

Reprint

as at 1 August 2007

Takeovers Code (RetailX Limited) Exemption Notice 2005

(SR 2005/165)

Takeovers Code (RetailX Limited) Exemption Notice 2005: expired, on 31 July 2007, pursuant to 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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Notice

Note

This notice is administered by the Takeovers Panel.

1 Title

This notice is the Takeovers Code (RetailX Limited) Exemption Notice 2005.

This Notice expired, as from the close of 31 July 2007, pursuant to clause 3 of this Notice.

2 Application

This notice applies to acts or omissions occurring on or after 10 June 2005.

This Notice expired, as from the close of 31 July 2007, pursuant to clause 3 of this Notice.

3 Expiry

This notice expires on the close of 31 July 2007.

4 Interpretation

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

12-month options means the 5 000 000 options to be granted by RTX to each of Snowden Peak and the Baker Trust that are classified as 12-month options

24-month options means all of the following that are classified as 24-month options

- (a) the 5 000 000 options to be granted by RTX to each of Snowden Peak and the Baker Trust:
- (b) the 6 000 000 options to be granted by RTX to Donoghue:
- (c) the 4 000 000 options to be granted by RTX to Suryawan

Act means the Takeovers Act 1993

Baker Trust means Grant Keith Baker, Donna Jean Baker, and Paul Anthony Smithies as trustees of the Baker Investment Trust

Code means the Takeovers Code approved by the Takeovers Code Approval Order 2000 (SR 2000/210)

consideration shares means the 240 000 000 voting securities in RTX that are—

- (a) to be issued in partial satisfaction of the payment of the consideration payable by RTX for the acquisition of the voting securities in Plus SMS Limited; and

(b) to be issued immediately before the issue of the options

Donoghue means Garry Donoghue

meeting means the meeting of RTX shareholders that is to be held to consider whether or not to approve, for the purposes of rule 7(d) of the Code, the allotment of voting securities in RTX to the option holders on the exercise of the options

notice of meeting means the notice of the meeting that is to be sent to RTX shareholders

option holders means—

- (a) Snowden Peak; and
- (b) Donoghue; and
- (c) Suryawan; and
- (d) the Baker Trust

options means the 12-month options and the 24-month options

placement shares means the 32 000 000 voting securities in RTX to be issued to certain professional investors immediately before the issue of the options

RTX means RetailX Limited

Snowden Peak means Snowden Peak Investments Limited

stapled options means the 16 000 000 options to acquire voting securities in RTX that are—

- (a) to be issued to those persons who subscribe for the placement shares on a 1:2 basis; and
- (b) to be issued immediately before the issue of the options

Suryawan means Andi Suryawan.

- (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 RTX.
- (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.

This Notice expired, as from the close of 31 July 2007, pursuant to clause 3 of this Notice.

5 Exemption from rule 7(d) of Code

The option holders are each exempted from rule 7(d) of the Code in respect of any increase in their voting control that results from the allotment of voting securities to them on the

exercise of the options to the extent that rule 7(d) requires the notice of meeting to be in accordance with rule 16(b) of the Code.

This Notice expired, as from the close of 31 July 2007, pursuant to clause 3 of this Notice.

6 Exemption from rule 16(b) of Code

RTX is exempted from rule 16(b) of the Code in respect of the notice of meeting.

This Notice expired, as from the close of 31 July 2007, pursuant to clause 3 of this Notice.

7 Conditions of exemptions

- (1) The exemptions in clauses 5 and 6 are subject to the condition that the notice of meeting contains particulars of—
- (a) the voting securities in RTX that may be allotted to the option holders as a result of the exercise of the options, including the number of voting securities in RTX that would be allotted to each of the following:
 - (i) Snowden Peak on the exercise of all of the options held by Snowden Peak;
 - (ii) Donoghue on the exercise of all of the options held by Donoghue;
 - (iii) Suryawan on the exercise of all of the options held by Suryawan;
 - (iv) the Baker Trust on the exercise of all of the options held by the Baker Trust; and
 - (b) the percentage of the aggregate of the following that the number of voting securities referred to in paragraph (a) represents:
 - (i) all existing voting securities in RTX; and
 - (ii) all the voting securities in RTX that would be allotted; and
 - (c) the percentage of all voting securities that would be held or controlled by each of the following:
 - (i) Snowden Peak after completion of the allotment of the number of voting securities referred to in paragraph (a)(i), calculated on the basis that none

