



Takeovers Code Approval Amendment Regulations 2013

Jerry Mateparae, Governor-General

Order in Council

At Wellington this 22nd day of April 2013

Present:

The Right Hon John Key presiding 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 formulated and made in accordance with Part 2 of that Act, makes the following regulations.

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Regulations 2013**

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Schedule 1

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Regulations

- 1 Title**
 These regulations are the Takeovers Code Approval Amendment Regulations 2013.
- 2 Commencement**
 These regulations come into force on 1 June 2013.

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), insert in its appropriate alphabetical order:
“**custodian** means a person who, in the ordinary course of business, holds securities directly or indirectly on behalf of the beneficial owner of the securities”.
- (2) In rule 3(1), definition of **director**,—
 - (a) paragraphs (b) and (c), after “special partnership”, insert “or limited partnership”; and
 - (b) paragraph (f), replace “(d)” with “(e)”.
- (3) In rule 3(1), definition of **director**, replace paragraph (d) with:
“(d) in relation to a body corporate or unincorporate not referred to in paragraphs (a) to (c), means a person who occupies a position in the body corporate or unincorporate that is comparable with that of a director of a company; and”.
- (4) In rule 3(1), insert in its appropriate alphabetical order:
“**entitled voter** has the meaning set out in rule 10(1A)”.
- (5) In rule 3(1), definition of **equity security**, replace paragraph (a) with:
“(a) means any interest in or right to (whether carrying voting rights or not)—
 - “(i) a share in a company or other body corporate; or
 - “(ii) the share capital of a company or other body corporate; and”.
- (6) In rule 3(1), replace the definition of **offeree** with:
“**offeree** means,—
 - “(a) before an offer is made, a person who holds securities in a target company that has received a takeover notice relating to those securities; and
 - “(b) after an offer is made, a person to whom an offer is made”.
- (7) In rule 3(1), replace the definition of **offeror** with:

- “**offeror** means a person who has made an offer or a person who has sent a takeover notice”.
- (8) In rule 3(1), insert in their appropriate alphabetical order:
“**specified holder** has the meaning set out in rule 14A
“**specified person** has the meaning set out in rule 14A”.
- (9) In rule 3(1), definition of **specified percentage**, replace “referred to in rule 9” with “calculated in accordance with rule 9(6)”.
- (10) In rule 3(1), insert in their appropriate alphabetical order:
“**target security** has the meaning set out in rule 14A
“**voting period** has the meaning set out in rule 10(1A)”.
- (11) In rule 3(1), replace the definition of **voting right** with:
“**voting right** means a currently exercisable right to cast a vote at meetings of shareholders of a company or security holders of another body corporate, not being a right to vote that is exercisable only in 1 or more of the following circumstances:
“(a) during a period in which a payment or distribution (or part of a payment or distribution) in respect of the security that confers the voting right is in arrears or some other default exists:
“(b) on a proposal that affects rights attached to the security that confers the voting right:
“(c) on a proposal to put the company or body corporate into liquidation or voluntary administration:
“(d) on a proposal for the disposal of the whole, or a material part, of the property, business, and undertaking of the company or body corporate:
“(e) during the liquidation or voluntary administration of the company or body corporate:
“(f) in respect of a special, immaterial, or remote matter that is inconsequential to control of the company or body corporate”.
- (12) After rule 3(3), insert:
“(4) A requirement in this code for an offeror (including, for the purposes of this rule, a dominant owner under Part 7 of this code) to send or pay or provide consideration is fulfilled if the offeror—

- “(a) vests the consideration in the offeree (for example, by electronically vesting securities or electronically transferring money); and
- “(b) sends or provides written notice to the offeree that this has been done.”

5 New rule 4A inserted (Provisions affecting application of amendments to this code)

After rule 4, insert:

“4A Provisions affecting application of amendments to this code

Schedule 1AA contains application, savings, and transitional provisions relating to amendments made to this code after 1 June 2013 that affect other provisions of the code (*see* rule 66).”

