

**Reprint  
as at 7 August 2013**



**Takeovers Code (Veritas  
Investments Limited) Exemption  
Notice 2013**

(SR 2013/96)

Takeovers Code (Veritas Investments Limited) Exemption Notice 2013:  
revoked, on 7 August 2013, by clause 8 of the Takeovers Code (Veritas  
Investments Limited) Exemption Notice (No 2) 2013 (SR 2013/313).

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 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 (Veritas Investments Limited) Exemption Notice 2013.

**2 Application**  
This notice applies to acts or omissions occurring on or after 6 March 2013.

**3 Revocation**  
This notice is revoked on the close of 31 December 2015.

**4 Interpretation**  
(1) In this notice, unless the context otherwise requires,—  
**Act** means the Takeovers Act 1993  
**CAM** means Collins Asset Management Limited  
**CIP** means Craigs Investment Partners Limited  
**Code** means the Takeovers Code under the Act  
**Cook** means Timothy John Cook  
**Darrow** Mark Charles Darrow  
**MBH** means Mad Butcher Holdings Limited  
**meeting** means the meeting of shareholders of VIL that is to be held on or about 3 April 2013 to approve (amongst other things) the specified transactions  
**Michael Morton No. 2 Family Trust** means the Michael Morton No. 2 Family Trust established by deed of trust dated 10 November 2005  
**Morton** means Michael John Morton

**notice of meeting** means the notice to be sent to shareholders of VIL in respect of the meeting and that contains the proposed resolution to approve the specified transactions

**other-means increase** means an increase in voting control that is effected by a means other than an allotment under a specified transaction

**prospectus** means a registered prospectus, prepared in accordance with the Securities Act 1978, relating to the public offer that is to be dated on or about 6 March 2013

**public offer** means the public offer of voting securities under the prospectus

**RMI** means RMI Holdings Limited

**sale and purchase agreement** means the agreement for the sale of the Mad Butcher business from MBH to VIL dated 20 December 2012 between, among others, VIL and MBH

**specified allottee** means each of the following:

- (a) MBH:
- (b) CAM:
- (c) Cook:
- (d) Darrow:
- (e) Wallace

**specified corporate allottee** means each of the following:

- (a) MBH:
- (b) CAM

**specified transaction** means each of the following:

- (a) the sale and purchase agreement:
- (b) the public offer:
- (c) the underwriting arrangements

**transfer period** means the period commencing on the date of the meeting and ending on 31 October 2015

**trustees** means the persons who are from time to time appointed as trustees of the Michael Morton No. 2 Family Trust under the deed of trust dated 10 November 2005, each in his or her capacity as a trustee of that trust, being at the date of this notice Morton and WBM Trustee Limited

**underwriting arrangements** means—

- (a) the arrangements between VIL and CIP for partially underwriting the public offer, as set out in an underwriting agreement dated 20 December 2012; and
- (b) the arrangements between VIL, CIP, and CAM for partially sub-underwriting the public offer, as set out in a sub-underwriting agreement dated 20 December 2012; and
- (c) the arrangements between VIL, CIP, and RMI for partially sub-underwriting the public offer, as set out in a sub-underwriting agreement dated 20 December 2012

**VIL** means Veritas Investments Limited

**voting security** means a voting security in VIL

**Wallace** means Simon Phillip Wallace and Sievwrights Trustee Services (No. 4) Limited as trustees of the Wallace Family Trust

**WHL** means Wilmot Holdings 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 VIL.
- (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.

### *Allotments*

#### **5 Exemption from rule 7(d) of Code**

In relation to an increase in voting control resulting from an allotment of voting securities under a specified transaction, the specified allottee is exempted from rule 7(d) of the Code to the extent that that rule requires the notice of meeting to comply with rule 16(b) of the Code.

#### **6 Exemption from rule 16(b) of Code**

In relation to an increase in voting control resulting from an allotment of voting securities under a specified transaction, VIL is exempted from rule 16(b) of the Code.