- of the other option holders exercises any of their options:
- (ii) Donoghue after completion of the allotment of the number of voting securities referred to in paragraph (a)(ii), calculated on the basis that none of the other option holders exercises any of their options:
 - (iii) Suryawan after completion of the allotment of the number of voting securities referred to in paragraph (a)(iii), calculated on the basis that none of the other option holders exercises any of their options:
 - (iv) the Baker Trust after completion of the allotment of the number of voting securities referred to in paragraph (a)(iv), calculated on the basis that none of the other option holders exercises any of their options; and
- (d) the percentage of all voting securities that would be held or controlled by each of the following:
- (i) Snowden Peak after completion of the allotment of the number of voting securities referred to in paragraph (a)(i), calculated on the basis that each of the other option holders exercises all of their options and the resulting allotments have been completed:
 - (ii) Donoghue after completion of the allotment of the number of voting securities referred to in paragraph (a)(ii), calculated on the basis that each of the other option holders exercises all of their options and the resulting allotments have been completed:
 - (iii) Suryawan after completion of the allotment of the number of voting securities referred to in paragraph (a)(iii), calculated on the basis that each of the other option holders exercises all of their options and the resulting allotments have been completed:
 - (iv) the Baker Trust after completion of the allotment of the number of voting securities referred to

- in paragraph (a)(iv), calculated on the basis that each of the other option holders exercises all of their options and the resulting allotments have been completed; and
- (e) the percentage of all voting securities that would be held or controlled by each of the following:
 - (i) Snowden Peak and all of Snowden Peak's associates after completion of the allotment of the number of voting securities referred to in paragraph (a)(i), calculated on the basis that none of the other option holders exercises any of their options;
 - (ii) Donoghue and all of Donoghue's associates after completion of the allotment of the number of voting securities referred to in paragraph (a)(ii), calculated on the basis that none of the other option holders exercises any of their options;
 - (iii) Suryawan and all of Suryawan's associates after completion of the allotment of the number of voting securities referred to in paragraph (a)(iii), calculated on the basis that none of the other option holders exercises any of their options;
 - (iv) the Baker Trust and all of the Baker Trust's associates after completion of the allotment of the number of voting securities referred to in paragraph (a)(iv), calculated on the basis that none of the other option holders exercises any of their options; and
 - (f) the percentage of all voting securities that would be held or controlled by each of the following:
 - (i) Snowden Peak and all of Snowden Peak's associates after completion of the allotment of the number of voting securities referred to in paragraph (a)(i), calculated on the basis that each of the other option holders exercises all of their options and the resulting allotments have been completed;
 - (ii) Donoghue and all of Donoghue's associates after completion of the allotment of the number of

- voting securities referred to in paragraph (a)(ii), calculated on the basis that each of the other option holders exercises all of their options and the resulting allotments have been completed:
- (iii) Suryawan and all of Suryawan's associates after completion of the allotment of the number of voting securities referred to in paragraph (a)(iii), calculated on the basis that each of the other option holders exercises all of their options and the resulting allotments have been completed:
 - (iv) the Baker Trust and all of the Baker Trust's associates after completion of the allotment of the number of voting securities referred to in paragraph (a)(iv), calculated on the basis that each of the other option holders exercises all of their options and the resulting allotments have been completed.
- (2) The matters referred to in subclause (1)(a) to (f) must be calculated on the basis that no bonus issue or capital reconstruction of RTX has occurred, other than as follows:
- (a) the consideration shares have been issued;
 - (b) the placement shares and the stapled options have been issued;
 - (c) none of the stapled options has been exercised;
 - (d) the options have been issued.
- (3) The exemptions in clauses 5 and 6 do not apply to an increase in voting control resulting from the exercise of a particular option if, immediately after the completion of the resulting allotment of voting securities,—
- (a) the percentage of all voting securities held or controlled by Snowden Peak is greater than the percentage disclosed under subclause (1)(c)(i); or
 - (b) the percentage of all voting securities held or controlled by Donoghue is greater than the percentage disclosed under subclause (1)(c)(ii); or
 - (c) the percentage of all voting securities held or controlled by Suryawan is greater than the percentage disclosed under subclause (1)(c)(iii); or

