

**Reprint
as at 1 February 2010**



**Takeovers Code (Life Pharmacy
Limited) Exemption Notice 2009**

(SR 2009/213)

Takeovers Code (Life Pharmacy Limited) Exemption Notice 2009: expired, on
1 February 2010, 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 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.

This notice is administered by the Takeovers Panel.

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Notice

- 1 Title**
This notice is the Takeovers Code (Life Pharmacy Limited) Exemption Notice 2009.
- 2 Application**
This notice applies to acts or omissions occurring on or after 31 July 2009.
- 3 Expiry**
This notice expires on the close of 31 January 2010.
- 4 Interpretation**
 - (1) In this notice, unless the context otherwise requires,—
Act means the Takeovers Act 1993
Code means the Takeovers Code under the Act
meeting means the meeting of the shareholders of Life Pharmacy Limited that is to be held on or about 31 August 2009 to consider, amongst other things, whether to approve, for the purposes of rule 7(d) of the Code, the allotment of voting securities to Cape Healthcare Limited under the scrip offer
notice of meeting means the notice of meeting to be sent to the shareholders of Life Pharmacy Limited in respect of the meeting
scrip offer means the full takeover offer to be made under rule 7(a) of the Code by Life Pharmacy Limited for all of the shares in Pharmacybrands Limited in consideration for ordinary shares in Life Pharmacy Limited on the terms referred to in the notice of meeting
voting security means a voting security in Life Pharmacy Limited.
 - (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 voting rights in Life Pharmacy 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.

5 Exemption from rule 7(d) of Code in respect of allotment on completion of scrip offer

Cape Healthcare Limited is exempted from rule 7(d) of the Code in respect of any increase in its voting control as a result of any allotment of voting securities to it on completion of the scrip offer to the extent that rule 7(d) of the Code requires the notice of meeting to comply with rule 16(b)(ii) to (iv) of the Code.

6 Exemption from rule 16(b)(ii) to (iv) of Code in respect of notice of meeting

Life Pharmacy Limited is exempted from rule 16(b)(ii) to (iv) of the Code in respect of the notice of meeting.

7 Condition of exemptions in clauses 5 and 6 relating to notice of meeting

The exemptions in clauses 5 and 6 are subject to the condition that the notice of meeting contains, or is accompanied by, the following particulars:

- (a) the maximum number of voting securities that could be allotted to Cape Healthcare Limited under the scrip offer, expressed as a percentage of the total voting securities on issue after that allotment:
- (b) the maximum percentage of the total voting securities on issue that could be held or controlled by Cape Healthcare Limited after the allotment of voting securities under the scrip offer:
- (c) the maximum percentage of the total voting securities on issue that could be held or controlled by Cape Healthcare Limited and its associates after the allotment of voting securities under the scrip offer.

8 Further notice of meeting conditions

The exemptions in clauses 5 and 6 are subject to the further conditions that—

- (a) the notice of meeting contains, or is accompanied by,—
 - (i) full particulars of the scrip offer; and
 - (ii) a summary of the terms and conditions of the exemptions granted under this notice; and
- (b) the notice of meeting displays, in a prominent position, a disclaimer stating that by exempting Cape Healthcare Limited from rule 7(d) of the Code and Life Pharmacy Limited from rule 16(b)(ii) to (iv) 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 that it has a view on the merits of the proposed issue of voting securities to Cape Healthcare Limited under the scrip offer; and
- (c) the form of the notice of meeting is approved by the Panel.

9 Restrictions on other acquisitions or increases in control greater than disclosed maximum

- (1) The exemption in clause 5 does not apply—
 - (a) if there is an increase in Cape Healthcare Limited's voting control, except as a result of an allotment under the scrip offer, before the completion of the scrip offer; or
 - (b) to an increase in the voting control of Cape Healthcare Limited if, immediately after completion of the allotment of voting securities under the scrip offer, the total percentage of voting securities held or controlled by Cape Healthcare Limited is greater than the maximum percentage of voting securities that could be held or controlled by Cape Healthcare Limited as disclosed in the notice of meeting in accordance with clause 7(b).
- (2) The exemption in clause 5 is subject to the condition that there is no change in control of Cape Healthcare Limited before the allotment of voting securities under the scrip offer.

