

Reprint

as at 1 December 2007

Takeovers Code (Fulton Hogan Limited) Exemption Notice 2007

(SR 2007/327)

Takeovers Code (Fulton Hogan Limited) Exemption Notice 2007: expired, on 1 December 2007, 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 eprint.

A general outline of these changes is set out in the notes at the end of this eprint, together with other explanatory material about this eprint.

This notice is administered by the Takeovers Panel.

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- 1 Title**
This notice is the Takeovers Code (Fulton Hogan Limited) Exemption Notice 2007.
 - 2 Application**
This notice applies to acts or omissions occurring on or after 4 September 2001.
 - 3 Expiry**
This notice expires on the close of 30 November 2007.
 - 4 Interpretation**
 - (1) In this notice, unless the context otherwise requires,—
Act means the Takeovers Act 1993

buybacks means the acquisitions by Fulton Hogan, in accordance with its constitution, of voting securities on the dates listed in Schedule 2

Code means the Takeovers Code under the Act

control percentage means the percentage of voting securities that a person holds or controls

employee share scheme means the scheme operated and administered by Fulton Hogan under which selected employees of Fulton Hogan, and of its wholly owned subsidiary companies, are provided with the opportunity to be allotted voting securities

Fulton Hogan means Fulton Hogan Limited

Fulton shareholders means the persons listed in Schedule 1

Fulton transferees means the persons listed in the first column of Schedule 3

Panel means the Takeovers Panel

share bonus scheme means the scheme operated and administered by Fulton Hogan under which selected senior employees of Fulton Hogan, and of its wholly owned subsidiary companies, are provided with the opportunity to be allotted voting securities in lieu of part of their annual cash performance bonus

Shell means Shell New Zealand Holding Company Limited

transaction means, as appropriate, each of the following transactions that resulted in a person increasing his, her, or its voting control

- (a) the buybacks;
- (b) the transfers of voting securities set out in Schedule 3;
- (c) the allotment of voting securities under the rights offer made by Fulton Hogan on 19 December 2001;
- (d) the allotments of voting securities under the employee share scheme listed in Schedule 4;
- (e) the allotments of voting securities under the share bonus scheme listed in Schedule 5

voting security means a voting security in Fulton Hogan.

- (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 Fulton Hogan.

- (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 6(1) of Code for Shell and Fulton shareholders in respect of buybacks

Shell and each of the Fulton shareholders is exempted from rule 6(1) of the Code in respect of any increase in that person's voting control resulting from the buybacks.

6 Application of clause 5

The exemption in clause 5 applies only to a person whose voting control has subsequently decreased to, or below, the control percentage of that person immediately before the increase in that person's voting control resulting from the buybacks.

7 Exemption from rule 6(1) of Code in respect of transfers of voting securities to Fulton transferees

Each of the Fulton transferees is exempted from rule 6(1) of the Code in respect of any increase in that person's voting control resulting from the transfers of voting securities set out in Schedule 3.

8 Exemption from rule 6(1) of Code in respect of allotment of voting securities under rights offer

Robert Jeffreys Fulton and Jules Richard Hurst Fulton are exempted from rule 6(1) of the Code in respect of the increase in their voting control resulting from the allotment of voting securities under the rights offer made by Fulton Hogan on 19 December 2001.

9 Exemption from rule 6(1) of Code in respect of allotments of voting securities under employee share scheme

Robert Jeffreys Fulton, Jules Richard Hurst Fulton, John Arthur Fulton, and Richard Edward Fulton are exempted from rule 6(1) of the Code in respect of the increases in their voting control resulting from the allotments of voting securities under the employee share scheme listed in Schedule 4.

10 Exemption from rule 6(1) of Code in respect of allotments of voting securities under share bonus scheme

Robert Jeffreys Fulton and Jules Richard Hurst Fulton are exempted from rule 6(1) of the Code in respect of the increases in their voting control resulting from the allotments of voting securities under the share bonus scheme listed in Schedule 5.

