

**Reprint
as at 1 November 2015**



**Takeovers Code (Fulton Hogan Limited) Exemption
Notice 2009
(SR 2009/379)**

Takeovers Code (Fulton Hogan Limited) Exemption Notice 2009: expired, on 1 November 2015, 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 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.

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Notice

1 Title

This notice is the Takeovers Code (Fulton Hogan Limited) Exemption Notice 2009.

2 Application

This notice applies to acts or omissions occurring on or after 27 November 2009.

3 Expiry

This notice expires on the close of 31 October 2015.

4 Interpretation

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

Act means the Takeovers Act 1993

buyback means any acquisition by Fulton Hogan, in accordance with its constitution, of voting securities under Fulton Hogan's buyback programme, but excluding the Shell repurchase

Code means the Takeovers Code under the Act

combined Fulton family shareholders means the Fulton family shareholders taken together as a whole class as if all the Fulton family shareholders were 1 person

combined Hogan family shareholders means the Hogan family shareholders taken together as a whole class as if all of the Hogan family shareholders were 1 person

constitution means the constitution of Fulton Hogan, as that constitution may be amended from time to time

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, as that scheme may be amended or replaced from time to time

employee share scheme allotment means an allotment to a Fulton family shareholder by Fulton Hogan under the employee share scheme

Fulton family means all persons who are—

- (a) descendants, naturally or by virtue of any adoption order, of Julius Herbert Fulton and Dorothy May Fulton, or the spouse of any of those persons; or
- (b) beneficiaries in the estate of Morice Henderson Law

Fulton family shareholders means any person who—

- (a) is a member of the Fulton family; or
- (b) represents any interest or interests of any member of the Fulton family, including—
 - (i) the trustees of any trust; and
 - (ii) any company; and
 - (iii) any personal representative or representatives

Fulton Hogan means Fulton Hogan Limited

Fulton intra-family transfer means the transfer of voting securities from any of the Fulton family shareholders to any other Fulton family shareholder, as permitted under the exception to the pre-emptive rights on transfer provisions in the constitution

Hogan family means all persons who are descendants, naturally or by virtue of any adoption order, of Robert Hogan and Margaret Catherine Hogan, or the spouse of any of those persons

Hogan family shareholders means any person who—

- (a) is a member of the Hogan family; or
- (b) represents any interest or interests of any member of the Hogan family, including—
 - (i) the trustees of any trust; and
 - (ii) any company; and
 - (iii) any personal representative or representatives

Hogan intra-family transfer means the transfer of voting securities from any of the Hogan family shareholders to any other Hogan family shareholder, as permitted under the exception to the pre-emptive rights on transfer provisions in the constitution

Panel means the Takeovers Panel

rights issue means the rights issue of voting securities by Fulton Hogan in accordance with a pro rata non-renounceable offer by Fulton Hogan to its shareholders to be allotted 1 voting security for every 12 voting securities held, as contemplated by the notice of meeting for a special meeting of shareholders to be held on or about 16 December 2009

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, as that scheme may be amended or replaced from time to time

share bonus scheme allotment means an allotment to a Fulton family shareholder by Fulton Hogan under the share bonus scheme

Shell means Royal Dutch Shell plc, a company incorporated in England, or any direct or indirect wholly owned subsidiary of that company

Shell repurchase means the acquisition by Fulton Hogan of up to all of the voting securities held by Shell, in 1 or more instalments and at 1 or more times

spouse, in relation to a person, means—

- (a) the husband or wife of the person;
- (b) a person who lived together with the person as a couple for more than 3 years;
- (c) a person who was formerly in a relationship referred to in paragraph (a) or (b);
- (d) a person who was cohabiting with the person at the date of death of the person

transfer, in relation to a Fulton intra-family transfer or a Hogan intra-family transfer, means the transfer of a voting security or the transfer of the control of a voting security

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.

Buybacks

5 Exemptions from rule 6(1) of Code in respect of buybacks

Each of the Fulton family shareholders, each of the Hogan family shareholders, and Shell are exempted from rule 6(1) of the Code in respect of any increase in that person's voting control that results from a buyback.

6 Conditions of exemptions in clause 5

- (1) The exemptions in clause 5 are subject to the conditions that—
 - (a) the buyback 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, the following information:
 - (i) the consideration per share for the buyback, or the manner in which the consideration would be determined, and when the consideration would be payable;
 - (ii) the reasons for the buyback;
 - (iii) a description of the person or persons whose increase in voting control results or may result from the buyback to be approved by the proposed resolution;
 - (iv) particulars of the voting securities that may be acquired by Fulton Hogan under the buyback, including—
 - (A) the maximum number of voting securities that may be acquired under the buyback; and
 - (B) the percentage of all voting securities that the maximum number of voting securities represents;
 - (v) a statement by the directors of Fulton Hogan in relation to the buyback that complies with rule 19 of the Code (as if the reference in that rule to acquisition under rule 7(c) of the Code were a reference to the buyback):

