

**Reprint  
as at 1 September 2010**



**Takeovers Code (Dairy Trust  
Limited) Exemption Notice 2008**

(SR 2008/247)

Takeovers Code (Dairy Trust Limited) Exemption Notice 2008: expired, on  
1 September 2010, 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).

**Contents**

|  | Page |
|--|------|
| 1 Title  | 2    |
| 2 Application  | 2    |
| 3 Expiry   | 2    |
| 4 Interpretation   | 2    |
| 5 Exemption from rule 7(c) of Code   | 3    |
| 6 Exemption from rule 15(b) of Code  | 4    |
| 7 Condition of exemptions in clauses 5 and 6 relating to particulars of voting securities to be contained in notice of meeting | 4    |
| 8 Additional conditions relating to contents of notice of meeting  | 5    |

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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.**

|    |  |   |
|----|--|---|
| 9  | Additional condition relating to change in effective control | 6 |
| 10 | Application of exemptions in clauses 5 and 6                 | 6 |
| 11 | Exemption from rule 35 of the Code                           | 7 |
| 12 | Condition of exemption in clause 11                          | 7 |

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## Notice

- 1 Title**

This notice is the Takeovers Code (Dairy Trust Limited) Exemption Notice 2008.
- 2 Application**

This notice applies to acts or omissions occurring on or after 20 August 2008.
- 3 Expiry**

This notice expires on the close of 31 August 2010.
- 4 Interpretation**
  - (1) In this notice, unless the context otherwise requires,—

**Act** means the Takeovers Act 1993

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

**Dairy Trust** means Dairy Trust Limited

**final completion date** means the date on which the last acquisition of voting securities by Olam under the share sale agreement occurs

**initial completion date** means the date on which completion takes place under the subscription agreement

**meeting** means the meeting of Dairy Trust shareholders that is to be held on or about 21 August 2008 to consider, amongst other things, whether or not to approve,—

    - (a) for the purposes of rule 7(c) of the Code, the acquisition of voting securities by Olam under the share sale agreement; and
    - (b) the allotment of voting securities to Olam under the subscription agreement

**notice of meeting** means the notice of meeting (including explanatory materials) that is to be sent to Dairy Trust shareholders in connection with the meeting

**offer** means the takeover offer to be made by Dairy Trust in accordance with the pre-bid agreement entered into by Dairy Trust and Olam and dated 8 July 2008 under which—

- (a) Dairy Trust has agreed to make a full, cash takeover offer for all of the ordinary shares in Open Country Cheese; and
- (b) Olam has agreed to accept Dairy Trust's offer for all of the ordinary shares that Olam holds in Open Country Cheese

**Olam** means Olam International Limited, a company incorporated in Singapore

**Open Country Cheese** means Open Country Cheese Company Limited

**share sale agreement** means the share sale agreement entered into by Dairy Investment Fund Limited and Olam and dated 8 July 2008 under which, subject to a scaling regime, Olam has agreed to acquire, and Dairy Investment Fund Limited has agreed to sell, 6 375 000 voting securities

**subscription agreement** means the subscription agreement entered into by Dairy Trust and Olam and dated 8 July 2008 under which Olam has agreed to subscribe for, and Dairy Trust has agreed to issue, 22 525 000 voting securities

**voting securities** means voting securities in Dairy Trust.

- (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 Dairy Trust.
- (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 7(c) of Code

Olam is exempted from rule 7(c) of the Code in respect of any increase in Olam's voting control that results from the acquisition of voting securities by Olam under the share sale agree-

ment to the extent that the notice of meeting does not comply with rule 15(b) of the Code.

**6 Exemption from rule 15(b) of Code**

Dairy Trust is exempted from rule 15(b) of the Code in respect of the notice of meeting.

**7 Condition of exemptions in clauses 5 and 6 relating to particulars of voting securities to be contained in notice of meeting**

The exemptions in clauses 5 and 6 are subject to the condition that the notice of meeting contains, or is accompanied by, the following particulars of the voting securities that may be acquired by Olam under the share sale agreement or allotted to Olam under the subscription agreement:

- (a) the maximum number of voting securities that could be acquired by Olam under the share sale agreement; and
- (b) the maximum number of voting securities that could be acquired by Olam under the share sale agreement, expressed as a percentage of the total voting securities on issue after the completion of the acquisition of voting securities under the share sale agreement on the initial completion date; and
- (c) the maximum percentage of the total voting securities on issue that could be held or controlled by Olam after the completion of the acquisition of voting securities under the share sale agreement on the initial completion date; and
- (d) the maximum percentage of the total voting securities on issue that could be held or controlled, in aggregate, by Olam and its associates after the completion of the acquisition of voting securities under the share sale agreement on the initial completion date; and
- (e) the maximum number of all voting securities, in aggregate, that could be allotted to Olam under the subscription agreement and acquired by Olam under the share sale agreement; and
- (f) the maximum number of voting securities, in aggregate, that could be allotted to Olam under the subscription