**7 Conditions of exemptions in clauses 5 and 6**

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

- (a) VIL discloses in the notice of meeting the information specified in clause 2 of the Schedule in accordance with the requirements of clause 3 of the Schedule; and
- (b) VIL and the specified allottees (as applicable) comply with clauses 4 to 6 of the Schedule.

*Transfer to trustees*

**8 Exemption from rule 6(1) of Code**

- (1) The trustees are exempted from rule 6(1) of the Code in respect of any increase in the trustees' voting control during the transfer period.
- (2) The exemption in subclause (1) is subject to the conditions that—
  - (a) the increase in trustees' voting control results from a transfer of voting securities from WHL to the trustees; and
  - (b) the trustees have control of those voting securities before and after their transfer; and
  - (c) during the transfer period, there is no change of control of MBH or WHL, unless the change of control is as a result of—
    - (i) a person becoming a trustee; or
    - (ii) a reduction in the number of trustees.

**9 Conditions of exemption in clause 8 relating to Michael Morton No. 2 Family Trust**

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

- (a) the Michael Morton No. 2 Family Trust continues for, or mainly for, the benefit of 1 or more of the following persons:
  - (i) the settlor or appointer of that trust;
  - (ii) a relative or relatives of the settlor or appointer;
  - (iii) a person or persons for whom the settlor or appointer has natural love and affection; and

- (b) the trust deed establishing the Michael Morton No. 2 Family Trust requires the trustees to act unanimously; and
- (c) an appointment of a new trustee or reduction in the number of trustees—
  - (i) reflects a bona fide reorganisation of the Michael Morton No. 2 Family Trust or is the result of an event beyond the control of the trustees; and
  - (ii) does not have as one of its purposes the purpose of enabling a person to increase the person's voting control, or the extent to which that person shares in the voting control, otherwise than in compliance with the Code; and
- (d) but for rule 6(2) of the Code, any appointment of a new trustee or reduction in the number of trustees does not result in an increase in the percentage of voting rights held or controlled by the trustees or the extent to which the trustees share in the voting control.

**10 Condition of exemption in clause 8 relating to other-means increases**

- (1) The exemption in clause 8 is subject to the condition that during the transfer period the trustees must not increase their voting control by way of an other-means increase unless the other-means increase—
  - (a) is by an acquisition of voting securities approved in accordance with rule 7(c) of the Code; or
  - (b) is by an allotment of voting securities approved in accordance with rule 7(d) of the Code; or
  - (c) is permitted by another exemption granted by the Panel.
- (2) If approval by VIL's shareholders is required under subclause (1)(a) or (b), the notice of meeting containing the resolution to approve the other-means increase must contain or be accompanied by the following:
  - (a) a summary of the terms of each of the specified transactions;
  - (b) a statement, as at the date of the notice of meeting containing the resolution to approve the other-means increase, of the following particulars:

- (i) the number of voting securities allotted to the trustees under the specified transactions:
  - (ii) the number of voting securities on issue that are held or controlled by the trustees, and the percentage of all voting securities on issue that that number represents:
  - (iii) the percentage of all voting securities on issue that are held or controlled, in aggregate, by the trustees and the trustees' associates:
  - (iv) the maximum percentage of all voting securities on issue that could be held or controlled by the trustees on completion of all allotments that could be made under the specified transactions:
  - (v) the maximum percentage of all voting securities on issue that could be held or controlled, in aggregate, by the trustees and the trustees' associates on completion of all allotments that could be made under the specified transactions:
  - (vi) the maximum percentage of all voting securities on issue that could be held or controlled by the trustees after the other-means increase and on completion of all allotments that could yet be made under the specified transactions:
  - (vii) the maximum percentage of all voting securities on issue that could be held or controlled, in aggregate, by the trustees and the trustees' associates after the other-means increase and on completion of all allotments that could yet be made under the specified transactions:
- (c) a statement of the assumptions on which the particulars referred to in paragraph (b) are based.

