

**Reprint
as at 18 May 2007**



Takeovers Code (Talleys Fisheries Limited) Exemption Notice 2007

(SR 2007/114)

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 (Talleys Fisheries Limited) Exemption Notice 2007.

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.

The Takeovers Code (Talleys Fisheries Limited) Exemption Notice 2007 is administered by the Takeovers Panel.

2 Application

This notice applies to acts or omissions occurring on or after 10 May 2007.

3 Interpretation

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

Act means the Takeovers Act 1993

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

control percentage means the percentage of voting rights in Dairy Trust Limited that a person holds or controls

founding shareholders means AFFCO New Zealand Limited, Dairy Investment Fund Limited, Balle Bros Holdings Limited, and Waipahi Dairy Farms Limited

OCC means Open Country Cheese Company Limited

OCC shares means ordinary shares in OCC

offer means a scrip full takeover offer under the Code made by Dairy Trust Limited for the OCC shares

prospectus means the combined registered prospectus and investment statement relating to the issue of scrip that will be registered on or about 10 May 2007

scrip means fully paid ordinary shares in Dairy Trust Limited issued as consideration under the offer

Talleys means Talleys Fisheries Limited.

(2) In this notice, a reference to Talleys increasing its voting control is a reference to Talleys becoming the holder or controller of an increased percentage of the voting rights in Dairy Trust 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.

4 Exemption from rule 6(1) of Code

Talleys is exempted from rule 6(1) of the Code in respect of any increase in its voting control as a result of the allotment of voting securities in Dairy Trust Limited under the offer.

5 Conditions of exemption

The exemption in clause 4 is subject to the conditions that—

- (a) the allotment of voting securities to Talleys under the offer is made within 6 months after the date of, and in accordance with, the offer; and
- (b) the offer complies with the Securities Act 1978; and
- (c) the prospectus clearly states—
 - (i) the maximum number of voting securities in Dairy Trust Limited to be allotted to Talleys under the offer; and
 - (ii) the potential maximum control percentage of Talleys after the completion, and as a result, of the allotments of voting securities under the offer; and
 - (iii) the potential maximum control percentage of AFFCO Holdings Limited after the completion, and as a result, of the allotments of voting securities under the offer; and
 - (iv) the potential maximum aggregate control percentage of Talleys and its associates after the completion, and as a result, of the allotments of voting securities under the offer; and
 - (v) the potential maximum aggregate control percentage of Talleys and the founding shareholders after the completion, and as a result, of the allotments of voting securities under the offer; and
- (d) the numbers and percentages referred to in paragraph (c)(i) to (v) are calculated on the basis that—
 - (i) Talleys and each founding shareholder that holds OCC shares accepts the offer in respect of all of its OCC shares; and
 - (ii) AFFCO Holdings Limited is an associate of Talleys; and
 - (iii) OCC issues no further securities after the date of the prospectus; and
 - (iv) the consideration under the offer is not increased; and
- (e) Dairy Trust Limited is not a code company before the allotment of voting securities under the offer; and

- (f) the prospectus contains, in a prominent position, a disclaimer stating that by exempting Talleys from rule 6(1) of the Code the Panel is—
 - (i) neither endorsing nor supporting the accuracy or reliability of the contents of the prospectus; and
 - (ii) not implying it has a view on the merits of either the offer or the potential allotment of voting securities to Talleys; and
- (g) the form and position of the disclaimer referred to in paragraph (f) is approved by the Panel; and
- (h) the prospectus contains a summary, in a form approved by the Panel, of the terms and conditions of the exemption granted in this notice; and
- (i) Talleys does not become the holder or controller of an increased percentage of voting rights in Dairy Trust Limited, except as a result of the offer, before the last allotment of voting securities under the offer; and
- (j) there is no change in the effective control of Talleys before the last allotment of voting securities under the offer.

Dated at Auckland this 15th day of May 2007.

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 10 May 2007.

Dairy Trust Limited intends to make a scrip full takeover offer (**offer**) for ordinary shares in Open Country Cheese Company Limited (**OCC**). Unless the offer is varied, the consideration payable to accepting OCC shareholders under the offer will be satisfied in full by the issue of fully paid ordinary shares in Dairy Trust Limited (**Dairy Trust Limited shares**). The Dairy Trust Limited shares will be issued under a combined registered prospectus and investment statement (**prospectus**).

At the date of this notice—

- AFFCO Holdings Limited (**AFFCO**) holds all of the ordinary shares in Dairy Trust Limited (through its wholly owned subsidiary AFFCO New Zealand Limited);
- Talleys Fisheries Limited (**Talleys**) holds 50.01% of the ordinary shares in AFFCO;
- Talleys owns 29.9% of the ordinary shares in OCC.

It is likely that Dairy Trust Limited will become a code company as a consequence of the offer. If Talleys accepts the offer it will increase its holding of voting rights in Dairy Trust Limited. Following that increase, Talleys and its associate AFFCO, will hold or control more than 20% of the voting rights in Dairy Trust Limited. Accordingly, the Takeovers Panel has granted Talleys an exemption from rule 6(1) of the Code in respect of any increase in the holding or control by Talleys of voting rights in Dairy Trust Limited resulting from the allotment of Dairy Trust Limited shares to Talleys under the offer.

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

- any person choosing to subscribe for shares in Dairy Trust Limited for the first time can be expected to take into account allotments that are notified to them in the prospectus; and
- as a condition of the exemption, the prospectus must state the maximum number of securities that could be allotted to Talleys in Dairy Trust Limited, the potential maximum control percentage in Dairy Trust Limited that could be held or controlled by Talleys and by AFFCO, and the potential maximum aggregate control percentage in Dairy Trust Limited held or

controlled by Talleys and its associates and by Talleys and the other founding shareholders. If an offeree subscribes for Dairy Trust Limited shares under the offer on the basis of this information, the offeree can be taken to approve of the potential maximum control percentages held or controlled by Talleys; and

- the exemption facilitates the offer by Dairy Trust Limited, which will become a code company as a consequence of the offer. The conditions limit the application of the exemption to an offer that is a preliminary step to Dairy Trust Limited becoming a code company.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 17 May 2007.

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Notes

1 *General*

This is a reprint of the Takeovers Code (Talleys Fisheries Limited) Exemption Notice 2007. The reprint incorporates all the amendments to the Takeovers Code (Talleys Fisheries Limited) Exemption Notice 2007 as at 18 May 2007, as specified in the list of amendments at the end of these notes.

Relevant provisions of any amending enactments that have yet to come into force or that contain relevant transitional or savings provisions are also included, after the principal enactment, in chronological order.

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/legislation/reprints.shtml> or Part 8 of the *Tables of 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)*