- (vi) a summary of the terms and conditions of the exemption in clause 5;
 - (vii) the additional information required under subclause (2)(b), (3)(b), or (4)(b) (as applicable), and clause 13 or 15 (as applicable); and
 - (c) the form of the notice of meeting is approved by the Panel; 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) the notice of meeting, or the accompanying information, displays, in a prominent position, a disclaimer stating that, by granting the exemptions contained in this notice, the Panel is—
 - (i) neither endorsing nor supporting the accuracy or reliability of the contents of the notice of meeting or the accompanying information; and
 - (ii) not implying it has a view on the merits of the proposed transaction; and
 - (f) every annual report from the year after the resolution is passed until the expiry of this notice contains, or is accompanied by, information prominently setting out—
 - (i) a brief description of Fulton Hogan’s buyback programme; and
 - (ii) a summary of the terms and conditions of the exemptions in clause 5 and their effect; and
 - (iii) the maximum number of voting securities that may be acquired under the buyback; and
 - (iv) the percentage of all voting securities that the maximum number of voting securities represents; and
 - (v) the additional information required under subclause 2(d), 3(d), or 4(d) (as applicable).
- (2) The exemptions in clause 5 for the Fulton family shareholders are subject to the further conditions that—
- (a) none of the Fulton family shareholders, nor any person who is or was at the time an associate of any of the Fulton family shareholders, votes in favour of the resolution to approve the buyback; and
 - (b) the notice of meeting containing the proposed resolution contains, or is accompanied by, the following additional information:
 - (i) the maximum percentage of the total voting securities on issue that could be held or controlled by the combined Fulton family shareholders if the maximum number of voting securities were acquired under the buyback:

- (ii) the potential maximum aggregate percentage of the total voting securities on issue that could be held or controlled by the combined Fulton family shareholders and the Fulton family shareholders' associates if the maximum number of voting securities were acquired under the buyback;
 - (iii) a statement to the effect that the increase in the combined Fulton family shareholders' voting control that would result from the buyback, if approved, would be permitted as an exception to rule 6 of the Code;
 - (iv) a report (or summary of a report) from an independent adviser in relation to the increase in the combined Fulton family shareholders' voting control that complies with rule 18 of the Code (as if the references in that rule to acquisition under rule 7(c) of the Code and notice of meeting referred to in rule 15 of the Code were references to the buyback and the notice, respectively); and
 - (c) at the same time that Fulton Hogan or any Fulton family shareholder publishes or sends to the shareholders, in respect of the meeting, a statement or information that is not required to be published or sent by the rules of the Code, or by this clause or clause 13 as a condition of the exemptions in clause 5, that person also sends to the Panel, in hard copy and in electronic form, a copy of that statement or information; and
 - (d) the annual report contains the following additional information:
 - (i) the maximum percentage of the total voting securities on issue that could be held or controlled by the combined Fulton family shareholders if the maximum number of voting securities were acquired under the buyback; and
 - (ii) the potential maximum aggregate percentage of the total voting securities on issue that could be held or controlled by the combined Fulton family shareholders and the Fulton family shareholders' associates if the maximum number of voting securities were acquired under the buyback.
- (3) The exemptions in clause 5 for the Hogan family shareholders are subject to the further conditions that—
 - (a) none of the Hogan family shareholders, nor any person who is or was at the time an associate of any of the Hogan family shareholders, votes in favour of the resolution to approve the buyback; and
 - (b) the notice of meeting containing the proposed resolution contains, or is accompanied by, the following additional information:
 - (i) the maximum percentage of the total voting securities on issue that could be held or controlled by the combined Hogan family shareholders if the maximum number of voting securities were acquired under the buyback;

- (ii) the potential maximum aggregate percentage of the total voting securities on issue that could be held or controlled by the combined Hogan family shareholders and the Hogan family shareholders' associates if the maximum number of voting securities were acquired under the buyback;
 - (iii) a statement to the effect that the increase in the combined Hogan family shareholders' voting control that would result from the buyback, if approved, would be permitted as an exception to rule 6 of the Code;
 - (iv) a report (or summary of a report) from an independent adviser in relation to the increase in the combined Hogan family shareholders' voting control that complies with rule 18 of the Code (as if the references in that rule to acquisition under rule 7(c) of the Code and notice of meeting referred to in rule 15 of the Code were references to the buyback and the notice, respectively); and
 - (c) at the same time that Fulton Hogan or any Hogan family shareholder publishes or sends to the shareholders, in respect of the meeting, a statement or information that is not required to be published or sent by the rules of the Code, or by this clause or clause 15 as a condition of the exemptions in clause 5, that person also sends to the Panel, in hard copy and in electronic form, a copy of that statement or information; and
 - (d) the annual report contains the following additional information:
 - (i) the maximum percentage of the total voting securities on issue that could be held or controlled by the combined Hogan family shareholders if the maximum number of voting securities were acquired under the buyback; and
 - (ii) the potential maximum aggregate percentage of the total voting securities on issue that could be held or controlled by the combined Hogan family shareholders and the Hogan family shareholders' associates if the maximum number of voting securities were acquired under the buyback.
- (4) The exemption in clause 5 for Shell is subject to the further conditions that—
 - (a) neither Shell, nor any person who is or was at the time an associate of Shell, votes in favour of the resolution to approve the buyback; and
 - (b) the notice of meeting containing the proposed resolution contains, or is accompanied by, the following additional information:
 - (i) the maximum percentage of the total voting securities on issue that could be held or controlled by Shell if the maximum number of voting securities were acquired under the buyback;
 - (ii) the potential maximum aggregate percentage of the total voting securities on issue that could be held or controlled by Shell and its

