

**Reprint
as at 1 January 2016**



**Takeovers Code (Veritas Investments Limited) Exemption
Notice (No 2) 2013
(SR 2013/313)**

Takeovers Code (Veritas Investments Limited) Exemption Notice (No 2) 2013: revoked, on 1 January 2016, 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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Notice

1 Title

This notice is the Takeovers Code (Veritas Investments Limited) Exemption Notice (No 2) 2013.

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.

2 Application

This notice applies to acts or omissions occurring on or after 7 August 2013.

3 Revocation of this notice

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

appointer has the same meaning as in the Takeovers Code (Trustees of Family Trusts) Exemption Notice 2012

Code means the Takeovers Code under the Act

MBH means MBH Limited (previously known as Mad Butcher Holdings Limited)

Michael Morton No. 2 Family Trust means the Michael Morton No. 2 Family Trust established by deed of trust dated 10 November 2005

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

relative has the same meaning as in the Takeovers Code (Trustees of Family Trusts) Exemption Notice 2012

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 transaction means a transfer of voting securities from WHL to the trustees

transfer period means the period commencing on the date of this notice and ending on 31 October 2015

trustee means a person who is appointed as a trustee 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 Michael John Morton and WBM Trustee Limited

VIL means Veritas Investments Limited

voting security means a voting security in VIL

WHL means Wilmat 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.

5 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 that results from a transfer of voting securities from WHL to the trustees.
- (2) The exemption in subclause (1) is subject to the conditions that—
 - (a) the trustees have control of those voting securities before and after their transfer; and
 - (b) 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.

6 Conditions of exemption relating to Michael Morton No. 2 Family Trust

The exemption in clause 5 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 a collateral 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 in VIL held or controlled by the trustees or the extent to which the trustees share in the voting control in VIL.

7 Condition of exemption relating to other-means increases

- (1) The exemption in clause 5 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 exemption in clause 5 is subject to the condition that 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 the 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:
 - (i) the number of voting securities that may be acquired by the trustees under the specified transaction:
 - (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 acquisitions that could be made under the specified transaction:
 - (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 acquisitions that could be made under the specified transaction:
 - (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 acquisitions that could yet be made under the specified transaction:
 - (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 acquisitions that could yet be made under the specified transaction:
 - (c) a statement of the assumptions on which the particulars referred to in paragraph (b) are based.

8 Revocation of Takeovers Code (Veritas Investments Limited) Exemption Notice 2013

The Takeovers Code (Veritas Investments Limited) Exemption Notice 2013 (SR 2013/96) is revoked.

Dated at Auckland this 2nd day of August 2013.

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

[Seal]

D O Jones,
Chairperson.

Statement of reasons

This notice applies to acts or omissions occurring on or after 7 August 2013 and is revoked on the close of 31 December 2015.

The Takeovers Panel (the **Panel**) has granted an exemption from rule 6(1) of the Code to the trustees of the Michael Morton No. 2 Family Trust (the **trust**) from time to time (currently Michael John Morton and WBM Trustee Limited) in their capacity as trustees (the **trustees**) in respect of any increase in their holding of voting securities in Veritas Investments Limited (**VIL**) that results from a transfer of voting securities in VIL from Wilmot Holdings Limited (**WHL**) to the trustees.

On 8 May 2013, VIL completed the acquisition from MBH Limited (previously known as Mad Butcher Holdings Limited) (**MBH**) and the reverse listing of the Mad Butcher business and allotted \$25 million of ordinary shares to shareholders under a public offer.

MBH is a wholly-owned subsidiary of 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 between VIL and MBH 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 to 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 trust, that reflects a bona fide reorganisation of the trust or that is the result of an event beyond the control of the trustees, provided that there is no increase in the trust's voting control of VIL.

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 in VIL (unless there is a change in the trustees) because ultimate control of VIL will remain with the trustees before and after the transfer; and
- if there is a change in the trustees, the exemption applies only if an appointment of a new trustee or a reduction of the number of trustees reflects a reorganisation of the trust, or is the result of an event outside the control of the trustees, and the Code is not intended to inhibit restructuring of family trusts that has no real effect on shareholders; and
- if a trustee exits the trust, although the reduction in the number of trustees will result in the continuing trustees each being deemed to increase their holding or controlling of voting rights in a code company, the Code is not intended to regulate these changes in the trustees of family trusts; and
- if a new trustee is appointed, there would be no disadvantage to the shareholders of VIL in not having the opportunity to vote on a trustee's appointment as trustee of the trust, because it would not have any real effect on those shareholders; and
- the exemption avoids unnecessary compliance costs that would be incurred if it were not granted.

Reprints notes

1 *General*

This is a reprint of the Takeovers Code (Veritas Investments Limited) Exemption Notice (No 2) 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, 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 (Veritas Investments Limited) Exemption Notice (No 2) 2013 (SR 2013/313): clause 3