11 Exemption from rule 6(1) of Code for trustees of Catherine Valpy Dunn Family Trust in respect of buybacks

Trustees Executors Limited and Catherine Valpy Dunn as trustees of the Catherine Valpy Dunn Family Trust are exempted from rule 6(1) of the Code in respect of the increases in their voting control resulting from the buybacks.

12 Conditions of exemptions in clauses 7 to 11

The exemptions in clauses 7 to 11 are subject to the conditions that—

- (a) each increase in voting control is approved by an ordinary resolution of the shareholders of Fulton Hogan; and
- (b) the notice of meeting containing the proposed resolution contains, or is accompanied by,—
 - (i) the identity of the person whose increase in voting control is to be approved by the resolution (the **exempted person**); and
 - (ii) particulars of the transaction that resulted in the exempted person increasing his, her, or its voting control in breach of rule 6 of the Code and the reasons for the transaction; and
 - (iii) particulars of the voting control of the exempted person, including—
 - (A) the voting control of the person prior to the transaction, expressed as a percentage of the total number of voting securities on issue at that time; and
 - (B) the maximum voting control that was held or controlled by the person, expressed as a percentage of the total voting securities on issue, as a result of the transaction; and

- (C) the maximum voting control that was held or controlled by the person and the person's associates, expressed as a percentage of the total voting securities on issue, as a result of the transaction; and
- (iv) the consideration paid for, or attributed to, the voting securities; and
- (v) a statement to the effect that the increase in the exempted person's voting control, if approved, would be permitted as an exception to rule 6 of the Code; and
- (vi) a statement by the directors of Fulton Hogan in relation to the increase that complies with rule 19 of the Code (prepared as if the reference in that rule to acquisition under rule 7(c) of the Code, or allotment under rule 7(d) of the Code, was the transaction that resulted in the exempted person increasing his, her, or its voting control); and
- (c) neither the exempted person nor any person who is or was at the time an associate of the exempted person votes in favour of the resolution; and
- (d) at the same time that the notice of meeting containing the proposed resolution is sent to shareholders, Fulton Hogan also sends to the Panel, in hard copy and in electronic form, a copy of the notice, and any document accompanying it that relates to the meeting; and
- (e) at the same time that a person (if any) publishes or sends to the shareholders, in respect of the meeting, a statement or information that was not required to be published or sent by the rules of the Code, or by this clause as a condition of this exemption, that person also sends to the Panel, in hard copy and in electronic form, a copy of that statement or information; and
- (f) the form of the notice of meeting is approved by the Panel; and
- (g) the notice of meeting displays, in a prominent position, a disclaimer stating that by exempting the increase in the voting securities held or controlled by the exempted person from rule 6(1) of the Code the Panel is—

- (i) neither endorsing nor supporting the accuracy or reliability of the contents of the notice of meeting; and
 - (ii) not implying it has a view on the merits of the transaction that resulted in the exempted person increasing his, her, or its voting control.
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Schedule 1
Fulton shareholders

cls 4(1), 5

Prudence Clare Adams
Nicola Ann Cocks
Ngaio Margaret Double
Catherine Valpy Dunn
Penelope Susan Franklin
Donald James Paul Fulton
Heather Mary Fulton
Dr James Douglas Fulton
Jeffery Alistair Fulton
John Arthur Fulton
John Michael Edmund Fulton
Jules Richard Hurst Fulton
Kerry Louise Fulton
Margaret Ann W Fulton
Molly Maureen Fulton
Nicholas Fulton
Richard Edward Fulton
Richard James Fulton
Robert Jeffreys Fulton
Timothy Simon Fulton

Alistair Ewan Gebbie

Stewart Keith Gebbie

Patricia Clare Hodgson

Peter Fulton Hodgson

Roderick Andrew Hodgson

William Fulton Hodgson

Elisabeth C G Prain

Rosalind Andrea Rattenbury

Janet Ann Velvin

Alan Trevor Gebbie and Barbara Owen Gebbie as trustees of A T Gebbie Family Trust

Trustees Executors Limited and Penelope Susan Franklin as trustees of CJ & PS Franklin Childrens Trust

Trustees Executors Limited as trustee in Estate Morice H Law

Alistair Ewan Gebbie and Barbara Owen Gebbie as trustees of Fazenda Trust

Trustees Executors Limited and Richard James Fulton as trustees of Frankton Property Trust