- associates if the maximum number of voting securities were acquired under the buyback:
- (iii) a statement to the effect that the increase in Shell's voting control that would result from the buyback, if approved, would be permitted as an exception to rule 6 of the Code:
 - (iv) a report (or summary of a report) from an independent adviser in relation to the increase in Shell's voting control that complies with rule 18 of the Code (as if the references in that rule to acquisition under rule 7(c) of the Code and notice of meeting referred to in rule 15 of the Code were references to the buyback and the notice, respectively); and
- (c) at the same time that Fulton Hogan or Shell publishes or sends to the shareholders, in respect of the meeting, a statement or information that is not required to be published or sent by the rules of the Code, or by this clause as a condition of the exemptions in clause 5, that person also sends to the Panel, in hard copy and in electronic form, a copy of that statement or information; and
 - (d) the annual report contains the following additional information:
 - (i) the maximum percentage of the total voting securities on issue that could be held or controlled by Shell if the maximum number of voting securities were acquired under the buyback; and
 - (ii) the potential maximum aggregate percentage of the total voting securities on issue that could be held or controlled by Shell and its associates if the maximum number of voting securities were acquired under the buyback; and
 - (e) Shell does not become the holder or controller of any increased percentage of voting rights in Fulton Hogan except as a result of the buyback that is approved by shareholders in accordance with the conditions in this clause.
- (5) The numbers and percentages referred to in subclauses (1)(b)(iv) and (f), (2)(b) and (d), (3)(b) and (d), and (4)(b) and (d) must be calculated on the basis that there is no change to the total number of voting securities on issue between the date that is 5 days prior to the date of the notice of meeting and the date of expiry of this notice other than as a result of the buyback.

Shell repurchase

7 Exemptions from rule 6(1) of Code in respect of Shell repurchase

Each of the Fulton family shareholders and each of the Hogan family shareholders is exempted from rule 6(1) of the Code in respect of any increase in that person's voting control that results from the Shell repurchase.

8 Conditions of exemptions in clause 7

- (1) The exemptions in clause 7 are subject to the conditions that—
- (a) the Shell repurchase 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, the following information:
 - (i) the consideration per share for the Shell repurchase or the manner in which the consideration would be determined;
 - (ii) when the consideration would be payable or the manner in which the dates for payment of the consideration would be determined;
 - (iii) a description of the person or persons whose increase in voting control results or may result from the Shell repurchase to be approved by the proposed resolution;
 - (iv) particulars of the voting securities that may be acquired by Fulton Hogan under the Shell repurchase, including—
 - (A) the maximum number of voting securities that may be acquired under the Shell repurchase; and
 - (B) the percentage of all voting securities that the maximum number of voting securities represents;
 - (v) a statement by the directors of Fulton Hogan in relation to the Shell repurchase that complies with rule 19 of the Code (as if the reference in that rule to acquisition under rule 7(c) of the Code were a reference to the Shell repurchase);
 - (vi) a summary of the terms and conditions of the exemptions in clause 7;
 - (vii) the additional information required under subclause (2)(b) or (3)(b) (as applicable), and clause 13 or 15 (as applicable); and
 - (c) the form of the notice of meeting is approved by the Panel; 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) the notice of meeting, or the accompanying information, displays, in a prominent position, a disclaimer stating that, by granting the exemptions contained in this notice, the Panel is—
 - (i) neither endorsing nor supporting the accuracy or reliability of the contents of the notice of meeting or the accompanying information; and
 - (ii) not implying it has a view on the merits of the proposed transaction; and

- (f) every annual report from the year after the resolution is passed until the expiry of this notice contains, or is accompanied by, information prominently setting out—
 - (i) a description of the Shell repurchase (taken as a whole); and
 - (ii) a summary of the terms and conditions of the exemptions in clause 7 and their effect; and
 - (iii) the maximum number of voting securities that may be acquired under the Shell repurchase; and
 - (iv) the percentage of all voting securities that the maximum number of voting securities represents; and
 - (v) the additional information required under subclause 2(d) or 3(d) (as applicable).
- (2) The exemptions in clause 7 for the Fulton family shareholders are subject to the further conditions that—
 - (a) none of the following vote in favour of the resolution to approve the Shell repurchase:
 - (i) any Fulton family shareholder;
 - (ii) any person who is or was at the time an associate of any of the Fulton family shareholders;
 - (iii) Shell; and
 - (b) the notice of meeting containing the proposed resolution contains, or is accompanied by, the following additional information:
 - (i) the maximum percentage of the total voting securities on issue that could be held or controlled by the combined Fulton family shareholders if the maximum number of voting securities were acquired under the Shell repurchase;
 - (ii) the potential maximum aggregate percentage of the total voting securities on issue that could be held or controlled by the combined Fulton family shareholders and the Fulton family shareholders' associates if the maximum number of voting securities were acquired under the Shell repurchase;
 - (iii) a statement to the effect that the increase in the combined Fulton family shareholders' voting control that would result from the Shell repurchase, if approved, would be permitted as an exception to rule 6 of the Code;
 - (iv) a report (or summary of a report) from an independent adviser in relation to the increase in the combined Fulton family shareholders' voting control that complies with rule 18 of the Code (as if the references in that rule to acquisition under rule 7(c) of the Code and notice of meeting referred to in rule 15 of the Code