- agreement and acquired by Olam under the share sale agreement, expressed as a percentage of the total voting securities on issue after the allotment of the voting securities under the subscription agreement and completion of the acquisition of voting securities under the share sale agreement on the initial completion date; and
- (g) the maximum percentage of the total voting securities on issue that could be held or controlled, in aggregate, by Olam after the allotment of the voting securities under the subscription agreement and the completion of the acquisition of voting securities under the share sale agreement on the initial completion date; and
  - (h) the maximum percentage of the total voting securities on issue that could be held or controlled, in aggregate, by Olam and its associates after the allotment of the voting securities under the subscription agreement and the completion of the acquisition of voting securities under the share sale agreement on the initial completion date.

## **8 Additional conditions relating to contents of notice of meeting**

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

- (a) the numbers and percentages referred to in clause 7 are calculated on the basis that—
  - (i) all 6 375 000 voting securities that could be acquired by Olam under the share sale agreement are acquired on the initial completion date; and
  - (ii) no voting securities are issued after the date of the meeting except the voting securities that are issued under the subscription agreement; and
- (b) the notice of meeting also contains, or is accompanied by,—
  - (i) the information and matters required by rule 16 of the Code in respect of the allotment of voting securities to Olam under the subscription agreement; and

- (ii) full particulars of the allotment of voting securities to Olam under the subscription agreement and a summary of the subscription agreement; and
  - (iii) full particulars of the acquisition of voting securities by Olam under the share sale agreement and a summary of the share sale agreement; and
  - (iv) a summary of the terms and conditions of the exemptions granted to Dairy Trust and Olam by this notice; and
- (c) the notice of meeting displays, in a prominent position, a disclaimer stating that by exempting Olam from rule 7(c) of the Code and Dairy Trust from rule 15(b) of the Code, the Takeovers Panel is—
- (i) neither endorsing nor supporting the accuracy or reliability of the contents of the notice of meeting; and
  - (ii) not implying it has a view on the merits of the allotment of voting securities to Olam under the subscription agreement or the acquisition of voting securities by Olam under the share sale agreement; and
- (d) the form of the notice of meeting is approved by the Takeovers Panel.

**9 Additional condition relating to change in effective control**  
The exemptions in clauses 5 and 6 are subject to the additional condition that there is no change in the effective control of Olam between the date of the meeting and the final completion date.

**10 Application of exemptions in clauses 5 and 6**  
The exemptions in clauses 5 and 6 do not apply—

- (a) to any acquisition of voting securities under the share sale agreement if, immediately after the completion of the acquisition, the total percentage of voting securities held or controlled by Olam is greater than the maximum percentage of voting securities that could be held

or controlled by Olam as disclosed in the notice of meeting:

- (b) to Olam if it increases its voting control except as a result of an allotment of voting securities under the subscription agreement or an acquisition of voting securities under the share sale agreement, but this ceases to apply after the later of—
  - (i) the allotment of all voting securities under the subscription agreement; or
  - (ii) the final completion date.

**11 Exemption from rule 35 of the Code**

Olam is exempted from rule 35 of the Code in respect of the offer.

**12 Condition of exemption in clause 11**

The exemption in clause 11 is subject to the condition that Olam does not dispose of any equity securities in Open Country Cheese during the offer period other than to—

- (a) Dairy Trust under the offer; or
- (b) an offeror under another offer that is made under the Code.

Dated at Wellington this 7th day of August 2008.

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

[Seal]

David J Quigg,  
Member.

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### Statement of reasons

This notice applies to acts or omissions occurring on or after 20 August 2008 and expires on 31 August 2010.

Dairy Trust Limited (**Dairy Trust**) and Open Country Cheese Company Limited (**Open Country Cheese**) are both code companies. The Takeovers Panel has granted exemptions to—

- Olam International Limited (**Olam**) from rule 7(c) of the Takeovers Code (the **Code**) in respect of the requirements for a notice of meeting under rule 15(b) of the Code; and
- Dairy Trust from rule 15(b) of the Code; and
- Olam from rule 35 of the Code.