Trustees Executors Limited as trustee of Gebbie Grandchildrens Trust

Trustees Executors Limited and James Douglas Fulton as trustees of J D Fulton Family Trust

Trustees Executors Limited and James Douglas Fulton as trustees of J D Fulton No 2 Family Trust

Trustees Executors Limited and Jeffery Alistair Fulton as trustees of Jeffery A Fulton Family Trust

Trustees Executors Limited and Richard James Fulton as trustees of J L Fulton No 2 Trust

Trustees Executors Limited and John Michael Edmund Fulton as trustees of J M E Fulton Family Trust

Trustees Executors Limited and Jules Richard Hurst Fulton as trustees of J R H Fulton Family Trust

Trustees Executors Limited and Richard James Fulton as trustees of J R H Fulton No 2 Family Trust

Trustees Executors Limited and Richard James Fulton as trustees of J R H Fulton No 3 Trust

Trustees Executors Limited and John Arthur Fulton as trustees of John Arthur Fulton Family Trust

Trustees Executors Limited, Jules Richard Hurst Fulton, and Susan Mary Fulton as trustees of Jules & Sue Fulton Family Trust

Trustees Executors Limited and Richard James Fulton as trustees of Jules & Sue Fulton No 2 Family Trust

Trustees Executors Limited as trustee of Katharine Gebbie Trust

Trustees Executors Limited, John Michael Edmund Fulton, and Phoebe Woodbine Fulton as trustees of M & P Fulton Family Trust

Trustees Executors Limited and Margaret Ann Wallace Fulton as trustees of MAW Fulton Grandchildrens Trust

Trustees Executors Limited as agent of Molly Maureen Fulton

Trustees Executors Limited and Nicholas Fulton as trustees of N Fulton Trust No 2

Trustees Executors Limited and Nicholas Fulton as trustees of Nicholas Fulton Family Trust

Trustees Executors Limited and Richard James Fulton as trustees of Owen Gebbie Family Trust

Trustees Executors Limited and Richard James Fulton as trustees of P C Hodgson No 3 Trust

Trustees Executors Limited and Penelope Susan Franklin as trustees of P S Franklin Family Trust

Trustees Executors Limited, Roderick Andrew Hodgson, and John Law Fulton as trustees of Patricia Clare Hodgson No 2 Trust

Trustees Executors Limited and Prudence Clare Fulton as trustees of Prudence C Fulton Family Trust

Trustees Executors Limited and Nicola Ann Cocks as trustees of R A Rattenbury Family Trust

Trustees Executors Limited and John Law Fulton as trustees of R J Fulton No 2 Trust

Trustees Executors Limited and Richard Edward Fulton as trustees of Richard Edward Fulton Family Trust

Trustees Executors Limited and Robert Jeffreys Fulton as trustees of Robert Fulton Family Trust

Stewart Keith Gebbie and Alan Trevor Gebbie as trustees of S K Gebbie Family Trust

Trustees Executors Limited and Donald James Paul Fulton as trustees of The DJP Fulton Family Trust

Ngaio Margaret Double, Kenneth Graham Double, and Stewart Keith Gebbie as trustees of The Double Family Trust

Trustees Executors Limited, Kerry Louise Fulton, and Donald James Paul Fulton as trustees of The Louise Fulton No 1 Trust

Trustees Executors Limited and Rosalind Andrea Rattenbury as trustees of The N A Cocks Family Trust

Janet Ann Velvin, Patrick David Velvin, and Alistair Ewan Gebbie as trustees of The Velvin Family Trust

Trustees Executors Limited and Timothy Simon Fulton as trustees of Timothy S Fulton Family Trust

Trustees Executors Limited and William Henry Fulton as trustees of W H Fulton Family Trust