- were references to the Shell repurchase and the notice, respectively); and
- (c) at the same time that Fulton Hogan or any Fulton family shareholder publishes or sends to the shareholders, in respect of the meeting, a statement or information that is not required to be published or sent by the rules of the Code, or by this clause or clause 13 as a condition of the exemptions in clause 7, that person also sends to the Panel, in hard copy and in electronic form, a copy of that statement or information; and
 - (d) the annual report contains the following additional information:
 - (i) the maximum percentage of the total voting securities on issue that could be held or controlled by the combined Fulton family shareholders if the maximum number of voting securities were acquired under the Shell repurchase; and
 - (ii) the potential maximum aggregate percentage of the total voting securities on issue that could be held or controlled by the combined Fulton family shareholders and the Fulton family shareholders' associates if the maximum number of voting securities were acquired under the Shell repurchase.
- (3) The exemptions in clause 7 for the Hogan family shareholders are subject to the further conditions that—
- (a) none of the following vote in favour of the resolution to approve the Shell repurchase:
 - (i) any Hogan family shareholder;
 - (ii) any person who is or was at the time an associate of any of the Hogan family shareholders;
 - (iii) Shell; and
 - (b) the notice of meeting containing the proposed resolution contains, or is accompanied by, the following additional information:
 - (i) the maximum percentage of the total voting securities on issue that could be held or controlled by the combined Hogan family shareholders if the maximum number of voting securities were acquired under the Shell repurchase;
 - (ii) the potential maximum aggregate percentage of the total voting securities on issue that could be held or controlled by the combined Hogan family shareholders and the Hogan family shareholders' associates if the maximum number of voting securities were acquired under the Shell repurchase;
 - (iii) a statement to the effect that the increase in the combined Hogan family shareholders' voting control that would result from the Shell repurchase, if approved, would be permitted as an exception to rule 6 of the Code:

- (iv) a report (or summary of a report) from an independent adviser in relation to the increase in the combined Hogan family shareholders' voting control that complies with rule 18 of the Code (as if the references in that rule to acquisition under rule 7(c) of the Code and notice of meeting referred to in rule 15 of the Code were references to the Shell repurchase and the notice, respectively); and
- (c) at the same time that Fulton Hogan or any Hogan family shareholder publishes or sends to the shareholders, in respect of the meeting, a statement or information that is not required to be published or sent by the rules of the Code, or by this clause or clause 15 as a condition of the exemptions in clause 7, that person also sends to the Panel, in hard copy and in electronic form, a copy of that statement or information; and
- (d) the annual report contains the following additional information:
 - (i) the maximum percentage of the total voting securities on issue that could be held or controlled by the combined Hogan family shareholders if the maximum number of voting securities were acquired under the Shell repurchase; and
 - (ii) the potential maximum aggregate percentage of the total voting securities on issue that could be held or controlled by the combined Hogan family shareholders and the Hogan family shareholders' associates if the maximum number of voting securities were acquired under the Shell repurchase.
- (4) The numbers and percentages referred to in subclauses (1)(b)(iv) and (f), (2)(b) and (d), and (3)(b) and (d) must be calculated on the basis that there is no change to the total number of voting securities on issue between the date that is 5 days prior to the date of the notice of meeting and the date of expiry of this notice other than as a result of the Shell repurchase.

Employee share scheme and share bonus scheme allotments

9 Exemptions from rule 6(1) of Code in respect of employee share scheme allotments and share bonus scheme allotments

Each of the Fulton family shareholders is exempted from rule 6(1) of the Code in respect of any increase in that person's voting control that results from that person being allotted voting securities under an employee share scheme allotment or a share bonus scheme allotment.

10 Conditions of exemptions in clause 9

- (1) In this clause, **transaction** means—
 - (a) an allotment of voting securities to a Fulton family shareholder under an employee share scheme allotment:

- (b) an allotment of voting securities to a Fulton family shareholder under a share bonus scheme allotment.
- (2) The exemptions in clause 9 are subject to the conditions that—
- (a) the transaction is approved by an ordinary resolution of the shareholders of Fulton Hogan, and none of the Fulton family shareholders, nor any person who is or was at the time an associate of any of the Fulton family shareholders, votes in favour of the resolution; and
 - (b) the notice of meeting containing the proposed resolution contains, or is accompanied by, the following information:
 - (i) the consideration per share for the transaction, or the manner in which the consideration would be determined, and when the consideration would be payable;
 - (ii) the reasons for the transaction;
 - (iii) a description of the person whose increase in voting control results or may result from the transaction to be approved by the proposed resolution;
 - (iv) particulars of the voting securities that may be allotted under the transaction, including—
 - (A) the maximum aggregate number of voting securities that could be allotted under the transaction; and
 - (B) the maximum aggregate number of voting securities that could be allotted under the transaction, expressed as a percentage of the total voting securities on issue after the allotment; and
 - (C) the maximum percentage of the total voting securities on issue that could be held or controlled by the combined Fulton family shareholders if the maximum number of voting securities were allotted under the transaction; and
 - (D) the maximum percentage of the total voting securities on issue that could be held or controlled by the combined Fulton family shareholders and the Fulton family shareholders' associates if the maximum number of voting securities were allotted under the transaction;
 - (v) a statement to the effect that the increase in voting control that results or may result from the transaction, if approved, would be permitted as an exception to rule 6 of the Code;
 - (vi) a report (or summary of a report) from an independent adviser in relation to the increase in the combined Fulton family shareholders' voting control that complies with rule 18 of the Code (as if the references in that rule to allotment under rule 7(d) of the Code

and notice of meeting referred to in rule 16 of the Code were references to the transaction and the notice, respectively):