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**Schedule**  
**Conditions of exemptions in clauses 5**  
**and 6**

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**1 Interpretation**

In this schedule, unless the context otherwise requires,—

**allotment period** means the period starting on the date of the meeting and ending on the date of the last allotment under the specified transactions

**approved maximum number**, in relation to a specified allottee, means the maximum number of voting securities that could be allotted to that specified allottee under the specified transactions, and that is the number required to be disclosed under clause 2(c)(i)

**approved maximum percentage**, in relation to a specified allottee, means the maximum percentage of all voting securities on issue that that specified allottee could hold or control on completion of the specified transactions, and that is the percentage figure required to be disclosed under clause 2(c)(iii)

**calculation date** means the date, identified in the notice of meeting, used for determining the matters referred to in clause 2

**firm allocations** means—

- (a) an application for voting securities under the public offer having an aggregate subscription price of \$7.5 million to be made by CAM; and
- (b) an application for voting securities under the public offer having an aggregate subscription price of \$2 million to be made by Ambrosia Trustees Limited; and
- (c) an application for voting securities under the public offer having an aggregate subscription price of \$200,000 to be made by RMI; and
- (d) an application for voting securities under the public offer having an aggregate subscription price of \$500,000 to be made by Cook; and
- (e) an application for voting securities under the public offer having an aggregate subscription price of \$100,000 to be made by Darrow; and
- (f) an application for voting securities under the public offer having an aggregate subscription price of \$100,000 to be made by Wallace.

## 2 Notice of meeting

The notice of meeting must contain, or be accompanied by, the following:

- (a) full particulars of each specified transaction:
- (b) the name of each specified allottee:
- (c) the following particulars in relation to the voting securities to be allotted to each specified allottee under the specified transactions:
  - (i) the approved maximum number:
  - (ii) the approved maximum number expressed as a percentage of all voting securities on issue after the allotment of all voting securities under the specified transactions:
  - (iii) the approved maximum percentage:
  - (iv) the maximum percentage of all voting securities on issue that the specified allottee and the specified allottee's associates could hold or control in aggregate on completion of the specified transactions:
- (d) a statement, in addition to the statement required by rule 16(f) of the Code, that the disclosures made in the notice of meeting have been modified in reliance on the exemption set out in the Takeovers Code (Veritas Investments Limited) Exemption Notice 2013:
- (e) the assumptions on which the particulars referred to in paragraph (c) are based, which must include the assumptions referred to in clause 3(2):
- (f) the calculation date.

### **3 Assumptions**

- (1) The assumptions set out in subclause (2) must be applied for the purposes of providing the particulars specified in clause 2(c).
- (2) The assumptions are as follows:
  - (a) that the number of voting securities is the number of voting securities on issue on the calculation date:
  - (b) that there is no change in the total number of voting securities on issue between the calculation date and the end of the allotment period, other than as a result of the specified transactions:

- (c) that, in relation to clause 2(c)(i) to (iii), the specified allottee is allotted the approved maximum number under the specified transactions, as follows:
- (i) in the case of the public offer, the only allotments of voting securities are under the firm allocations and no other allotments of voting securities are made;
  - (ii) in the case of the underwriting arrangements, CAM and RMI are allotted the maximum number of voting securities that they could be allotted under the underwriting arrangements, if the only allotments of voting securities under the public offer are under the firm allocations;
  - (iii) in the case of the allotment of voting securities to MBH under the sale and purchase agreement, MBH is allotted the maximum number of voting securities that it could be allotted under the sale and purchase agreement, if the only allotments under the public offer and underwriting arrangements are as described in subparagraphs (i) and (ii):
- (d) that, in relation to clause 2(c)(iv), the specified allottee and each of the specified allottee's associates are allotted the maximum number of voting securities under the specified transactions in the manner described in paragraph (c)(i) to (iii) (which must be read as if the references to a specified allottee were references to the specified allottee together with each of the specified allottee's associates):
- (e) any other assumptions that are reasonably necessary to ensure that shareholders are provided with the material information required for them to be able to determine whether to approve the resolution approving the specified transactions.