Schedule 2
Date of buybacks

cls 4(1), 5, 11

20 February 2002

19 March 2002

17 April 2002

22 May 2002

20 June 2002
18 October 2002
19 March 2003
24 April 2003
21 May 2003
18 June 2003
23 July 2003
20 August 2003
23 September 2003
17 October 2003
24 March 2004
21 April 2004
19 May 2004
23 June 2004
21 July 2004
18 August 2004
22 September 2004
29 October 2004
31 March 2005
27 April 2005
25 May 2005
29 June 2005
27 July 2005
31 August 2005
28 September 2005
28 October 2005
29 March 2006

27 April 2006
 31 May 2006
 28 June 2006
 26 July 2006
 30 August 2006
 27 September 2006
 27 October 2006
 28 March 2007
 2 May 2007

Schedule 3
Transfers of voting securities to Fulton transferees

cls 4(1), 7

Name of Fulton transferee	Name of transferor	Date of transfer
Trustees Executors Limited and John Michael Edmund Fulton as trustees of J M E Fulton Family Trust	John Michael Edmund Fulton	26 October 2001
Trustees Executors Limited as trustee of Katharine Gebbie Trust	Katharine May Gebbie	26 October 2001
Trustees Executors Limited and Nicholas Fulton as trustees of N Fulton Trust No 2	Nicholas Fulton	27 October 2001

Name of Fulton transferee	Name of transferor	Date of transfer
Trustees Executors Limited and Penelope Susan Franklin as trustees of CJ & PS Franklin Childrens Trust	Penelope Susan Franklin	19 March 2002
Trustees Executors Limited and John Michael Edmund Fulton as trustees of J M E Fulton Family Trust	John Michael Edmund Fulton	19 March 2002
Trustees Executors Limited, Kerry Louise Fulton, and Donald James Paul Fulton as trustees of The Louise Fulton No 1 Trust	Kerry Louise Fulton	19 March 2002
Trustees Executors Limited and Richard James Fulton as trustees of Frankton Property Trust	Richard James Fulton	21 August 2002
Trustees Executors Limited and Richard James Fulton as trustees of Frankton Property Trust	Trustees Executors Limited as agent of Molly Maureen Fulton	21 August 2002

Name of Fulton transferee	Name of transferor	Date of transfer
Trustees Executors Limited and Jeffery Alistair Fulton as trustees of Jeffery A Fulton Family Trust	Trustees Executors Limited and Nicholas Fulton as trustees of Nicholas Fulton Family Trust	18 October 2002
Trustees Executors Limited and Prudence Clare Fulton as trustees of Prudence C Fulton Family Trust	Trustees Executors Limited and Nicholas Fulton as trustees of Nicholas Fulton Family Trust	18 October 2002
Trustees Executors Limited and Timothy Simon Fulton as trustees of Timothy S Fulton Family Trust	Trustees Executors Limited and Nicholas Fulton as trustees of Nicholas Fulton Family Trust	18 October 2002
Trustees Executors Limited and James Douglas Fulton as trustees of J D Fulton No 2 Family Trust	Dr James Douglas Fulton	21 May 2003
Stewart Keith Gebbie and Alan Trevor Gebbie as trustees of S K Gebbie Family Trust	Stewart Keith Gebbie	20 August 2003
Trustees Executors Limited and Richard James Fulton as trustees of Frankton Property Trust	Molly Maureen Fulton	23 September 2003

Name of Fulton transferee	Name of transferor	Date of transfer
Trustees Executors Limited and Richard James Fulton as trustees of Frankton Property Trust	Richard James Fulton	23 September 2003
Trustees Executors Limited and Richard James Fulton as trustees of Frankton Property Trust	Trustees Executors Limited as agent of Molly Maureen Fulton	23 September 2003
Trustees Executors Limited and Jeffery Alistair Fulton as trustees of Jeffery A Fulton Family Trust	Trustees Executors Limited and Nicholas Fulton as trustees of Nicholas Fulton Family Trust	23 September 2003
Trustees Executors Limited and Prudence Clare Fulton as trustees of Prudence C Fulton Family Trust	Trustees Executors Limited and Nicholas Fulton as trustees of Nicholas Fulton Family Trust	23 September 2003
Trustees Executors Limited and Timothy Simon Fulton as trustees of Timothy S Fulton Family Trust	Trustees Executors Limited and Nicholas Fulton as trustees of Nicholas Fulton Family Trust	23 September 2003
Alistair Ewan Gebbie and Barbara Owen Gebbie as trustees of Fazenda Trust	Alistair Ewan Gebbie	17 October 2003