6 Rule 7 amended (Exceptions to fundamental rule)

In rule 7(d), replace “19A” with “19B”.

7 Rule 9 amended (Partial offer)

After rule 9(5), insert:

- “(6) For the purposes of this rule and this code, the **specified percentage** of the voting securities of each class under offer must be calculated as follows:

$$\frac{\text{number of voting securities of the particular class sought by offeror}}{\text{number of voting securities of that class not already held or controlled by offeror}} \times 100 = \text{the specified percentage}$$

- “(7) If the offeror already holds or controls voting securities of a class of voting securities included in the offer, and if the number of voting securities in that class not already held or controlled by the offeror is increased or decreased during the period that commences with the sending of the takeover notice and ends with the close of the offer period, the specified percentage is adjusted to the extent required to ensure that the maximum aggregate percentage of voting securities in that class that the offeror could hold or control following comple-

tion of the offer is the same as that which it could have held or controlled had the increase or decrease not occurred.”

8 Rule 10 amended (When offeror does not hold or control more than 50% of voting rights)

- (1) Replace rule 10(1)(b)(ii) to (v) with:
- “(ii) the offer must be accompanied by a separate voting document that provides for entitled voters to approve or object to the offer conferring on the offeror the percentage of voting rights that the offeror would hold or control in the target company after successful completion of the offer:
 - “(iii) the offer and the voting document must specify the voting period:
 - “(iv) approval under this rule is obtained if the entitled voters who approve hold more voting rights in the target company than are held by entitled voters who object:
 - “(v) only entitled voters may vote:
 - “(vi) for an approval or objection to be valid, the completed voting document must be received by the target company or its agent before the end of the voting period.”
- (2) After rule 10(1), insert:
- “(1A) For the purposes of this rule and this code,—
- “**entitled voters** are—
- “(a) those persons recorded on the target company’s securities register (as at the end of the voting period) as holders of voting securities to which the offer relates; but
 - “(b) not the offeror or its associates
- “**voting period** is a period that commences with the date of the offer and ends with a date that is—
- “(a) no later than 7 days before the date first specified in the offer (under rule 24(2)) as the end of the offer period; and
 - “(b) at least 14 days after the date on which the offer document is sent in accordance with rule 43B.”
- (3) In rule 10(2), replace “offer period” with “voting period”.

9 New rules 14A to 14E and cross-heading inserted

After rule 14, insert:

“Scaling excess acceptances when target securities held on behalf of another

“14A Interpretation of rules 14A to 14E

For the purposes of this rule and rules 14B to 14E,—

“**specified holder** means an offeree under a partial offer who holds target securities on behalf of more than 1 specified person, regardless of—

“(a) whether the holdings are direct or indirect:

“(b) whether the specified holder is a custodian or not:

“(c) the particular arrangements between the specified holder and specified persons

“**specified person** means a person on whose behalf a specified holder holds target securities

“**target security** means a voting security in the target company.

“14B Specified holders must provide certificate

Specified holders must, by the close of the last day of the offer period, provide a certificate that complies with rule 14D to—

“(a) the offeror; and

“(b) the person who administers the target company’s share register.

“14C Acceptance by specified holder who has not provided certificate is invalid

An acceptance under a partial offer by a specified holder who has not provided a certificate in accordance with rule 14B is invalid.