#### **4 Restriction on increase above approved maximum percentage**

Until the completion of all allotments of voting securities under the specified transactions, a specified allottee must not

hold or control a percentage of voting securities that exceeds the approved maximum percentage, except as a result of an other-means increase that complies with clause 5.

**5 Other-means increases**

- (1) Until the completion of all allotments under the specified transactions, a specified allottee must not increase its voting control by way of an other-means increase unless the other-means increase—
  - (a) is by an acquisition of voting securities approved in accordance with rule 7(c) of the Code; or
  - (b) is by an allotment of voting securities approved in accordance with rule 7(d) of the Code; or
  - (c) is permitted by another exemption granted by the Panel.
- (2) If approval by VIL's shareholders is required under subclause (1)(a) or (b), the notice of meeting containing the resolution to approve the other-means increase must contain or be accompanied by the following:
  - (a) a summary of the terms of each specified transaction:
  - (b) a statement, as at the date of the notice of meeting containing the resolution to approve the other-means increase, of the following particulars in relation to each specified allottee:
    - (i) the number of voting securities allotted to the specified allottee under the specified transactions:
    - (ii) the number of voting securities on issue that are held or controlled by the specified allottee, and the percentage of all voting securities on issue that that number represents:
    - (iii) the percentage of all voting securities on issue that are held or controlled, in aggregate, by the specified allottee and the specified allottee's associates:
    - (iv) the maximum percentage of all voting securities on issue that could be held or controlled by the specified allottee on completion of all allotments that could yet be made under the specified transactions:

- (v) the maximum percentage of all voting securities on issue that could be held or controlled, in aggregate, by the specified allottee and the specified allottee's associates on completion of all allotments that could yet be made under the specified transactions:
  - (vi) the maximum percentage of all voting securities on issue that could be held or controlled by the specified allottee after the other-means increase and on completion of all allotments that could yet be made under the specified transactions:
  - (vii) the maximum percentage of all voting securities on issue that could be held or controlled, in aggregate, by the specified allottee and the specified allottee's associates after the other-means increase and on completion of all allotments that could yet be made under the specified transactions:
  - (c) a statement of the assumptions on which the particulars referred to in paragraph (b) are based.
- (3) If an other-means increase is approved by shareholders in accordance with this clause, the reference in clause 4 to the approved maximum percentage must be taken to be a reference to the approved maximum percentage adjusted to take account of the other-means increase.

**6 Change of control in specified corporate allottee**

- (1) Until the completion of all allotments under the specified transactions, there must be no change of control in a specified corporate allottee that results in another person becoming the holder or controller of voting rights or an increased percentage of voting rights unless the change of control in the specified corporate allottee—
- (a) is by an acquisition of voting securities in the specified corporate allottee approved by an ordinary resolution of VIL in accordance with rule 7(c) of the Code; or
  - (b) is by an allotment of voting securities in the specified corporate allottee approved by an ordinary resolution of VIL in accordance with rule 7(d) of the Code; or

- (c) is permitted under another exemption granted by the Panel.
- (2) If approval of VIL's shareholders is required under subclause (1)(a) or (b), the notice of meeting containing the resolution to approve the change of control must contain or be accompanied by the following information:
  - (a) a summary of the terms of each of the specified transactions, as approved at the meeting:
  - (b) a statement, as at the date of the notice of meeting containing the resolution to approve the change of control, of the numbers and percentages referred to in clause 5(2)(b):
  - (c) a statement of the assumptions on which the particulars referred to in paragraph (b) are based.

Dated at Auckland this 1st day of March 2013.

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

[Seal]

D O Jones,  
Chairperson.

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**Statement of reasons**

This notice applies to acts or omissions occurring on or after 6 March 2013 and is revoked on the close of 31 December 2015.