Name of Fulton transferee	Name of transferor	Date of transfer
Janet Ann Velvin, Patrick David Velvin, and Alistair Ewan Gebbie as trustees of The Velvin Family Trust	Janet Ann Velvin	22 September 2004
Trustees Executors Limited and Penelope Susan Franklin as trustees of P S Franklin Family Trust	Penelope Susan Franklin	29 October 2004
Ngaio Margaret Double, Kenneth Graham Double, and Stewart Keith Gebbie as trustees of The Double Family Trust	Ngaio Margaret Double	29 October 2004
Alistair Ewan Gebbie and Barbara Owen Gebbie as trustees of Fazenda Trust	Alistair Ewan Gebbie	5 December 2004
Trustees Executors Limited and Catherine Valpy Dunn as trustees of Catherine Valpy Dunn Family Trust	Trustees Executors Limited and Richard James Fulton as trustees of J L Fulton No 2 Trust	2 March 2005

Name of Fulton transferee	Name of transferor	Date of transfer
Trustees Executors Limited and James Douglas Fulton as trustees of J D Fulton Family Trust	Trustees Executors Limited and Richard James Fulton as trustees of J L Fulton No 2 Trust	2 March 2005
Trustees Executors Limited and John Arthur Fulton as trustees of John Arthur Fulton Family Trust	Trustees Executors Limited and Richard James Fulton as trustees of J L Fulton No 2 Trust	2 March 2005
Trustees Executors Limited and Richard Edward Fulton as trustees of Richard Edward Fulton Family Trust	Trustees Executors Limited and Richard James Fulton as trustees of J L Fulton No 2 Trust	2 March 2005
Trustees Executors Limited and Robert Jeffreys Fulton as trustees of Robert Fulton Family Trust	Trustees Executors Limited and Richard James Fulton as trustees of J L Fulton No 2 Trust	2 March 2005
Trustees Executors Limited and William Henry Fulton as trustees of W H Fulton Family Trust	Trustees Executors Limited and Richard James Fulton as trustees of J L Fulton No 2 Trust	2 March 2005
Timothy Simon Fulton	Elisabeth C G Prain	31 March 2005

Name of Fulton transferee	Name of transferor	Date of transfer
Trustees Executors Limited and Nicholas Fulton as trustees of N Fulton Trust No 2	Timothy Simon Fulton	27 April 2005
Nicholas Fulton	Timothy Simon Fulton	27 April 2005
Trustees Executors Limited and Nicholas Fulton as trustees of Nicholas Fulton Family Trust	Timothy Simon Fulton	27 April 2005
Trustees Executors Limited and Richard James Fulton as trustees of J R H Fulton No 2 Family Trust	Trustees Executors Limited and Jules Richard Hurst Fulton as trustees of J R H Fulton Family Trust	27 January 2006
Jules Richard Hurst Fulton	Trustees Executors Limited, Jules Richard Hurst Fulton, and Susan Mary Fulton as trustees of Jules & Sue Fulton Family Trust	1 March 2006
Trustees Executors Limited and Richard James Fulton as trustees of J R H Fulton No 3 Trust	Jules Richard Hurst Fulton	1 March 2006

Name of Fulton transferee	Name of transferor	Date of transfer
Trustees Executors Limited and Richard James Fulton as trustees of Jules & Sue Fulton No 2 Family Trust	Jules Richard Hurst Fulton	1 March 2006
Trustees Executors Limited and Richard James Fulton as trustees of Jules & Sue Fulton No 2 Family Trust	Trustees Executors Limited, Jules Richard Hurst Fulton, and Susan Mary Fulton as trustees of Jules & Sue Fulton Family Trust	1 March 2006
Trustees Executors Limited and Donald James Paul Fulton as trustees of The DJP Fulton Family Trust	Donald James Paul Fulton	29 March 2006
Trustees Executors Limited and Catherine Valpy Dunn as trustees of Catherine Valpy Dunn Family Trust	Trustees Executors Limited and Richard James Fulton as trustees of J L Fulton No 2 Trust	31 May 2006
Trustees Executors Limited and James Douglas Fulton as trustees of J D Fulton No 2 Family Trust	Trustees Executors Limited and James Douglas Fulton as trustees of J D Fulton Family Trust	31 May 2006