“14D Certificate requirements

The certificate that a specified holder must provide in accordance with rule 14B must—

“(a) state the date of the certificate; and

“(b) include a statement that the offeree holds target securities as a specified holder on behalf of specified persons; and

- “(c) state the total number and class of target securities that are held by the offeree on behalf of specified persons; and
- “(d) state the number of specified persons on whose behalf the offeree holds those target securities; and
- “(e) identify as **Pool A**—
 - “(i) the number of specified persons on behalf of whom the specified holder has not accepted the offer, along with the number and class of target securities held by the specified holder on behalf of each such specified person; and
 - “(ii) the number of specified persons on behalf of whom the specified holder has accepted the offer for the specified percentage, or any smaller percentage, of target securities held by the specified holder on behalf of each such specified person, along with the number and class of target securities that are held by the specified holder on behalf of each such specified person and to which the acceptance relates; and
- “(f) identify as **Pool B** the number of specified persons who have accepted the offer in relation to more than the specified percentage of target securities that are held by the specified holder on behalf of each such specified person, along with the number and class of target securities that are held by the specified holder on behalf of each such specified person and to which the acceptance relates; and
- “(g) state the total number of target securities and acceptances in each of Pool A and Pool B.

“14E Offeror’s obligations on receiving certificate

An offeror who receives a certificate that complies with rule 14D must,—

- “(a) in relation to Pool A, take up the target securities from the specified holder (not from the specified person); and
- “(b) in relation to Pool B, take up the target securities from the specified holder (not from the specified person) as if each specified person in pool B were an offeree in

relation to which the offer was accepted, in accordance with rules 12 and 13.”

10 Rule 15 amended (Notice of meeting: acquisition of voting securities)

- (1) In rule 15, after “notice of meeting”, insert “sent by the code company”.
- (2) In rule 15, replace paragraph (a) with:
 - “(a) the identity of the following:
 - “(i) the person acquiring the voting securities; and
 - “(ii) (if different from the person described in subparagraph (i)) any person who will become a controller of an increased percentage of voting securities in the code company as a result of the acquisition; and
 - “(iii) the person disposing of the voting securities; and”.

11 Rule 16 amended (Notice of meeting: allotment of voting securities)

- (1) In rule 16, after “notice of meeting”, insert “sent by the code company”.
- (2) In rule 16(a), after “the allottee”, insert “and, if different from the allottee, the identity of any person who will become a controller of an increased percentage of voting securities in the code company as a result of the allotment”.
- (3) In rule 16, replace paragraph (b) with:
 - “(b) particulars of the voting securities to be allotted, including—
 - “(i) the particulars required by Schedule 4; or
 - “(ii) if the particulars required by Schedule 4 are not ascertainable, the particulars required by Schedule 5 (note that rule 19B applies); and”.
- (4) In rule 16, after “allotment,” insert “or allotments” in each place.

12 New rule 19B and cross-heading inserted

After rule 19A, insert:

“Extra requirements where particulars required by Schedule 5 given (in accordance with rule 16(b)(ii))

“19B Extra requirements where particulars required by Schedule 5 given (in accordance with rule 16(b)(ii))

“(1) This rule applies if—

- “(a) the particulars required by Schedule 5 were contained in, or accompanied, a notice of meeting (in accordance with rule 16(b)(ii)); and
- “(b) shareholders approved the allotment or allotments particularised in that notice of meeting to the allottee (the **approved allotment package**).

“Annual report requirements

“(2) If allotments under the approved allotment package are to occur over an allotment period that is more than 12 months long, the code company must include in a prominent position in every annual report issued during the allotment period, and in the first annual report issued after the end of the allotment period,—

- “(a) a summary of the terms of the approved allotment package; and
- “(b) particulars, as at the end of the financial year to which the annual report relates, of—
 - “(i) the number of voting securities already allotted to the allottee under the approved allotment package; and
 - “(ii) the number of voting securities on issue that are held or controlled by the allottee, and the percentage of all voting securities on issue that that number represents; and
 - “(iii) the aggregate of the percentages of all voting securities that are held or controlled by the allottee and the allottee’s associates; and
 - “(iv) the maximum percentage of all voting securities that could be held or controlled by the allottee on completion of all the allotments; and
 - “(v) the maximum aggregate of the percentages of all voting securities that could be held or controlled

by the allottee and the allottee's associates on completion of all the allotments; and

“(vi) the assumptions on which these particulars are calculated.

