

Reprint  
as at 29 October 2018



**Takeovers Code (Unmarketable Parcels) Exemption  
Notice 2003**  
(SR 2003/234)

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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**Notice**

**1 Title**

This notice is the Takeovers Code (Unmarketable Parcels) Exemption Notice 2003.

**2 Commencement**

This notice comes into force on 1 September 2003.

**3 Interpretation**

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

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**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.**

**Act** means the Takeovers Act 1993

**cash alternative** means alternative consideration, under a scrip offer, of wholly cash

**Code** means the Takeovers Code under the Act

**consideration securities** means securities that are quoted on a stock exchange and that are offered as consideration under a scrip offer

**offer** means a takeover offer made under the Code

**scrip offer** means an offer under which the consideration includes consideration securities (whether or not that consideration also includes cash or any other additional consideration, and whether or not that offer also includes a cash alternative)

**security** means an equity security

**small security holder** means a person who would, if that person was offered, and accepted, consideration securities under a scrip offer, receive an unmarketable parcel of consideration securities

**stock exchange** means, in respect of any consideration securities, the securities exchange that is the primary exchange of the issuer of the consideration securities

**target security** means, in respect of an offer, a security of the target company to which the offer extends

**unmarketable parcel** means a number of consideration securities that is less than the minimum holding of consideration securities specified by the stock exchange

**weighted average price**, in respect of consideration securities, means the weighted average of the closing prices of those consideration securities on the stock exchange over the period of the 5 trading days immediately preceding the date that is 5 working days before the first date when consideration is sent to any offeree who has accepted the offer.

- (2) 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.

Clause 3(1) **Code**: replaced, on 29 October 2018, by clause 12(2) of the Takeovers Code (Class Exemptions) Amendment Notice 2018 (LI 2018/210).

Clause 3(1) **security**: replaced, on 29 October 2018, by clause 12(3) of the Takeovers Code (Class Exemptions) Amendment Notice 2018 (LI 2018/210).

Clause 3(1) **weighted average price**: amended, on 29 October 2018, by clause 12(4) of the Takeovers Code (Class Exemptions) Amendment Notice 2018 (LI 2018/210).

#### 4 Exemption from rule 20 of Code

Every person who makes a scrip offer is exempted from rule 20 of the Code to the extent that the consideration offered to small security holders is cash only.

**5 Condition of exemption in case of scrip offer without cash alternative**

In the case of a scrip offer without a cash alternative in respect of the relevant class of target securities, the exemption in clause 4 is subject to the condition that the cash offered to small security holders in respect of each target security in that class is the sum of—

- (a) the weighted average price of the consideration securities multiplied by the number of consideration securities offered generally under the scrip offer for each target security in that class; and
- (b) any additional consideration (if any) offered generally under the scrip offer for each target security in that class.

**6 Condition of exemption in case of scrip offer with cash alternative**

In the case of a scrip offer with a cash alternative in respect of the relevant class of target securities, the exemption in clause 4 is subject to the condition that the cash offered to small security holders in respect of each target security in that class is the greater of—

- (a) the cash alternative; and
- (b) the sum of—
  - (i) the weighted average price of the consideration securities multiplied by the number of consideration securities offered generally under the scrip offer for each target security in that class; and
  - (ii) any additional consideration (if any) offered generally under the scrip offer for each target security in that class.

**7 Transitional provision**

The definition of weighted average price in clause 3(1), as in force immediately before the commencement of the Takeovers Code (Class Exemptions) Amendment Notice 2018, continues to apply as if that notice had not been made to a scrip offer if the first consideration sent to any offeree who has accepted the offer is sent before that commencement.

Clause 7: inserted, on 29 October 2018, by clause 12(5) of the Takeovers Code (Class Exemptions) Amendment Notice 2018 (LI 2018/210).

Dated at Auckland this 27th day of August 2003.

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

[Seal]

J C King,  
Chairperson.

### **Statement of reasons of Takeovers Panel**

**Note: The following statement of reasons should be read in conjunction with the statement(s) of reasons appended to the:**

- **Takeovers Code (Class Exemptions) Amendment Notice 2018**

Rule 20 of the Takeovers Code requires an offer to be made on the same terms and provide the same consideration for all securities of the same class. The effect is that an offeror who makes a takeover offer with consideration that includes securities listed on a stock exchange may be obliged to provide some smaller security holders with an unmarketable parcel of securities. Unmarketable parcels of securities may be difficult for security holders to deal with and are expensive for companies to administer.

Consequently the Takeovers Panel has granted a class exemption to allow offerors to limit the consideration offered to small security holders to cash.

The Takeovers Panel considers that it is appropriate to grant the exemption in the interests of market efficiency.

The Takeovers Panel considers that the exemption is consistent with the objectives of the Takeovers Code because it retains the principle of providing equal consideration to all security holders in the target company while at the same time promoting efficiency in the market and reducing costs for offerors and target company security holders.

**Note: The preceding statement of reasons should be read in conjunction with the statement(s) of reasons appended to the:**

- **Takeovers Code (Class Exemptions) Amendment Notice 2018**

Issued under the authority of the Legislation Act 2012.  
Date of notification in *Gazette*: 4 September 2003.

## **Reprints notes**

### **1    *General***

This is a reprint of the Takeovers Code (Unmarketable Parcels) Exemption Notice 2003 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 (Class Exemptions) Amendment Notice 2018 (LI 2018/210): clause 12