Name of Fulton transferee	Name of transferor	Date of transfer
Trustees Executors Limited and James Douglas Fulton as trustees of J D Fulton No 2 Family Trust	Trustees Executors Limited and Richard James Fulton as trustees of J L Fulton No 2 Trust	31 May 2006
Trustees Executors Limited and John Arthur Fulton as trustees of John Arthur Fulton Family Trust	Trustees Executors Limited and Richard James Fulton as trustees of J L Fulton No 2 Trust	31 May 2006
Trustees Executors Limited and Richard Edward Fulton as trustees of Richard Edward Fulton Family Trust	Trustees Executors Limited and Richard James Fulton as trustees of J L Fulton No 2 Trust	31 May 2006
Trustees Executors Limited and Robert Jeffreys Fulton as trustees of Robert Fulton Family Trust	Trustees Executors Limited and Richard James Fulton as trustees of J L Fulton No 2 Trust	31 May 2006
Trustees Executors Limited and William Henry Fulton as trustees of W H Fulton Family Trust	Trustees Executors Limited and Richard James Fulton as trustees of J L Fulton No 2 Trust	31 May 2006

Name of Fulton transferee	Name of transferor	Date of transfer
Trustees Executors Limited and Nicola Ann Cocks as trustees of R A Rattenbury Family Trust	Rosalind Andrea Rattenbury	30 August 2006
Trustees Executors Limited and Nicholas Fulton as trustees of Nicholas Fulton Family Trust	Trustees Executors Limited and Nicholas Fulton as trustees of N Fulton Trust No 2	27 September 2006
Trustees Executors Limited, John Michael Edmund Fulton, and Phoebe Woodbine Fulton as trustees of M & P Fulton Family Trust	John Michael Edmund Fulton	28 February 2007
Trustees Executors Limited and Jeffery Alistair Fulton as trustees of Jeffery A Fulton Family Trust	Trustees Executors Limited and Nicholas Fulton as trustees of Nicholas Fulton Family Trust	28 March 2007
Trustees Executors Limited and Prudence Clare Fulton as trustees of Prudence C Fulton Family Trust	Trustees Executors Limited and Nicholas Fulton as trustees of Nicholas Fulton Family Trust	28 March 2007

Name of Fulton transferee	Name of transferor	Date of transfer
Trustees Executors Limited and Timothy Simon Fulton as trustees of Timothy S Fulton Family Trust	Trustees Executors Limited and Nicholas Fulton as trustees of Nicholas Fulton Family Trust	28 March 2007
Trustees Executors Limited and Robert Jeffreys Fulton as trustees of Robert Fulton Family Trust	Robert Jeffreys Fulton	2 May 2007
Trustees Executors Limited, Kerry Louise Fulton, and Donald James Paul Fulton as trustees of The Louise Fulton No 1 Trust	Kerry Louise Fulton	2 May 2007

Schedule 4
Allotments of voting securities under
employee share scheme

cls 4(1), 9

Name of allottee	Date of allotment
Robert Jeffreys Fulton	19 December 2001 18 February 2004
Jules Richard Hurst Fulton	19 December 2001 18 February 2004

Name of allottee	Date of allotment
John Arthur Fulton	2 March 2005
Richard Edward Fulton	19 February 2003

Schedule 5
Allotments of voting securities under
share bonus scheme

cls 4(1), 10

Name of allottee	Date of allotment
Robert Jeffreys Fulton	4 September 2001
	19 September 2002
	17 December 2003
	1 December 2004
	1 March 2006
Jules Richard Hurst Fulton	4 September 2001
	19 September 2002
	17 December 2003
	1 December 2004
	1 March 2006

Dated at Wellington this 26th day of October 2007.

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

David J Quigg,

Member.