“Internet publication requirements

“(3) If allotments under the approved allotment package are to occur over an allotment period that is more than 12 months long, the code company must show the following information in a prominent position on its Internet site (if it has one) from the date of the first annual report issued during the allotment period until the date of the first annual report issued after the end of the allotment period:

“(a) the information required by subclause (2) to be in the code company's latest annual report; and

“(b) as soon as the code company is aware of it or ought reasonably to be aware of it, any aggregate increase of 1% or more in the voting securities held or controlled by the allottee.

“Subsequent increases of voting rights by allottee

“(4) During the allotment period, the allottee must not increase the percentage of voting rights in the code company held or controlled by it except in accordance with—

“(a) the approved allotment package; or

“(b) an exemption from the Panel under section 45 of the Act; or

“(c) rule 7(c) or (d), in which case the new notice of meeting containing the resolution to approve the proposed increase must contain or be accompanied by—

“(i) a summary of the terms of the approved allotment package; and

“(ii) particulars, as at the date of the new notice of meeting, of—

“(A) the number of voting securities already allotted to the allottee under the approved allotment package; and

“(B) the number of voting securities on issue that are held or controlled by the allottee,

- and the percentage of all voting securities that that number represents; and
- “(C) the aggregate of the percentages of all voting securities that are held or controlled by the allottee and the allottee’s associates; and
 - “(D) the maximum percentage of all voting securities that could be held or controlled by the allottee after the completion of both the approved allotment package and the proposed increase; and
 - “(E) the maximum aggregate of the percentages of all voting securities that could be held or controlled by the allottee and the allottee’s associates after the completion of both the approved allotment package and the proposed increase; and
 - “(F) the assumptions on which these particulars are calculated.
- “*Change of control of allottee*
- “(5) During the allotment period, there must be no change of control of the allottee that results in another person becoming the holder or controller of an increased percentage of voting rights in the code company, except in accordance with—
 - “(a) an exemption from the Panel under section 45 of the Act; or
 - “(b) rule 7(c) or (d), in which case the new notice of meeting containing the resolution to approve the proposed increase must contain or be accompanied by—
 - “(i) a summary of the terms of the approved allotment package; and
 - “(ii) particulars, as at the date of the new notice of meeting, of—
 - “(A) the number of voting securities already allotted to the allottee under the approved allotment package; and
 - “(B) the number of voting securities on issue that are held or controlled by the allottee,

- and the percentage of all voting securities that that number represents; and
- “(C) the aggregate of the percentages of all voting securities that are held or controlled by the allottee and the allottee’s associates; and
- “(D) the maximum percentage of all voting securities that could be held or controlled by the allottee on completion of all the allotments; and
- “(E) the maximum percentage of all voting securities that could be held or controlled by the allottee and the allottee’s associates on completion of all the allotments; and
- “(F) the assumptions on which these particulars are calculated.

“Definitions in this rule

- “(6) For the purposes of this rule and Schedule 5,—
- “**allotment period** means the period starting on the date of the meeting at which the shareholders approved the approved allotment package and ending on the date of the last allotment under the approved allotment package
- “**annual report** includes any concise annual report.”

13 Rule 24A amended (Extension of offer period)

- (1) In rule 24A(1), replace “rule 24B” with “rules 24B and 24C”.
- (2) In rule 24A(3), after “rule 24B”, insert “or 24C”.

14 New rule 24C inserted (Extension of offer period if minimum acceptance condition satisfied or waived in final week)

After rule 24B, insert:

“24C Extension of offer period if minimum acceptance condition satisfied or waived in final week

- “(1) This rule applies if—
- “(a) the offer is subject to a minimum acceptance condition referred to in rule 23; and

- “(b) that condition is satisfied or waived in the period that begins 7 days before the end of the offer period.
- “(2) If this rule applies, the offer period is extended for 14 days from the day on which the condition referred to in subclause (1) is satisfied or waived.
- “(3) *See* rule 49B.”

