



Takeovers Code (New Zealand Clearing Limited and New Zealand Depository Limited) Exemption Notice 2010

Pursuant to section 45 of the Takeovers Act 1993, the Takeovers Panel gives the following notice (to which is appended a statement of reasons of the Takeovers Panel).

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Notice

- 1 Title**
This notice is the Takeovers Code (New Zealand Clearing Limited and New Zealand Depository Limited) Exemption Notice 2010.

2 Application

This notice applies to acts or omissions occurring on or after 15 June 2010.

3 Expiry

This notice expires on the close of 15 June 2015.

4 Interpretation

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

Act means the Takeovers Act 1993

clearing and settlement rules means NZ Clearing's clearing and settlement rules, and includes all amendments made to those rules

clearing house means the central counterparty clearing house operated by NZ Clearing

clearing participant means a person who is entitled to undertake clearing and settlement and associated depository activities under the clearing and settlement rules and the depository rules

Code means the Takeovers Code under the Act

depository means the central product depository operated by NZ Depository

depository rules means NZ Depository's depository operating rules, and includes all amendments made to those rules

NZ Clearing means New Zealand Clearing Limited

NZ Depository means New Zealand Depository Limited

upstream party means,—

(a) in relation to a clearing participant, any other person who directly or indirectly has effective control over the clearing participant; and

(b) in relation to NZ Clearing and NZ Depository, NZX Limited and New Zealand Clearing and Depository Corporation 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 the voting rights in a code company.

- (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 relating to clearing house

NZ Clearing and its upstream parties are exempted from rule 6(1) of the Code in respect of an increase in their voting control—

- (a) as a result of the exercise by NZ Clearing of any power, or the performance by NZ Clearing of any function, in accordance with the clearing and settlement rules or the depository rules; or
- (b) as a consequence of any event or circumstance affecting NZ Clearing in its capacity as operator of the clearing house.

6 Exemption from rule 6(1) of Code relating to depository

NZ Depository and its upstream parties are exempted from rule 6(1) of the Code in respect of an increase in their voting control—

- (a) as a result of the exercise by NZ Depository of any power, or the performance by NZ Depository of any function, in accordance with the depository rules; or
- (b) as a consequence of any event or circumstance affecting NZ Depository in its capacity as operator of the depository.

7 Condition of exemptions in clauses 5 and 6

The exemptions in clauses 5 and 6 are subject to the condition that the increase in NZ Clearing's, NZ Depository's, or their upstream parties' voting control is only for the purposes of—

- (a) clearing and settling transactions through the clearing house; or
- (b) operating the depository.

8 Exemption for clearing participants from rule 6(1) of Code

All clearing participants and their upstream parties are exempted from rule 6(1) of the Code in respect of an increase in their voting control.

9 Conditions of exemption in clause 8

The exemption in clause 8 is subject to the conditions that—

- (a) the increase in a clearing participant's or its upstream parties' voting control results only from the clearing participant acting in respect of the clearing and settlement of a transaction through the clearing house; and
- (b) the clearing participant and its upstream parties are not beneficiaries under the transaction and do not, directly or indirectly, have effective control over a beneficiary; and
- (c) the clearing participant exercises the voting rights that relate to the increase in voting control only at the direction of a beneficiary.

10 Exemption for associates from rule 6(1) of Code

Every person (**person A**) who is an associate of a person who is exempted by clause 5, 6, or 8 from rule 6(1) of the Code (a **principal exempted person**) is exempted from rule 6(1) of the Code in respect of any increase in person A's voting control.

11 Conditions of exemption in clause 10

The exemption in clause 10 is subject to the conditions that—

- (a) person A does not control the principal exempted person's voting rights; and
- (b) the increase in voting control by person A would comply with rule 6(1) of the Code if the voting rights held or controlled by the principal exempted person in its capacity as an operator of, or a participant in, the clearing house or the depository were held and controlled by a person who is not an associate of person A.

Dated at Wellington this 15th day of June 2010.