Dairy Trust has entered into—

- a subscription agreement with Olam under which Olam has agreed to subscribe for, and Dairy Trust has agreed to issue, 22 525 000 voting securities in Dairy Trust (the **subscription agreement**); and
- a pre-bid agreement with Olam under which Dairy Trust has agreed to make a full, cash takeover offer (the **offer**) for all of the shares in Open Country Cheese that it does not own, and Olam has agreed to accept the offer for all of the shares that it holds in Open Country Cheese (the **pre-bid agreement**).

In addition, Olam has entered into a share sale agreement with Dairy Investment Fund Limited (**Dairy Investment Fund**) under which Olam has agreed to acquire, and Dairy Investment Fund has agreed to sell, up to 6 375 000 voting securities in Dairy Trust (the **share sale agreement**).

The actual number of voting securities to be acquired by Olam under the share sale agreement will depend on the operation of the scaling regime contained in the share sale agreement. This scaling regime provides that the actual number of voting securities to be acquired by Olam from Dairy Investment Fund on the completion date specified in the share sale agreement is automatically adjusted downwards to ensure that, immediately after completion under the share sale agreement, Olam and all other overseas persons (in terms of the Overseas Investment Act 2005) will hold or control less than 25% of the voting rights in Dairy Trust.

If scaling does occur, following the completion date specified in the share sale agreement, Olam is required to apply to the Overseas Investment Office for consent under the Overseas Investment Act 2005 to enable Olam to purchase the scaled voting securities from Dairy Investment Fund. Olam must purchase the scaled voting securities if Overseas Investment Office consent is obtained or if it otherwise becomes lawful to do so.

Dairy Trust intends to obtain shareholder approval, in accordance with the Code, to the allotment of voting securities to Olam under the subscription agreement and to the acquisition of voting securities by Olam under the share sale agreement. However, the disclosures required by rule 15(b) of the Code in respect of the acquisition of voting securities under the share sale agreement cannot be determined in advance and Dairy Trust therefore cannot comply with rule 15(b) of the Code because it cannot state in the notice of meeting—

- the exact number of voting securities that would be acquired by Olam under the share sale agreement; and
- the exact percentage of voting rights in Dairy Trust that Olam would hold or control after completion of the acquisitions contemplated by the share sale agreement; and
- the aggregate of the percentages of all voting securities that will be held or controlled by Olam and its associates after completion of the acquisitions contemplated by the share sale agreement.

The actual number of Dairy Trust voting securities to be acquired under the share sale agreement could be affected by uncertain future events including—

- the extent to which the scaling regime under the share sale agreement will operate to adjust the number of voting securities actually acquired by Olam; and
- whether or not Overseas Investment Office consent will be obtained to permit Olam to acquire scaled voting securities under the share sale agreement.

The Takeovers Panel considers that it is appropriate and consistent with the objectives of the Code to grant the exemptions from rules 7(c) and 15(b) of the Code because—

- it is impossible for the actual numbers of voting securities to be acquired by Olam and the relevant percentages required

by rule 15(b) to be stated in the notice of meeting, as these numbers and percentages are dependent on the operation of the scaling regime under the share sale agreement:

- all non-associated shareholders will have an opportunity to vote on the acquisition of voting securities by Olam under the share sale agreement:
- if the non-associated shareholders approve the potential maximum acquisition of voting securities, then by implication they also approve any lesser percentage of voting rights that may be acquired by Olam under the share sale agreement.

It is possible that, because of the transactions contemplated by the subscription agreement and the pre-bid agreement, Olam may be acting jointly or in concert with Dairy Trust for the purposes of the offer. If so, rule 35 of the Code would prevent Olam from accepting the offer.

Rule 35 of the Code prevents the offeror, or any person acting jointly or in concert with the offeror, from disposing of any equity securities in the target company, other than to a competing bidder.

The Takeovers Panel considers that it is appropriate and consistent with the objectives of the Code to grant the exemption from rule 35 of the Code because—

- it would avoid an unintended consequence of the Code; and
- it would not disadvantage other shareholders or prevent them from deciding the merits of the offer for themselves.

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Issued under the authority of the Acts and Regulations Publication Act 1989.  
Date of notification in *Gazette*: 14 August 2008.

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## **Contents**

- 1 General
  - 2 Status of reprints
  - 3 How reprints are prepared
  - 4 Changes made under section 17C of the Acts and Regulations Publication Act 1989
  - 5 List of amendments incorporated in this reprint (most recent first)
- 

## **Notes**

### **1 *General***

This is a reprint of the Takeovers Code (Dairy Trust Limited) Exemption Notice 2008. The reprint incorporates all the amendments to the notice as at 1 September 2010, 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 (Dairy Trust Limited) Exemption Notice 2008 (SR 2008/247):  
clause 3

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