15 Rule 25 amended (Conditions)

- (1) After rule 25(1), insert:
- “(1A) An offeror may not allow an offer to lapse—
- “(a) in unreasonable reliance on a condition of the offer; or
- “(b) in reliance on a condition of the offer that restricts the target company’s activities in the ordinary course of the target company’s business during the period that begins with the sending of a takeover notice and ends on the specified date referred to in subclause (2) (or on the latest specified date referred to in subclause (3A), whichever is later).”
- (2) In rule 25(3A), after “rule 24B”, insert “or 24C”.
- (3) Replace rule 25(5) with:
- “(5) *See* rule 49C.”

16 Rule 35 amended (Dispositions)

In rule 35, replace “an offeror” with “the offeror or to another offeror”.

17 Rule 43 amended (Who are offerees)

- (1) Replace the heading to rule 43 with “**To whom offer must be sent**”.
- (2) Replace rule 43(1) with:
- “(1) The offer must be sent to those persons recorded in the target company’s securities register (as at the record date) as holders of securities to which the offer relates.”

18 Rule 43A amended (Record date)

In rule 43A(4), replace “to the offerees” with “in accordance with rule 43(1)”.

19 Rule 43B amended (When offer must be sent)

In rule 43B, replace “to the offerees” with “in accordance with rule 43(1)”.

20 Rule 44 amended (Offer document)

(1) Replace rule 44(1)(b)(iii) with:

“(iii) any variation or amendment made in accordance with subclause (3); and”.

(2) In rule 44(1)(d)(iv), after “rule 46(a)(i)”, insert “; and”.

(3) After rule 44(1)(d), insert:

“(e) contain a term that the offeror may not allow the offer to lapse—

“(i) in unreasonable reliance on a condition of the offer; or

“(ii) in reliance on a condition of the offer that restricts the target company’s activities in the ordinary course of the target company’s business during the period that begins with the sending of the takeover notice and ends on the specified date referred to in rule 25(2) (or on the latest specified date referred to in rule 25(3A), whichever is later).”

(4) In rule 44(3), after “classes of security”, insert “, or to amend the terms or conditions of the offer relating to a class or classes of security,”.

(5) Replace rule 44(3)(a) with:

“(a) the class or classes were included in the class notice given under rule 42A but—

“(i) were not included in the terms or conditions contained in or accompanying the takeover notice; or

“(ii) were included in the terms or conditions contained in or accompanying the takeover notice but those terms or conditions did not accurately or completely account for the information in the class notice; and”.

21 Rule 45 amended (Despatch notice)

In rule 45(1) and (1)(a)(i), replace “to the offerees” with “in accordance with rule 43(1)”.

22 Rule 46 amended (Target company statement)

(1) In rule 46(a)(ii)(A), replace “every offeree” with “those persons recorded in the target company’s securities register (as at the record date) as holders of securities to which the offer relates”.

(2) In rule 46, insert as subclause (2):

“(2) Nothing in subclause (1) prevents the target company from sending the target company statement to persons who acquire securities in the target company to which the offer relates after the record date.”

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

In rule 47(4), after “in relation to an offer”, insert “or a takeover notice”.

24 Rule 48 amended (Notification of altered offer document)

In rule 48, replace “to the offerees” with “in accordance with rule 43(1)”.

25 New rules 49B and 49C inserted

After rule 49A, insert:

“49B Notice if rule 24C applies

“(1) If rule 24C applies, the offeror must immediately send a written notice to those referred to in subclause (2) stating—

“(a) that the condition about the minimum acceptance condition has been satisfied or waived; and

“(b) the date to which the offer period has been extended.

“(2) The notice must be sent to—

“(a) every offeree who has not accepted the offer; and

“(b) the target company; and

“(c) the Panel; and

“(d) the registered exchange (if any voting securities of the target company are quoted on the registered exchange’s securities market).