- (d) the percentage of all voting securities held or controlled by the Baker Trust is greater than the percentage disclosed under subclause (1)(c)(iv).
- (4) The exemptions in clauses 5 and 6 are subject to the further condition that the option holders—
- (a) do not become the holders or controllers of any options other than by way of the original allotment approved in the notice of meeting by RTX shareholders; and
- (b) can only sell those options to persons not associated with them during the period in which the options may be exercised.

This Notice expired, as from the close of 31 July 2007, pursuant to clause 3 of this Notice.

Dated at Wellington this 20th day of June 2005.

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

KJ O'Connor,
Deputy Chairperson.

Statement of reasons

This notice applies to acts or omissions occurring on or after 10 June 2005 and expires on the close of 31 July 2007.

The Takeovers Panel has granted exemptions to—

- RetailX Limited (**RTX**) in respect of rule 16(b) of the Takeovers Code (the **Code**); and
- Snowden Peak Investments Limited (**Snowden Peak**), Garry Donoghue (**Donoghue**), Andi Suryawan (**Suryawan**), and Grant Keith Baker, Donna Jean Baker, and Paul Anthony Smithies as trustees of the Baker Investment Trust (the **Baker Trust**) in respect of the rule 7(d) of the Code .

The exemptions relate to the increase in the voting control of Snowden Peak, Donoghue, Suryawan, and the Baker Trust in RTX that would result from the allotment of shares to them on the exercise of certain options (**options**).

RTX intends to purchase all the voting securities of Plus SMS Limited (**Plus SMS**), which is to be satisfied by way of issuing 240 million shares of RTX at 5 cents per share to Plus SMS shareholders and 10 million 12-month options and 20 million 24-month options to Snowden Peak, Donoghue, Suryawan, and the Baker Trust (the **option holders**).

RTX intends to obtain shareholder approval, in accordance with the Code, for the potential allotment of shares to the option holders under the terms of the options. However, the disclosures required by rule 16(b) of the Code cannot be determined in advance of the final exercise date for the options and RTX 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 allotted to the option holders; and
- the exact percentage of voting rights in RTX that the option holders would hold or control after allotment.

The actual number of RTX voting securities to be allotted could be affected by uncertain future events. These future events include the extent to which the options are exercised and whether RTX undertakes some form of capital adjustment before the exercise of the options.

The Takeovers Panel considers that it is appropriate to grant the exemptions because—

- it is not possible to state the actual numbers of shares to be allotted, and the percentage of shares that will be held or controlled by the person to whom the shares are being allotted, in the notice of meeting as required by rule 16(b) of the Code because the actual number of shares to be allotted could be affected by uncertain future events. These future events include the extent to which the options are exercised and whether RTX undertakes some form of capital adjustment before the exercise of the options; and
- if the shareholders of RTX approve the number of shares that could be allotted to each of the option holders on the exercise of all of their options then, by implication, they can be taken to also approve that each of the option holders may be allotted a lesser number of shares; and

- the issue of options by a purchaser as part of the satisfaction of the consideration for the acquisition to the vendor is an acknowledged market practice and the Takeovers Panel should facilitate this practice by the grant of appropriate exemptions.

The Takeovers Panel considers that the exemptions are consistent with the objectives of the Code because the non-associated shareholders of RTX will have an opportunity to vote on the allotment of voting securities to each of the option holders.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 23 June 2005.
