

**Reprint  
as at 1 June 2011**



**Takeovers Code (Abano Healthcare  
Group Limited) Exemption  
Notice 2008**

(SR 2008/128)

Takeovers Code (Abano Healthcare Group Limited) Exemption Notice 2008:  
revoked, on 1 June 2011, by clause 3 of the Takeovers Code (Revocation of  
Exemptions) Notice 2011 (SR 2011/191).

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**

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**Note**

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989  
have been made in this reprint.

A general outline of these changes is set out in the notes at the end of this reprint, together  
with other explanatory material about this reprint.

**This notice is administered by the Takeovers Panel.**

**1 Title**

This notice is the Takeovers Code (Abano Healthcare Group Limited) Exemption Notice 2008.

**2 Application**

This notice applies to acts or omissions occurring on or after 12 February 2008.

**3 Interpretation**

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

**Abano** means Abano Healthcare Group Limited

**Act** means the Takeovers Act 1993

**clarifying statement** means the statement dated 21 December 2007 made by Crescent to clarify its intention in respect of the business activities of Abano and its subsidiaries that was sent to New Zealand Exchange Limited on 21 December 2007 and posted to shareholders of Abano on 24 December 2007

**Code** means the Takeovers Code under the Act

**Crescent** means Crescent Capital Partners Limited

**offer** means the offer dated 17 December 2007 by Crescent for all of the shares in Abano

**specified shareholder** means a shareholder of Abano that—

- (a) accepted the offer on or before 27 December 2007; and
- (b) indicated to Crescent a desire to withdraw that acceptance due to having received the clarifying statement

**variation** means the variation of the offer to confer on a specified shareholder the right to withdraw the shareholder's acceptance of the offer.

(2) 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.

**4 Exemptions**

Crescent is exempted from the following rules of the Code in respect of the variation:

- (a) rule 20:
- (b) rule 27:

- (c) rule 28(1) to the extent that it requires written notice of the variation to be given to every offeree and to New Zealand Exchange Limited:
- (d) rule 29.

**5 Condition of exemption from rule 28(1) of Code**

The exemption in clause 4(c) is subject to the condition that Crescent sends or has sent written notice of the variation to every specified shareholder.

Dated at Auckland this 22nd day of May 2008.

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 12 February 2008.

Abano Healthcare Group Limited (**Abano**) is a code company by virtue of being a party to a listing agreement with New Zealand Exchange Limited (**NZX**) and having voting securities quoted on the NZSX market.

Crescent Capital Partners Limited (**Crescent**) made an offer dated 17 December 2007 for all of the shares in Abano not already held by

Crescent (the **Crescent offer**). The Crescent offer was despatched on 19 December 2007.

A complaint was made to the Takeovers Panel (the **Panel**) alleging that Crescent had made a statement, in its offer document in respect of its intentions in relation to Abano, which was inconsistent with other statements made by Crescent in December 2007 to the media and to certain Abano shareholders.

The Panel and Crescent entered into discussions to find an appropriate resolution to the potential misinformation in the market. As a result of those discussions, Crescent issued a statement to NZX on 21 December 2007 and posted it to Abano shareholders on 24 December 2007 clarifying its intentions in relation to Abano should its takeover offer be successful (the **clarifying statement**).

The Panel and Crescent also agreed that any Abano shareholder who had accepted the offer on or before 27 December 2007 should be afforded an opportunity to withdraw its acceptance. A small number of Abano shareholders were identified as having accepted the Crescent offer on or before 27 December 2007. On 12 February 2008, Crescent wrote to those Abano shareholders asking whether they wished to withdraw their acceptances in light of the clarifying statement. Each of those shareholders that indicated that it wished to withdraw its acceptance (a **withdrawing shareholder**) was given a right to withdraw its acceptance.

The Crescent offer period closed on 14 March 2008.

In order to vary the Crescent offer to permit a withdrawing shareholder to withdraw its acceptance of the offer, the Panel has granted an exemption from the following rules of the Takeovers Code:

- rule 20 (requiring the Crescent offer to be made on the same terms to all shareholders);
- rule 27 (prescribing the circumstances in which the Crescent offer may be varied);
- rule 28(1) (requiring a notice of variation to be given to every Abano shareholder and to NZX);
- rule 29 (specifying the time period in which the Crescent offer may be varied).