- (vii) a statement by the directors of Fulton Hogan in relation to the transaction that complies with rule 19 of the Code (as if the reference in that rule to allotment under rule 7(d) of the Code were a reference to the transaction):
- (viii) a summary of the terms and conditions of the exemptions in clause 9; and
- (c) the form of the notice of meeting is approved by the Panel; 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 Fulton Hogan or any Fulton family shareholder publishes or sends to the shareholders, in respect of the meeting, a statement or information that is not required to be published or sent by the rules of the Code, or by this clause as a condition of the exemptions in clause 9, that person also sends to the Panel, in hard copy and in electronic form, a copy of that statement or information; and
- (f) the notice of meeting, or the accompanying information, displays, in a prominent position, a disclaimer stating that, by granting the exemptions contained in this notice, the Panel is—
 - (i) neither endorsing nor supporting the accuracy or reliability of the contents of the notice of meeting or the accompanying information; and
 - (ii) not implying it has a view on the merits of the proposed transaction; and
- (g) every annual report from the year after the resolution is passed until the expiry of this notice contains, or is accompanied by, information prominently setting out—
 - (i) a general description of the employee share scheme and the share bonus scheme; and
 - (ii) a summary of the terms and the conditions of the exemptions in clause 9 and their effect; and
 - (iii) the maximum aggregate number of voting securities that could be allotted under the transaction; and
 - (iv) the maximum aggregate number of voting securities that could be allotted under the transaction, expressed as a percentage of the total voting securities on issue after the allotment; and

- (v) the maximum percentage of the total voting securities on issue that could be held or controlled by the combined Fulton family shareholders if the maximum number of voting securities were allotted under the transaction; and
- (vi) the maximum percentage of the total voting securities on issue that could be held or controlled by the combined Fulton family shareholders and the Fulton family shareholders' associates if the maximum number of voting securities were allotted under the transaction; and
- (h) the numbers and percentages referred to in paragraphs (b)(iv) and (g) are calculated on the basis that there is no change to the total number of voting securities on issue between the date that is 5 days prior to the date of the notice of meeting and the date of expiry of this notice other than as a result of the employee share scheme allotment or the share bonus scheme allotment, as the case may be.

Rights issue

11 Exemptions from rules 7(d) and 16(b) and (d) of Code in respect of rights issue

- (1) Each of the Fulton family shareholders is exempted from rule 7(d) of the Code to the extent that rule 7(d) requires the notice of meeting containing the proposed resolution in respect of the allotment of voting securities to Fulton family shareholders under the rights issue to comply with rules 16(b) and 16(d) of the Code.
- (2) Fulton Hogan is exempted from rule 16(b) and (d) of the Code in respect of the notice of meeting.

12 Conditions of exemptions in clause 11

The exemptions in clause 11 are subject to the conditions that—

- (a) the notice of meeting containing the resolution for shareholder approval under rule 7(d) of the Code contains, or is accompanied by, the following information:
 - (i) the issue price for the voting securities to be allotted under the rights issue, or the manner in which the issue price for the rights issue would be determined;
 - (ii) when the issue price would be payable, or the manner in which the dates for the payment of the issue price would be determined;
 - (iii) particulars of the voting securities that may be allotted to the Fulton family shareholders under the rights issue, including—

- (A) the maximum number of voting securities that could be allotted to the combined Fulton family shareholders under the rights issue; and
 - (B) the maximum number of voting securities that could be allotted to the combined Fulton family shareholders under the rights issue, expressed as a percentage of the total voting securities on issue after completion of all allotments under the rights issue; and
 - (C) the maximum percentage of the total voting securities on issue that could be held or controlled by the combined Fulton family shareholders after completion of all allotments under the rights issue; and
 - (D) the maximum percentage of the total voting securities on issue that could be held or controlled by the combined Fulton family shareholders and the Fulton family shareholders' associates after completion of all allotments under the rights issue:
 - (iv) a summary of the terms and conditions of the exemptions in clause 11; and
- (b) the form of the notice of meeting is approved by the Panel; and
 - (c) the notice of meeting, or the accompanying information, displays, in a prominent position, a disclaimer stating that, by granting the exemptions contained in this notice, the Panel is—
 - (i) neither endorsing nor supporting the accuracy or reliability of the contents of the notice of meeting or the accompanying information; and
 - (ii) not implying it has a view on the merits of the proposed transaction; and
 - (d) the numbers and percentages referred to in paragraph (a)(iii) are calculated on the basis that—
 - (i) there is no change to the total number of voting securities on issue between the date that is 5 days prior to the date of the notice of meeting and the date of expiry of this notice other than as a result of the rights issue:
 - (ii) the only allotments made under the rights issue are the allotments referred to in paragraph (a)(iii)(A).

Further condition of exemptions for Fulton family shareholders and restrictions on other acquisitions and increases in voting control

13 Further condition of exemptions in clauses 5, 7, 9, and 11 for Fulton family shareholders

The exemptions in clauses 5, 7, 9, and 11 for the Fulton family shareholders are subject to the further condition that each notice of meeting prepared under the conditions for the exemptions prominently discloses, or is accompanied by prominent disclosure of, the following, calculated as at the date that is 5 days prior to the notice of meeting:

- (a) the maximum percentage of voting securities that could be held or controlled by the combined Fulton family shareholders as a result of the combined effect of the buybacks, the Shell repurchase, the employee share scheme allotments, the share bonus scheme allotments, and the rights issue; and
- (b) the maximum percentage of voting securities that could be held or controlled by the combined Fulton family shareholders and the Fulton family shareholders' associates as a result of the combined effect of the buybacks, the Shell repurchase, the employee share scheme allotments, the share bonus scheme allotments, and the rights issue.