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

[Seal]

Colin G Giffney,
Deputy Chairperson.

Statement of reasons

This notice applies to acts or omissions occurring on or after 15 June 2010 and expires on 15 June 2015.

NZX Limited is proposing to establish a new clearing house.

The clearing house will be operated by a subsidiary of NZX Limited, New Zealand Clearing Limited (**NZ Clearing**). Settlement will occur in a depository that will be operated by another subsidiary of NZX Limited, New Zealand Depository Limited (**NZ Depository**).

The clearing house's clearing and settlement system (**CSS**) is to be the platform through which trades on NZX Limited's markets are settled. The depository is the central product depository. The depository enables (among other things) electronic custody, delivery, recording, and settlement of interests in products, including securities, traded through the CSS.

A broad range of products, including securities with voting rights in code companies, will be cleared and settled through the CSS and held in the depository.

The process by which voting securities are cleared and settled may result in persons who are entitled to undertake clearing and settlement and associated depository activities under the relevant rules of the CSS (the **clearing participants**), and NZ Clearing and NZ De-

pository, temporarily becoming the holders or controllers of voting rights in code companies.

Exemptions for NZ Clearing, NZ Depository, New Zealand Clearing and Depository Corporation Limited, and NZX Limited

Clauses 5 and 6 of the notice exempt NZ Clearing and NZ Depository and their upstream controllers, New Zealand Clearing and Depository Corporation Limited and NZX Limited, from rule 6(1) of the Takeovers Code (the **Code**) in respect of any increase in their respective voting control in a code company as a result of the exercise by NZ Clearing or NZ Depository of any power or the performance by NZ Clearing or NZ Depository of any function under the rules of the CSS, or otherwise as a consequence of any event or circumstance affecting NZ Clearing or NZ Depository in their respective capacities as operators under the rules of the CSS.

The Takeovers Panel (the **Panel**) considers that the exemptions for NZ Clearing, NZ Depository, and their upstream parties are appropriate and consistent with the objectives of the Code because—

- the exemptions apply only in the course of NZ Clearing and NZ Depository's clearing and settlement and depository functions; and
- the holding or control of voting rights by NZ Clearing and NZ Depository would be incidental to, or in connection with, carrying out their clearing and settlement and depository roles and is necessary to ensure a robust clearing and settlement system; and
- the Code will apply to the holding and control of voting rights by beneficial owners, and by CSS participants, acting in their own right; and
- the exemptions maintain a proper relationship between the cost of compliance with the Code and the benefits arising from it.

Exemption for clearing participants and upstream parties

Clause 8 of the notice exempts clearing participants and upstream parties of those clearing participants from rule 6(1) of the Code in respect of any increase in their voting control in code companies as

a result of the holding or controlling of voting rights as part of the clearing and settlement of a transaction through the CSS.

Clearing participants, either in their own right or together with associates, may hold or control more than 20% of the voting securities in a public issuer when carrying out the clearing and settlement of a transaction through the CSS.

It would not be practical for clearing participants to carry out clearing and settlement transactions if it were first necessary for them to comply with (or obtain specific exemptions from) the Code. Without this exemption, rule 6(1) of the Code would effectively preclude clearing participants from carrying out clearing and settlement transactions.

The Panel considers that the exemption for clearing participants and their upstream parties is appropriate and consistent with the objectives of the Code because the conditions of exemption ensure that the policy of the Code is complied with by requiring that the voting rights are controlled by the beneficial owner of the voting securities.

Exemption for associates

Clause 10 of the notice exempts associates of any of the persons exempted under *clause 5, 6, or 8 (principal exempted persons)*.

The Panel considers that the exemption for associates of the principal exempted persons is appropriate and consistent with the objectives of the Code because it is consequential to the exemptions in *clauses 5, 6, and 8* of the notice and applies only to the extent that the principal exempted persons have the benefit of those exemptions.

Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 17 June 2010.

This notice is administered by the Takeovers Panel.