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

- an exemption from rule 16(b) of the Takeovers Code (the **Code**) to Veritas Investments Limited (**VIL**); and
- an exemption from rule 7(d) of the Code to Mad Butcher Holdings Limited (**MBH**), Collins Asset Management Limited (**CAM**), Timothy John Cook (**Cook**), Mark Charles Darrow (**Darrow**), and Simon Phillip Wallace and Sievwrights Trustee Services (No. 4) Limited as trustees of the Wallace Family Trust (**Wallace**) (together the **specified allottees**) to the extent that that rule requires the notice of meeting to vote on a resolution to approve the allotment of certain voting securities in VIL to the specified allottees to comply with rule 16(b) of the Code; and
- an exemption from rule 6(1) of the Code to the trustees of the Michael Morton No. 2 Family Trust from time to time (currently Michael Morton and WBM Trustee Limited) in their capacity as trustees (the **trustees**) in respect of any increase in their holding of voting securities in VIL that results from a transfer of voting securities in VIL from Wilmat Holdings Limited (**WHL**) to the trustees.

### **Allotments**

VIL is a code company with shares quoted on the NZX Main Board. VIL has entered into an agreement (the **sale and purchase agreement**) to acquire the Mad Butcher business and assets from MBH for a purchase price of \$40 million, to be satisfied by \$20 million in cash and \$20 million in ordinary shares in VIL (the **acquisition**).

To fund the cash component of the acquisition, VIL proposes to undertake a public offering of up to \$25 million of ordinary shares in VIL (the **public offer**). Allotment of shares under the public offer will occur simultaneously with completion (and allotment of shares to MBH) under the acquisition.

VIL has received firm commitments to subscribe for shares under the public offer from the following parties:

- CAM, a 16.93% shareholder in VIL, for \$7.5 million of shares:
- Ambrosia Trustees Limited, for \$2.0 million of shares:
- Cook, for \$500,000 of shares:
- RMI Holdings Limited (**RMI**), for \$200,000 of shares:

- Darrow, for \$100,000 of shares:
- Wallace, for \$100,000 of shares.

The public offer will also be partly underwritten as to \$12.7 million by Craigs Investment Partners Limited (**CIP**), which has in turn entered into sub-underwriting agreements with CAM as to \$2.5 million and RMI as to \$2.0 million (together the **underwriting arrangements**). Amounts subscribed by CAM, Cook, and RMI as firm commitments, together with the sub-underwriting commitments of CAM and RMI, will fully reduce CIP's underwriting obligation.

If CAM was required to take up the maximum number of shares that it could be required to subscribe for under the underwriting arrangements, together with the number of shares that it has entered into a firm commitment to subscribe for under the public offer, its holding of voting rights in VIL would be greater than 20%.

VIL and MBH have agreed that MBH will hold less than 50% of the aggregate shares on issue in VIL following completion of the acquisition and the public offer. If the public offer is undersubscribed such that the number of shares to be allotted under it would be insufficient to ensure that MBH will hold less than 50% of the shares on issue after allotment of the shares to MBH under the acquisition, the share and cash components of the purchase price under the acquisition will be adjusted and MBH will receive fewer shares and more cash (or MBH may provide a vendor loan to VIL). Depending on the level of subscriptions under the public offer, MBH could hold up to 49.99% of the voting rights in VIL following completion of the acquisition and the public offer.

Cook is an associate of CAM because Cook is managing director of CAM. Cook and Darrow are directors of VIL and, together with Simon Phillip Wallace, a former director of VIL, were responsible for the development of the acquisition. Darrow and Wallace have agreed to be treated as associates of Cook and CAM for the purposes of these transactions.

At a meeting of shareholders to be held on or about 3 April 2013, VIL proposes to ask shareholders to approve the following allotments of shares in VIL under rule 7(d) of the Code:

- the allotment of shares to MBH under the sale and purchase agreement:

- the allotment of shares to CAM under its firm commitment under the public offer and the underwriting arrangements:
- the allotment of shares to Cook, Darrow, and Wallace, as associates of CAM, under their firm commitments under the public offer.