14 Restrictions on other acquisitions and increases in voting control greater than disclosed maximum by Fulton family shareholders

None of the exemptions in clauses 5, 7, 9, and 11 apply to any increase in voting control of a Fulton family shareholder if—

- (a) the total percentage of voting securities held or controlled by the combined Fulton family shareholders is greater than the maximum percentage of voting securities that could be held or controlled by the combined Fulton family shareholders as disclosed under clause 13(a); or
- (b) the combined Fulton family shareholders increase their voting control except as a result of a buyback, the Shell repurchase, an employee share scheme allotment, a share bonus scheme allotment, or the rights issue.

Further condition of exemptions for Hogan family shareholders and restrictions on other acquisitions and increases in voting control

15 Further condition of exemptions in clauses 5 and 7 for Hogan family shareholders

The exemptions in clauses 5 and 7 for the Hogan family shareholders are subject to the further condition that each notice of meeting prepared under the conditions for the exemptions prominently discloses, or is accompanied by prominent disclosure of, the following, calculated as at the date that is 5 days prior to the notice of meeting:

- (a) the maximum percentage of voting securities that could be held or controlled by the combined Hogan family shareholders as a result of the combined effect of the buybacks, the Shell repurchase, and the rights issue; and
- (b) the maximum percentage of voting securities that could be held or controlled by the combined Hogan family shareholders and the Hogan family shareholders' associates as a result of the combined effect of the buybacks, the Shell repurchase, and the rights issue.

16 Restrictions on other acquisitions and increases in voting control greater than disclosed maximum by Hogan family shareholders

The exemptions in clauses 5 and 7 do not apply to any increase in voting control of a Hogan family shareholder if—

- (a) the total percentage of voting securities held or controlled by the combined Hogan family shareholders is greater than the maximum percentage of voting securities that could be held or controlled by the combined Hogan family shareholders as disclosed under clause 15(a); or
- (b) the combined Hogan family shareholders increase their voting control except as a result of a buyback, the Shell repurchase, or the rights issue.

Fulton intra-family transfers

17 Exemptions from rule 6(1) of Code in respect of Fulton intra-family transfers

Each of the Fulton family shareholders is exempted from rule 6(1) of the Code in respect of any increase in that person's voting control that results from a transfer of voting securities to that person pursuant to a Fulton intra-family transfer.

18 Conditions of exemptions in clause 17

The exemptions in clause 17 are subject to the conditions that—

- (a) the maximum percentage of voting securities that can be transferred pursuant to the Fulton intra-family transfer is approved by an ordinary resolution of the shareholders of Fulton Hogan, and none of the Fulton family shareholders, nor any person who is or was at the time an associate of any of the Fulton family shareholders, votes in favour of the resolution; and
- (b) the notice of meeting containing the proposed resolution contains, or is accompanied by, the following information:
 - (i) the reasons for the Fulton intra-family transfer;
 - (ii) a description of the person or persons whose increase in voting control results or may result from the transfer of securities pur-

- suant to a Fulton intra-family transfer to be approved by the proposed resolution:
- (iii) particulars of the maximum percentage of total voting securities that can be transferred pursuant to all Fulton intra-family transfers in any 12-month period;
 - (iv) a statement to the effect that the increases in voting control of any of the Fulton family shareholders that would result from the Fulton intra-family transfers, if approved, are permitted as an exception to rule 6 of the Code;
 - (v) a summary of the terms and conditions of the exemption in clause 17; and
- (c) 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
 - (d) at the same time that Fulton Hogan or any Fulton family shareholder publishes or sends to the shareholders, in respect of the meeting, a statement or information that is not required to be published or sent by the rules of the Code, or by this clause as a condition of the exemptions in clause 17, that person also sends to the Panel, in hard copy and in electronic form, a copy of that statement or information; and
 - (e) the maximum number of voting securities that may be transferred under the exemptions in clause 17 pursuant to all Fulton intra-family transfers in any 12-month period is voting securities that carry in aggregate not more than 5% of the total voting rights in Fulton Hogan at the commencement of the 12-month period; and
 - (f) any transfer of voting securities that is effected under the provisions of any other exemption granted in respect of Fulton Hogan by the Panel is not taken into account for the purpose of the aggregate percentage limitation referred to in paragraph (e); and
 - (g) every annual report from the year after the resolution is passed until the expiry of this notice contains, or is accompanied by, information prominently setting out—
 - (i) a general description of the Fulton intra-family transfers; and
 - (ii) a summary of the terms and the conditions of the exemptions in clause 17 and their effect; and
 - (iii) the maximum percentage of total voting securities that can be transferred pursuant to all Fulton intra-family transfers in any 12-month period.

Hogan intra-family transfers

19 Exemptions from rule 6(1) of Code in respect of Hogan intra-family transfers

Each of the Hogan family shareholders is exempted from rule 6(1) of the Code in respect of any increase in that person's voting control that results from a transfer of voting securities to that person pursuant to a Hogan intra-family transfer.

