specified transactions:
 - (iv) a statement of the assumptions on which the particulars are based.
- (3) Olam must not hold or control a percentage of voting securities that exceeds the maximum percentage approved by the shareholders of OCD, except as a result of an increase that complies with subclause (1).

12 Conditions relating to changes in voting control of Olam

- (1) The exemptions in clauses 5 and 6 are subject to the condition that, during the allotment period, there must be no effective change of control of Olam that results in another person becoming the holder or controller of an increased percentage of voting rights in OCD unless the change of control of Olam is—

- (a) by an acquisition of voting securities in Olam approved by an ordinary resolution of OCD in accordance with rule 7(c) of the Code; or
 - (b) by an allotment of voting securities in Olam approved by an ordinary resolution of OCD in accordance with rule 7(d) of the Code; or
 - (c) permitted under another exemption granted by the Panel under section 45 of the Act.
- (2) If approval of the shareholders of OCD is required for the purposes of subclause (1)(a) or (b), the notice of meeting containing the resolution to approve the change of control must contain or be accompanied by the following particulars:
- (a) a summary of the terms of each of the specified transactions;
 - (b) a statement, as at the date of the notice of meeting containing the resolution to approve the change of control, of the number and percentages referred to in clause 7(1)(a);
 - (c) a statement of the assumptions on which the particulars are based.

Dated at Auckland this 10th day of February 2012.

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

[Seal]

D O Jones,
Chairperson.

Statement of reasons

This notice applies to acts or omissions occurring on or after 15 February 2012 and expires on 31 December 2012.

The Takeovers Panel has granted exemptions to—

- Olam International Limited (**Olam**) from rule 7(d) of the Takeovers Code (the **Code**) to the extent that that rule requires the notice of meeting approving the allotment of voting securities to Olam in certain share placements to disclose the exact number and percentages of voting securities to be allotted in each share placement, as required by rule 16(b) of the Code; and
- Open Country Dairy Limited (**OCD**) from rule 16(b) of the Code.

OCD proposes to undertake a one-for-two pro rata rights offer to its existing shareholders (the **rights offer**). One of OCD's existing shareholders is Olam, which holds 24.75% of the voting securities of OCD. Olam is an overseas person, as defined in the Overseas Investment Act 2005.

Olam has committed to subscribe for its full entitlement under the rights offer. While the rights offer is pro rata to all shareholders of OCD, this commitment will mean that Olam may increase its voting rights in OCD if other shareholders do not take up all their voting securities under the rights offer. Olam's commitment is subject to obtaining shareholder consent in accordance with the Code and applying for, and obtaining, Overseas Investment Office (**OIO**) consent to holding 25% or more of the voting rights in OCD.

If Olam does not obtain OIO approval until after the allotment of voting securities in the rights offer and the minimum subscription of \$40.8 million has otherwise been received in the rights offer, OCD proposes to allot to Olam the number of voting securities equal to the difference between the voting securities Olam took up under the rights offer and its full pro rata entitlement under the rights offer, being a maximum of a further 3 809 634 voting securities (the **Olam OIO share placement**).

OCD proposes also to issue voting securities (the **residual share placement**) to shareholders or other persons in a number equal to the number of voting securities not taken up under the rights offer, less the number of voting securities allotted in the Olam OIO share

placement. Olam may be offered a maximum of 4 489 934 voting securities in the residual share placement. This number has been calculated by OCD on the basis that only AFFCO Holdings Limited (**AFFCO**), Talley's Group Limited (**Talley's**), and Olam participate in the rights offer and the residual share placement and that Olam, AFFCO, and Talley's are offered, and subscribe for, all of the voting securities in the residual share placement on a pro rata basis, subject in the case of AFFCO and Talley's to their subscriptions being within the maximum subscription permitted under a proposed exemption from rule 6(1) of the Code (which will, if granted and subject to conditions, exempt Talley's from that rule in respect of any increase in its voting control).

OCD intends to obtain shareholder approval, in accordance with the Code, for the allotment of voting securities to Olam under the rights offer, the Olam OIO share placement, and the residual share placement.

However, the matters required to be disclosed by rule 16(b) of the Code in respect of the acquisition of voting securities under the rights offer, the Olam OIO share placement, and the residual share placement cannot be determined in advance and OCD therefore cannot comply with rule 16(b) of the Code, because it cannot state in the notice of meeting—

- the exact number of voting securities that would be acquired by Olam under the rights offer, the Olam OIO share placement, or the residual share placement; or
- the exact percentage of voting rights in OCD that Olam would hold or control after completion of the rights offer, the Olam OIO share placement, or the residual share placement; or
- the aggregate of the percentages of all voting securities that will be held or controlled by Olam and its associates after completion of the rights offer, the Olam OIO share placement, and the residual share placement.

The actual number of OCD voting securities Olam will acquire under the rights offer, the Olam OIO share placement, and the residual share placement will depend on the participation by other shareholders in the rights offer, the timing of any OIO approval and the determination by the board of OCD as to allotments in the residual share placement.

OCD will rely on the Takeovers Code (Class Exemptions) Notice (No 2) 2001 in respect of disclosures required by rule 16(b) of the Code relating to voting securities allotted to Olam under the rights offer.

The Takeovers Panel considers that it is appropriate and consistent with the objectives of the Code to grant the exemptions from rules 7(d) and 16(b) of the Code because—

- it is impossible for the actual number of voting securities to be acquired by Olam and the relevant percentages required by rule 16(b) to be stated in the notice of meeting, since the number and percentages are dependent on the results of the rights offer, the timing of the OIO approval, and the OCD board's determination of allotments in the residual share placement; and
- all non-associated shareholders will have an opportunity to vote on the acquisition of voting securities by Olam under the rights offer, the Olam OIO share placement, and the residual share placement; and
- if the non-associated shareholders approve the potential maximum acquisition of voting securities, then by implication they also approve any lesser percentage of voting rights that may be acquired by Olam under the rights offer, the Olam OIO share placement, and the residual share placement.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 1 March 2012.

Contents

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Notes**1 General**

This is a reprint of the Takeovers Code (Open Country Dairy Limited) Exemption Notice 2012. The reprint incorporates all the amendments to the notice as at 1 January 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 (Open Country Dairy Limited) Exemption Notice 2012 (SR 2012/29): clause 3