“49C Notice of conditions to which offer subject 14 days before end of offer period

“(1) If an offer is still subject to 1 or more conditions, the offeror must, not earlier than 14 days before the end of the offer period and not later than 7 days before the end of the offer period, send a written notice that includes the following information:

“(a) that the offer is still subject to conditions (which are set out in the offer document):

“(b) whether the offeror has the right to waive any of the conditions to which the offer remains subject as at the date of the notice and, if so, which conditions:

“(c) whether, to the best knowledge and belief of the offeror, after making proper inquiry, any (and, if so, which) conditions have been satisfied or waived as at the date of the notice:

“(d) the percentage of voting rights in the target company in respect of which the offeror has received acceptances as at the date of the notice together with any percentage of voting rights already held or controlled by the offeror.

“(2) If the offer period is extended after a notice has been sent under subclause (1), a new notice must be given in accordance with subclause (1).

“(3) If an offer has become unconditional, both in respect of any minimum acceptance condition referred to in rule 23 and in respect of any condition referred to in rule 25, the offeror must immediately send a written notice to that effect.

“(4) The notice must be sent to—

“(a) the target company; and

“(b) the Panel; and

“(c) the registered exchange (if any voting securities of the target company are quoted on the registered exchange’s securities market).”

26 Rule 60 amended (Payment of consideration to outstanding security holder)

In the heading to rule 60, replace “to outstanding security holder” with “if documents returned”.

27 Rule 61 amended (Delivery of consideration to code company)

- (1) In the heading to rule 61,—
 - (a) replace “Delivery” with “Payment”; and
 - (b) replace “to code company” with “if documents not returned”.
- (2) In rule 61(1)(a), replace “deliver to the code company” with “deal with in accordance with subclause (2) or (3) (whichever applies)”.
- (3) In rule 61(1)(b), replace “those” with “the”.
- (4) Replace rule 61(2) and (3) with:
 - “(2) If the consideration is, or includes, cash, the dominant owner must pay the cash to the code company, which must—
 - “(a) deposit it in an interest-bearing trust account with a registered bank; and
 - “(b) hold it in trust for the outstanding security holder until it is claimed.
 - “(3) If the consideration is, or includes, securities, the dominant owner must—
 - “(a) vest the securities in the outstanding security holder; and
 - “(b) send written notice to the outstanding security holder and the code company that this has been done.”

28 Rule 63 amended (Registration of dominant owner as holder of outstanding securities)

- (1) In rule 63(1), after “company of”, insert “;”.
- (2) Replace rule 63(1)(a) to (c) with:
 - “(a) in relation to outstanding security holders who have returned the documents referred to in rule 59,—
 - “(i) the executed instruments of transfer and related documents; and

- “(ii) evidence to the reasonable satisfaction of the code company that the consideration has been sent to the outstanding security holders in accordance with rule 60; and
- “(b) in relation to outstanding security holders who have not returned the documents referred to in rule 59,—
- “(i) the executed instrument or instruments of transfer; and
- “(ii) evidence to the reasonable satisfaction of the code company that the consideration has been dealt with in accordance with rule 61(2) or (3) (whichever applies).”

29 New Part 9 inserted

After rule 65, insert:

“Part 9

“Application, savings, and transitional provisions relating to amendments to code

“66 Application, savings, and transitional provisions relating to amendments to code

The application, savings, and transitional provisions set out in Schedule 1AA, which relate to amendments made to this code after 1 June 2013, have effect for the purposes of this code.”