20 Conditions of exemptions in clause 19

The exemptions in clause 19 are subject to the conditions that—

- (a) the maximum percentage of voting securities that can be transferred pursuant to the Hogan intra-family transfer is approved by an ordinary resolution of the shareholders of Fulton Hogan, and none of the Hogan family shareholders, nor any person who is or was at the time an associate of any of the Hogan family shareholders, may vote in favour of the resolution; and
- (b) the notice of meeting containing the proposed resolution contains, or is accompanied by, the following information:
 - (i) the reasons for the Hogan intra-family transfer;
 - (ii) a description of the person or persons whose increase in voting control results or may result from the transfer of securities pursuant to a Hogan intra-family transfer to be approved by the proposed resolution;
 - (iii) particulars of the maximum percentage of total voting securities that can be transferred pursuant to all Hogan intra-family transfers in any 12-month period;
 - (iv) a statement to the effect that the increases in voting control of any of the Hogan family shareholders that would result from the Hogan intra-family transfers, if approved, are permitted as an exception to rule 6 of the Code;
 - (v) a summary of the terms and conditions of the exemption in clause 19; and
- (c) 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
- (d) at the same time that Fulton Hogan or any Hogan family shareholder publishes or sends to the shareholders, in respect of the meeting, a statement or information that is not required to be published or sent by the rules of the Code, or by this clause as a condition of the exemptions in

- clause 19, that person also sends to the Panel, in hard copy and in electronic form, a copy of that statement or information; and
- (e) the maximum number of voting securities that may be transferred under the exemptions in clause 19 pursuant to all Hogan intra-family transfers in any 12-month period after the date on which the voting control of the combined Hogan family shareholders equals or exceeds 20% is voting securities that carry in aggregate not more than 5% of the total voting rights in Fulton Hogan at the commencement of the 12-month period; and
 - (f) any transfer of voting securities that is effected under the provisions of any other exemption granted in respect of Fulton Hogan by the Panel is not taken into account for the purpose of the aggregate percentage limitation referred to in paragraph (e); and
 - (g) every annual report from the year after the resolution is passed until the expiry of this notice contains, or is accompanied by, information prominently setting out—
 - (i) a general description of the Hogan intra-family transfers; and
 - (ii) a summary of the terms and the conditions of the exemptions in clause 19 and their effect; and
 - (iii) the maximum percentage of total voting securities that can be transferred pursuant to all Hogan intra-family transfers in any 12-month period.

21 Revocation

The Takeovers Code (Fulton Hogan Limited) Exemption Notice (No 2) 2007 (SR 2007/328) is revoked with effect from 26 November 2009.

Dated at Wellington this 26th day of November 2009.

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

[Seal]

David J Quigg,
Member.

Statement of reasons

This notice applies to acts or omissions occurring on or after 27 November 2009 and expires on 31 October 2015.

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

- Royal Dutch Shell plc and its direct and indirect wholly owned subsidiaries (**Shell**) from rule 6(1) of the Code, subject to conditions, in relation to any increase in the percentage of voting securities that are held or controlled (**voting control**) by Shell that results from Fulton Hogan Limited (**Fulton Hogan**) acquiring its own voting securities under Fulton Hogan's buyback programme (the **buyback**):
- any person who is a Fulton family shareholder (as that term is defined in this notice) from rule 6(1) of the Code, subject to conditions, in relation to any increase in that person's voting control that results from—
 - Fulton Hogan acquiring its own voting securities under the buyback:
 - Fulton Hogan acquiring up to all of its own voting securities from Shell (the **Shell repurchase**):
 - allotments of voting securities under Fulton Hogan's employee share scheme:
 - allotments of voting securities under Fulton Hogan's share bonus scheme:
 - transfers of voting securities between persons who are Fulton family shareholders:
- any person who is a Fulton family shareholder from rules 7(d) and 16(b) and (d) of the Code, subject to conditions, in relation to allotments of voting securities under a 1 for 12 pro rata non-renounceable offer to be made by Fulton Hogan to its shareholders (the **rights issue**):
- any person who is a Hogan family shareholder (as that term is defined in this notice) from rule 6(1) of the Code, subject to conditions, in relation to any increase in that person's voting control that results from—
 - Fulton Hogan acquiring its own voting securities under the buyback:

- Fulton Hogan acquiring its own voting securities under the Shell repurchase:
- transfers of voting securities between persons who are Hogan family shareholders.

It is arguable that the Fulton family shareholders are associates for the purposes of the Code. The exemptions were considered on the basis that the Fulton family shareholders are associates for the purposes of the Code. The persons who comprise the Fulton family shareholders hold or control more than 20% of the voting securities in Fulton Hogan. Given this, if any person who is a Fulton family shareholder increases their voting control as a result of the transactions referred to above, that person would breach rule 6(1) of the Code.

It is also arguable that the Hogan family shareholders are associates for the purposes of the Code. Their exemptions were also considered on the basis that the Hogan family shareholders are associates for the purposes of the Code. The persons who comprise the Hogan family shareholders hold or control less than 20% of the voting securities in Fulton Hogan at the date of this notice, but will hold or control more than 20% of the voting securities in Fulton Hogan as a result of the Shell repurchase and the buyback. That would constitute a breach of rule 6(1) of the Code by any person who is a Hogan family shareholder. Further, once that 20% level is exceeded, then if any person who is a Hogan family shareholder increases their voting control as a result of the Shell repurchase or the buyback, that person would breach rule 6(1) of the Code.

Shell currently holds or controls more than 20% of the voting securities in Fulton Hogan. If Fulton Hogan decides to acquire its own voting securities under the buyback, then Shell, which will not participate in the buyback, will increase its voting control in breach of rule 6(1) of the Code.