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1 February 2010

Takeovers Code (Life Pharmacy Limited)
Exemption Notice 2009

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Dated at Auckland this 7th day of August 2009.

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

[Seal]

Colin Glenn Giffney,
Chairperson.

Statement of reasons

This notice applies to acts or omissions occurring on or after 31 July 2009 and expires on 31 January 2010.

The Takeovers Panel (the **Panel**) has granted exemptions for—

- Cape Healthcare Limited (**Cape Healthcare**) from rule 7(d) of the Takeovers Code (the **Code**) to the extent that rule 7(d) requires the notice of meeting to comply with rule 16(b)(ii) to (iv) of the Code in respect of any allotment of voting securities in Life Pharmacy Limited (**LPL**) to Cape Healthcare under the scrip offer to be made by LPL for Pharmacybrands Limited (**Pharmacybrands**):
- LPL from rule 16(b)(ii) to (iv) of the Code in respect of the notice of meeting.

LPL proposes to make a full scrip offer for Pharmacybrands under rule 7(a) of the Code. Cape Healthcare currently holds approximately 66% of the shares in Pharmacybrands. Cape Healthcare is expected to enter into a lock-in agreement with LPL to accept LPL's scrip offer in respect of all of its Pharmacybrands shares. LPL is going to conduct a pro-rata buyback from its partly paid shareholders before the completion of the scrip offer.

If LPL's offer is successful and Cape Healthcare accepts LPL's offer in respect of all of its Pharmacybrands shares, the resulting allotment of LPL shares to Cape Healthcare will increase the percentage of voting rights that Cape Healthcare holds or controls in LPL to between 20% and 50%. Rule 6(1) of the Code prohibits such increases, except as provided by rule 7. The approval of LPL shareholders is therefore

to be sought for that allotment, in accordance with rule 7(d) of the Code.

Rule 7(d) requires that the notice of meeting sent to shareholders in respect of that approval contains the information specified by rule 16 of the Code. However, the information specified by rule 16(b)(ii) to (iv) will not be known at the time the notice of meeting is prepared. This is due to uncertainties in—

- the level of participation by LPL shareholders in the pro-rata buyback to be conducted by LPL before the completion of the scrip offer; and
- the level of participation by Pharmacybrands' shareholders other than Cape Healthcare in LPL's scrip offer for that company.

The Panel has granted exemptions from those disclosure requirements. The Panel has made those exemptions subject to conditions that substitute disclosure of the exact percentages required by rule 16(b)(ii) to (iv) with disclosure of potential maximum percentages.

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

- it is impossible for the actual percentages specified by rule 16(b) to be stated in the notice of meeting, as those percentages are dependent on a number of factors that will not be known with any certainty until after the notice of meeting is prepared; and
- all non-associated shareholders will have an opportunity to vote on the potential allotment of voting securities to Cape Healthcare as a result of the scrip offer and lock-in agreement; and
- if the non-associated shareholders approve the potential maximum allotment of voting securities to Cape Healthcare then, by implication, the shareholders also approve any lesser percentage of voting securities that may be allotted to Cape Healthcare under the scrip offer and lock-in agreement.

**Takeovers Code (Life Pharmacy Limited)
Exemption Notice 2009**

Reprinted as at
1 February 2010

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 13 August 2009.

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 - 2 Status of reprints
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Notes

1 *General*

This is a reprint of the Takeovers Code (Life Pharmacy Limited) Exemption Notice 2009. The reprint incorporates all the amendments to the notice as at 1 February 2010, 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/editorial-conventions/> or Part 8 of the *Tables of New Zealand 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)***

Takeovers Code (Life Pharmacy Limited) Exemption Notice 2009
(SR 2009/213): clause 3