30 Schedule 1, new clause 5A inserted

In Schedule 1, after clause 5, insert:

“5A Partial offers: particulars of voting securities sought

- “(1) If the offer is a partial offer, the following particulars of the voting securities of each class sought by the offeror under the offer:

Number	Percentage
The number (A) of voting securities of that class that the offeror would hold or control in the target company after successful completion of the offer	The percentage of all voting securities of that class that A represents

Number	Percentage
The number (B) of voting securities of that class that the offeror would hold or control in the target company if the offeror receives acceptances in respect of the minimum number of voting securities required to satisfy the minimum acceptance condition included in the offer under rule 23	The percentage of all voting securities of that class that B represents
The number (C) of voting securities of that class that the offeror already holds or controls in the target company	The percentage of all voting securities of that class that C represents
The number (D) of voting securities of that class sought by the offeror	D expressed as a percentage of all voting securities of that class not already held or controlled by the offeror (being the specified percentage as calculated in accordance with rule 9(6))
The number (E) that is the aggregate of A together with the number of voting securities in that class held or controlled by the offeror's associates	The percentage of all voting securities of that class that E represents

“(2) A statement of the assumptions on which the particulars in subclause (1) are calculated.”

31 Schedule 1, clause 14 replaced

In Schedule 1, replace clause 14 with:

“14 Intentions about material changes to target company

- “(1) A statement of the offeror's intentions about—
- “(a) material changes to the business activities of the target company or its subsidiaries; and
 - “(b) material changes to the material assets of the target company or its subsidiaries; and
 - “(c) material changes to the capital structure of the target company (including the target company's dividend policy, raising capital, and taking on debt); and
 - “(d) any other information about the likelihood of changes to the target company or its subsidiaries that could reasonably be expected to be material to the making of a decision by an offeree to accept or reject the offer.
- “(2) If the offeror has no intentions in respect of the particulars listed in subclause (1), a statement to that effect.

- “(3) A statement that statements made under this clause are consistent with any information that has been given by the offeror to any regulatory body (in New Zealand or in an overseas jurisdiction) in relation to the offer.
- “(4) The statements referred to in subclauses (1) to (3) are not required if—
- “(a) the offer is a full offer conditional on the offeror receiving acceptances that will result in the offeror being required to give an acquisition notice under rule 54; and
 - “(b) the condition cannot be waived.”

32 Schedule 2, clause 6 amended

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

- “(3) If a person referred to in clause 5(1) holds equity securities of any class in the target company as a custodian who only acts in relation to those securities on the direction of their beneficial owner, and if the beneficial owner controls less than 5% of the total equity securities in that class in the target company, the information required by subclause (1) in respect of those securities is not required in respect of the beneficial owner or the custodian.”

33 Schedule 2, clause 18 amended

- (1) In Schedule 2, clause 18(6), definition of **annual report**, paragraph (a), replace “send” with “send or make available”.
- (2) In Schedule 2, clause 18(6), definition of **annual report**, paragraph (b),—
 - (a) replace “sent” with “sent or made available”; and
 - (b) replace “section 209” with “sections 209, 209A, and 209B”.
- (3) In Schedule 2, clause 18(6), definition of **half-yearly report**, paragraph (a), replace “send” with “send or make available”.
- (4) In Schedule 2, clause 18(6), definition of **half-yearly report**, paragraph (b), replace “sent” with “sent or made available”.

34 New Schedules 4 and 5 inserted

After Schedule 3, insert the Schedules 4 and 5 set out in Schedule 1 of these regulations.

35 Takeovers Code (Class Exemptions) Notice (No 2) 2001 amended

- (1) This regulation amends the Takeovers Code (Class Exemptions) Notice (No 2) 2001.
- (2) Revoke clauses 10A and 26 and Schedules 2 and 3.

36 Consequential revocation

The Takeovers Code (Class Exemptions—Partial Offers) Amendment Notice 2011 (SR 2011/271) is revoked.

37 New Schedule 1AA inserted

Before Schedule 1, insert the Schedule 1AA set out in Schedule 2 of these regulations.