Buybacks

The Panel considers that the exemptions for Shell, the Fulton family shareholders, and the Hogan family shareholders from rule 6(1) of the Code in relation to any future increases in their voting control that result from Fulton Hogan acquiring its own voting securities under the buyback are appropriate and consistent with the objectives of the Code for the reason that the conditions to the exemptions require that the buyback is approved by shareholders. Multiple resolutions in respect of shareholder approval are permitted, and the conditions to the exemption ensure that a person whose voting control will or may increase as a result of the buyback to be approved by a resolution cannot vote on the resolution, and neither can any associate of such a person.

Shell repurchase

The Panel considers that the exemptions for the Fulton family shareholders and the Hogan family shareholders from rule 6(1) of the Code in relation to any future increases in their voting control that result from Fulton Hogan acquiring its own voting se-

curities under the Shell repurchase are appropriate and consistent with the objectives of the Code for the reason that the conditions to the exemptions require that the possible increases in voting control resulting from the Shell repurchase are approved by shareholders not associated with the party increasing their voting control.

Allotments of voting securities under Fulton Hogan’s employee share scheme and share bonus scheme

The Panel considers that the exemption for any person who is a Fulton family shareholder from rule 6(1) of the Code in relation to any increase in that person’s voting control that results from that person being allotted voting securities under Fulton Hogan’s employee share scheme or share bonus scheme is appropriate and consistent with the objectives of the Code for the following reasons:

- all non-associated shareholders will have an opportunity to vote on the potential allotment of voting securities to all members of the Fulton family shareholders in aggregate under those schemes:
- as the Fulton family shareholders are assumed to all be associates for the purposes of the Code and essentially 1 voting group, the conditions of the exemptions allow the notice of meeting to specify the maximum number of voting securities that will be allotted to all members of the Fulton family shareholders in aggregate:
- if the non-associated shareholders approve the potential maximum allotment of voting securities to the Fulton family shareholders, then, by implication, the shareholders also approve any lesser percentage of voting rights that may be acquired due to the allotment of voting securities under those schemes.

Transfers of voting securities between Fulton family shareholders

The Panel considers that the exemption for any person who is a Fulton family shareholder from rule 6(1) of the Code in relation to any increase to that person’s voting control that results from that person being transferred voting securities in Fulton Hogan from another person who is also a Fulton family shareholder is appropriate and consistent with the objectives of the Code for the following reasons:

- the transactions covered by the exemptions are confined to those that take place under Fulton Hogan’s constitution, the principal purpose of which is to facilitate transfers of voting securities between family interests, not changes of control of voting rights:
- there are restrictions on the transfer of voting securities that may take place in any 12-month period to limit the possibility of a change of control occurring without using one of the mechanisms of the Code:
- intra-family transfers permitted by the exemption will not result in an effective change in the control of voting rights in Fulton Hogan.

Transfers of voting securities between Hogan family shareholders

The Panel considers that the exemption for any person who is a Hogan family shareholder from rule 6(1) of the Code in relation to any increase to that person's voting control that results from that person being transferred voting securities in Fulton Hogan from another person who is also a Hogan family shareholder is appropriate and consistent with the objectives of the Code for the following reasons:

- the transactions covered by the exemptions are confined to those that take place under Fulton Hogan's constitution, the principal purpose of which is to facilitate transfers of voting securities between family interests, not changes of control of voting rights;
- there are restrictions on the transfer of voting securities that may take place in any 12-month period to limit the possibility of a change of control occurring without using one of the mechanisms of the Code;
- intra-family transfers permitted by the exemption will not result in an effective change in the control of voting rights in Fulton Hogan.

Rights issue

The Panel considers that the exemption for any person who is a Fulton family shareholder from rules 7(d) and 16(b) and (d) of the Code in relation to the rights issue is appropriate and consistent with the objectives of the Code for the following reasons:

- it is impossible to comply with rule 16(b) of the Code by stating the actual number of voting securities to be allotted and the relevant percentages in the notice of meeting, as these numbers and percentages are dependent on a number of factors outside Fulton Hogan's control;
- it is unlikely that rule 16(d) of the Code will be able to be complied with by stating the issue price for the voting securities to be allotted and when it is payable in the notice of meeting, as that pricing and timing is unlikely to have been determined at the time of that notice;
- all non-associated shareholders will have an opportunity to vote on the potential allotment of voting securities to all members of the Fulton family shareholders under the rights issue;
- as the Fulton family shareholders are assumed to all be associates for the purposes of the Code and essentially 1 voting group, the conditions of the exemptions allow the notice of meeting to specify the maximum number of voting securities that will be allotted to all members of the Fulton family shareholders in aggregate;
- if the non-associated shareholders approve the potential maximum allotment of voting securities to the Fulton family shareholders, then, by implication, the shareholders also approve any lesser percentage of voting rights that may be acquired due to the allotment of voting securities under the rights issue;
- rights issues are an acknowledged method of providing incentives to shareholders to participate in and contribute to a company's growth as well as providing

a company with a means of raising equity capital in New Zealand. The Panel should facilitate this by granting appropriate exemptions where necessary.

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*: 3 December 2009.

Reprints notes

1 *General*

This is a reprint of the Takeovers Code (Fulton Hogan Limited) Exemption Notice 2009 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 (Fulton Hogan Limited) Exemption Notice 2009 (SR 2009/379): clause 3