However, VIL is unable to provide the information that is required by rule 16(b) of the Code to be included in the notice of meeting for shareholder approval because VIL is unable to specify—

- the exact numbers of shares that will be allotted to MBH under the sale and purchase agreement and to CAM in aggregate in accordance with its firm commitment under the public offer and the underwriting arrangements (and the related relevant percentages required to be stated under rule 16(b)), because they will depend on the level of subscriptions under the public offer and will not be known until the close of the public offer; and
- the exact percentages required to be stated under rule 16(b) in relation to the shares that will be allotted to Cook, Darrow, and Wallace in accordance with their firm commitments under the public offer, as these percentages are dependent upon the level of subscriptions under the public offer and will not be known until the close of the public offer.

The exemptions from rules 7(d) and 16(b) of the Code in *clauses 5 and 6* of the notice relate to the disclosure of information in the notice of meeting to consider the allotments to the specified allottees, and the particulars of the voting securities to be allotted to those specified allottees under the sale and purchase agreement (in the case of MBH), the public offer (in the case of CAM, Cook, Darrow, and Wallace), and the underwriting arrangements (in the case of CAM) (together the **allotments**).

The exemptions are subject to conditions that ensure that the other shareholders in VIL will be given sufficient information about the allotments to enable them to decide for themselves the merits of the proposal.

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

- it is not possible for VIL to comply with rule 16(b) given the uncertainty over the level of subscriptions under the public offer; and
- other shareholders will be given sufficient information about the allotments to enable them to decide for themselves the merits of the proposal; and
- other shareholders will have the opportunity to vote on the potential allotment of voting securities to the specified allottees under the allotments; and
- if the other shareholders approve the potential maximum allotments of voting securities to the specified allottees, then, by implication, they are able to be taken to approve any lesser number and percentage of voting securities that are actually allotted under the allotments during the period of this notice.

#### **Transfer to trustees**

MBH is a wholly owned subsidiary of Wilmat Holdings Limited (**WHL**), which is itself wholly owned by the trustees.

WHL proposes to liquidate MBH following the expiry of the warranty claims period under the sale and purchase agreement and to transfer MBH's shares to WHL. Any transfer from MBH to WHL will take place in reliance on the exemption from rule 6(1) of the Code for transfers within wholly owned groups in clause 25 of the Takeovers Code (Class Exemptions) Notice (No 2) 2001 (the **transfers within wholly owned groups exemption**).

The trustees then propose to liquidate WHL and distribute the shares held by WHL to the trustees. This transfer will not be able to take place in reliance on the transfers within wholly owned groups exemption because the trustees include an individual. To the extent WHL is transferring more than 20% of the voting rights in VIL, this transfer would breach rule 6(1) of the Code.

The exemption from rule 6(1) of the Code relates to the transfer of voting securities from WHL to the trustees.

The exemption also permits the appointment of a new trustee or the reduction in the number of trustees of the Michael Morton No. 2 Family Trust for a bona fide reorganisation of the trust, or that is the

result of an event beyond the control of the trustees, where there is no increase in voting control in VIL on behalf of that trust.

The Panel considers that it is appropriate and consistent with the objectives of the Code to grant this exemption because there is no change in the ultimate control of the voting rights, which will remain with the trustees before and after the transfer.

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Issued under the authority of the Acts and Regulations Publication Act 1989.  
Date of notification in *Gazette*: 4 April 2013.

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## **Reprints notes**

### **1    *General***

This is a reprint of the Takeovers Code (Veritas Investments Limited) Exemption Notice 2013 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, will have the status of an official version once issued by the Chief Parliamentary Counsel under section 17(1) of that Act.

### **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 (Veritas Investments Limited) Exemption Notice (No 2) 2013 (SR 2013/313): clause 8

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