Schedule 1

r 34

New Schedules 4 and 5 inserted**Schedule 4**

r 16(b)(i)

Rule 16(b)(i): Particulars of voting securities

The particulars of the voting securities for the purposes of rule 16(b)(i) are—

- (a) the number being allotted; and
 - (b) the percentage of the aggregate of all existing voting securities and all voting securities being allotted that that number represents; and
 - (c) the percentage of all voting securities that will be held or controlled by the allottee after completion of the allotment; and
 - (d) the aggregate of the percentages of all voting securities that will be held or controlled by the allottee and the allottee's associates after completion of the allotment.
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Schedule 5

r 16(b)(ii)

Rule 16(b)(ii): Particulars of voting securities

The particulars of voting securities for the purposes of rule 16(b)(ii) are—

- (a) the maximum number of voting securities that could be allotted (the **approved maximum number**) to the allottee; and
- (b) the percentage of the aggregate of all existing voting securities and all voting securities that could be allotted that the approved maximum number represents; and
- (c) the maximum percentage of all voting securities that could be held or controlled by the allottee after completion of the allotment or allotments; and
- (d) the maximum aggregate of the percentages of all voting securities that could be held or controlled by the allottee and the allottee's associates after completion of the allotment or allotments (not including voting securities of any of the allottee's associates who are also relying on rule 7(d) in relation to the allotment or allotments (the **relying associates**)); and
- (e) if there are relying associates, the maximum aggregate of the percentages of all voting securities that could be held or controlled by the allottee and the allottee's associates after completion of the allotment or allotments; and
- (f) the date used to determine the information referred to in this clause (the **calculation date**); and
- (g) the assumptions on which the particulars in paragraphs (a) to (f) are calculated, which must include—
 - (i) that the number of voting securities is the number of voting securities on issue on the calculation date; and
 - (ii) that there is no change in the total number of voting securities on issue between the calculation date and the end of the allotment period (other than as a result of the allotment or allotments); and
 - (iii) that, in relation to paragraphs (a) to (c), the allottee is allotted the approved maximum number under the allotment or allotments; and
 - (iv) that, in relation to paragraph (d), the allottee and each of the allottee's associates (not including the relying as-

Schedule 5—*continued*

- sociates) are allotted the maximum number of voting securities; and
- (v) that, in relation to paragraph (e) (if applicable), the allottee and each of the allottee's associates are allotted the maximum number of voting securities; and
 - (vi) any other assumptions that are reasonably necessary to ensure that shareholders in the code company are provided with the material information required for them to be able to determine whether to approve the resolution.

Schedule 2

r 37

New Schedule 1AA inserted**Schedule 1AA**

rr 4A, 66

Application, savings, and transitional provisions relating to amendments made to code after 1 June 2013

Transitional provision

The takeovers code that is in force immediately before the commencement of these regulations (the **pre-amendment code**) applies, and the takeovers code as amended by these regulations 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 these regulations;
- (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-amendment code that has been sent to shareholders before the commencement of these regulations.

Michael Webster,
for 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 June 2013, amend the takeovers code (the **code**). The amendments are technical only and arise out of discussion papers by the Takeovers Panel (the **Panel**) and recommendations to the Minister of Commerce in the period 2009 to 2012. Those documents are available on the Panel's Internet site at <http://www.takeovers.govt.nz>

Principally, the regulations make amendments to—

- improve processes in the code's regime for partial takeover offers. The amendments relate to the procedure for shareholder approval of certain partial offers, clarify the position of custodians who accept offers on behalf of persons who do not hold shares directly in the target company, and provide additional information to shareholders in partial offers:
- enhance the information provided to shareholders in target companies, such as information about the likelihood of changes to the target company and the status of conditional offers during the offer period:
- remove drafting anomalies and inconsistencies in the text of the code. This will improve public understanding and reduce the number of exemptions granted by the Panel.

The code came into force on 1 July 2001. The Panel has administered the code since then and, from time to time, becomes aware, through its interaction with participants in the takeovers market, of problems which leave the code less effective and efficient than it could be. The current regulations represent the third time that the Panel has made recommendations to the Minister on changes to the code.

2013/120 **Takeovers Code Approval Amendment
Regulations 2013**

Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 26 April 2013.

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