The Panel considers that the granting of those exemptions is appropriate and consistent with the objectives of the Takeovers Code because—

- a withdrawing shareholder accepted Crescent's offer before receipt of the clarifying statement and therefore its decision to accept the Crescent offer was not based upon the offer information as clarified by the clarifying statement; and
- the giving of the withdrawal right to a withdrawing shareholder, as facilitated by the granting of the exemptions, provides an efficient and effective solution to acceptances having been given during a period when there was or may have been misinformation in the market; and
- the exemptions will not disadvantage other Abano shareholders because the variation to the terms of Crescent's offer is specific only to a withdrawing shareholder. Requiring a notice of variation to be sent to all Abano shareholders and to NZX is not necessary and would create confusion; and
- in order to be effective, the right of withdrawal needed to be exercised before the closing date of the offer.

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Issued under the authority of the Acts and Regulations Publication Act 1989.  
Date of notification in *Gazette*: 29 May 2008.  
This notice is administered by the Takeovers Panel.

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**Notes****1 General**

This is a reprint of the Takeovers Code (Abano Healthcare Group Limited) Exemption Notice 2008. The reprint incorporates all the amendments to the notice as at 1 June 2011, as specified in the list of amendments at the end of these notes.

Relevant provisions of any amending enactments that contain transitional, savings, or application provisions that cannot be compiled in the reprint are also included, after the principal enactment, in chronological order. For more information, see <http://www.pco.parliament.govt.nz/reprints/>.

**2 Status of reprints**

Under section 16D of the Acts and Regulations Publication Act 1989, reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by the amendments to that enactment. This presumption applies even though editorial changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in the reprint.

This presumption may be rebutted by producing the official volumes of statutes or statutory regulations in which the principal enactment and its amendments are contained.

**3 How reprints are prepared**

A number of editorial conventions are followed in the preparation of reprints. For example, the enacting words are not included in Acts, and provisions that are repealed or revoked

are omitted. For a detailed list of the editorial conventions, see <http://www.pco.parliament.govt.nz/editorial-conventions/> or Part 8 of the *Tables of New Zealand Acts and Ordinances and Statutory Regulations and Deemed Regulations in Force*.

#### **4 *Changes made under section 17C of the Acts and Regulations Publication Act 1989***

Section 17C of the Acts and Regulations Publication Act 1989 authorises the making of editorial changes in a reprint as set out in sections 17D and 17E of that Act so that, to the extent permitted, the format and style of the reprinted enactment is consistent with current legislative drafting practice. Changes that would alter the effect of the legislation are not permitted. A new format of legislation was introduced on 1 January 2000. Changes to legislative drafting style have also been made since 1997, and are ongoing. To the extent permitted by section 17C of the Acts and Regulations Publication Act 1989, all legislation reprinted after 1 January 2000 is in the new format for legislation and reflects current drafting practice at the time of the reprint.

In outline, the editorial changes made in reprints under the authority of section 17C of the Acts and Regulations Publication Act 1989 are set out below, and they have been applied, where relevant, in the preparation of this reprint:

- omission of unnecessary referential words (such as “of this section” and “of this Act”)
- typeface and type size (Times Roman, generally in 11.5 point)
- layout of provisions, including:
  - indentation
  - position of section headings (eg, the number and heading now appear above the section)
- format of definitions (eg, the defined term now appears in bold type, without quotation marks)
- format of dates (eg, a date formerly expressed as “the 1st day of January 1999” is now expressed as “1 January 1999”)

- position of the date of assent (it now appears on the front page of each Act)
- punctuation (eg, colons are not used after definitions)
- Parts numbered with roman numerals are replaced with arabic numerals, and all cross-references are changed accordingly
- case and appearance of letters and words, including:
  - format of headings (eg, headings where each word formerly appeared with an initial capital letter followed by small capital letters are amended so that the heading appears in bold, with only the first word (and any proper nouns) appearing with an initial capital letter)
  - small capital letters in section and subsection references are now capital letters
- schedules are renumbered (eg, Schedule 1 replaces First Schedule), and all cross-references are changed accordingly
- running heads (the information that appears at the top of each page)
- format of two-column schedules of consequential amendments, and schedules of repeals (eg, they are rearranged into alphabetical order, rather than chronological).

**5** *List of amendments incorporated in this reprint (most recent first)*

Takeovers Code (Revocation of Exemptions) Notice 2011 (SR 2011/191):  
clause 3

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