[Seal]

Statement of reasons

This notice applies to acts or omissions on or after 4 September 2001 and expires on 30 November 2007.

The notice exempts Shell New Zealand Holding Company Limited (**Shell**), each of the shareholders in Fulton Hogan Limited (**Fulton Hogan**) that represent interests of the Fulton family (the **Fulton shareholders**), and Trustees Executors Limited and Catherine Valpy Dunn as trustees of the Catherine Valpy Dunn Family Trust from rule 6(1) of the Takeovers Code (the **Code**) in relation to certain increases in their voting control that resulted from a number of transactions occurring between September 2001 and July 2007.

It is arguable that the Fulton shareholders and Trustees Executors Limited and Catherine Valpy Dunn as trustees of the Catherine Valpy Dunn Family Trust are associates for the purposes of the Code and the exemption application was considered on this basis.

Between September 2001 and July 2007 a number of transactions occurred which resulted in the parties named above increasing their control percentage. These increases appear to have inadvertently breached the Code. These historical transactions include Fulton Hogan acquiring its own voting securities, allotments of securities under Fulton Hogan's employee share scheme, allotments of securities under Fulton Hogan's share bonus scheme, transfers of securities between some Fulton shareholders, and allotments of securities under a rights offer.

The Takeovers Panel considers that it is appropriate to grant Shell and the Fulton shareholders an exemption from rule 6(1) of the Code in relation to increases in voting control that resulted from Fulton Hogan acquiring its own voting securities, in circumstances where that increased voting control has subsequently been decreased, and that the exemptions are consistent with the objectives of the Code for the following reasons:

- buybacks can lead to persons inadvertently increasing their voting control in breach of the Code. Clause 5 of the Takeovers Code (Class Exemptions) Notice (No 2) 2001 (the **class notice**) provides a mechanism for dealing with such increases in a manner consistent with the objectives of the Code:
- although the relevant increases in voting control have been eliminated, Shell and the Fulton shareholders are not able to

rely on clause 5 of the class notice (even though the relevant increases have subsequently been eliminated) as the relevant increases in voting control were not eliminated within 6 months of the increases and the voting rights in relation to those securities were exercised before those increases were eliminated:

- the apparent breaches of the Code were inadvertent.

The Takeovers Panel considers that it is appropriate to grant to Robert Jeffreys Fulton, Jules Richard Hurst Fulton, John Arthur Fulton, Richard Edward Fulton, Trustees Executors Limited and Catherine Valpy Dunn as trustees of the Catherine Valpy Dunn Family Trust, and the Fulton transferees an exemption from rule 6(1) of the Code in relation to the various transactions mentioned above that resulted in those individuals increasing their voting control, where that increase was not subsequently decreased to, or below, the control percentage of the person immediately before the increase in the person's voting control, and that the exemptions are consistent with the objectives of the Code for the following reasons:

- the Code contains certain mechanisms that allow shareholders to approve an increase in a person's voting control that would otherwise breach the fundamental rule. The exempted persons cannot rely on these mechanisms, as the transactions are historical in nature and the Code mechanisms do not provide for retrospective approval by shareholders:
- the conditions to the exemptions appropriately mirror the shareholder approval mechanisms contained in the Code because they require certain information in relation to the increases in voting control to be provided to shareholders and allow those shareholders who are not associates of the exempted persons the opportunity to vote on whether to retrospectively approve the increases:
- the apparent breaches of the Code were inadvertent.

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 - 2 About this eprint
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Notes**1 *General***

This is an eprint of the Takeovers Code (Fulton Hogan Limited) Exemption Notice 2007. It incorporates all the amendments to the Takeovers Code (Fulton Hogan Limited) Exemption Notice 2007 as at 1 December 2007. The list of amendments at the end of these notes specifies all the amendments incorporated into this eprint since 9 November 2007. Relevant provisions of any amending enactments that contain transitional, savings, or application provisions are also included, after the Principal enactment, in chronological order.

2 *About this eprint*

This eprint has not been officialised. For more information about officialisation, please see "Making online legislation official" under "Status of legislation on this site" in the About section of this website.

**3 *List of amendments incorporated in this eprint
(most recent first)***