Reprint
as at 1 April 2013

Takeovers Code (Open Country Dairy Limited) Exemption Notice (No 2) 2012

(SR 2012/28)

Takeovers Code (Open Country Dairy Limited) Exemption Notice (No 2) 2012: expired, on 1 April 2013, 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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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.

Notice

1 Title

This notice is the Takeovers Code (Open Country Dairy Limited) Exemption Notice (No 2) 2012.

2 Application

This notice applies to acts or omissions occurring on or after 15 February 2012.

3 Expiry

This notice expires on the close of 31 March 2013.

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

OCD means Open Country Dairy Limited

Talley's means Talley's Group Limited

voting security means a voting security in OCD.

(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 OCD.

(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 in respect of increase in voting control

Talley's is exempted from rule 6(1) of the Code in respect of any increase in its voting control that meets the conditions in clause 6.

6 Conditions of exemption in clause 5

The exemption in clause 5 is subject to the conditions that,—

(a) before the increase in its voting control, Talley's holds or controls more than 50%, but less than 90%, of the voting rights in OCD; and

(b) after the increase in Talley's voting control, the percentage of the total voting rights in OCD that is held or controlled by Talley's does not exceed by more than 5 the lowest percentage of the total voting rights in OCD that was held or controlled by Talley's and any wholly owned subsidiaries of Talley's in the 12-month period ending on, and inclusive of, the date of the increase.

7 Exemption from rule 6(1) of Code in respect of allotment under pro-rata offer

Talley's is exempted from rule 6(1) of the Code in respect of any increase in its voting control of OCD as a result of an allotment of voting securities by OCD that meets the conditions in clause 8.

8 Conditions of exemption in clause 7

The exemption in clause 7 is subject to the conditions that,—

(a) before the increase in its voting control, Talley's holds or controls more than 50%, but less than 90%, of the voting rights in OCD; and

(b) the allotment is made by OCD in accordance with an offer of voting securities that is made pro rata to all holders of a class of voting securities in OCD, and in respect of which Talley's acquires no more than its pro rata share of the securities offered; and

(c) Talley's control percentage of OCD is, within 6 months after the increase in Talley's voting control, decreased to, or below, the maximum control percentage to which Talley's would have been entitled under clauses 5 and 6 at the time of the decrease had the increase not occurred; and

(d) Talley's additional voting rights are not exercised before that decrease.

Dated at Auckland this 10th day of February 2012.

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 15 February 2012, and expires on 31 March 2013.

Talley's Group Limited (**Talley's**) holds or controls through a wholly owned subsidiary all of the shares in AFFCO New Zealand Limited (**AFFCO NZ**). Talley's holds 17.04% of the shares in Open Country Dairy Limited (**OCD**), and AFFCO NZ holds 35.45% of the shares in OCD. Talley's intends that AFFCO NZ's 35.45% holding will be transferred to Talley's (the **transfer**). The transfer will constitute a transfer within a wholly owned group of companies and will proceed in reliance on clause 25 of the Takeovers Code (Class Exemptions) Notice (No 2) 2001 (the **Class Exemptions Notice**).

Following the transfer, there may be doubt as to whether Talley's can take advantage of the "creep" provision in rule 7(e) of the Takeovers Code (the **Code**) for 12 months. This is because, before the transfer, Talley's will hold only 17.04% of voting rights in OCD (although Talley's controls 52.49% of those voting rights) and after the transfer will already hold over 5% more than 17.04%.

The Takeovers Panel (the **Panel**) has granted an exemption from rule 6(1) of the Code to allow Talley's to increase its voting control of OCD on the conditions that—

- before the increase, Talley's holds or controls more than 50%, but less than 90%, of the voting rights in OCD; and
- the percentage of the total voting rights in OCD that is held or controlled by Talley's after the increase does not exceed by more than 5 the lowest percentage of the total voting rights in

OCD that was held or controlled by Talley's and any wholly owned subsidiaries of Talley's in the 12-month period ending on, and inclusive of, the date of the increase.

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

- Talley's currently controls more than 50% of the voting rights in OCD, through a 17.04% direct holding and indirect control of 35.45% held by a wholly owned subsidiary, and will hold and control more than 50% of the voting rights in OCD after the transfer; and
- if it were not for the transfer increasing the direct holding of OCD shares by Talley's by more than 5%, Talley's would clearly have been able to rely on the exception in rule 7(e) of the Code to increase the total voting rights it held or controlled from 52.49% to 57.49%.

The Panel has also granted an exemption from rule 6(1) of the Code to allow Talley's to increase its voting control of OCD as a consequence of the allotment of voting securities by OCD on the conditions that,—

- before the increase, Talley's holds or controls more than 50%, but less than 90%, of the voting rights in OCD; and
- the allotments are pursuant to a pro rata offer of voting securities by OCD under which Talley's takes up no more than its pro rata entitlement; and
- Talley's voting control is reduced within 6 months to the maximum control percentage permitted under the first exemption referred to above (being the exemption from rule 6(1) of the Code to allow Talley's to increase its voting control of OCD); and
- Talley's additional voting rights are not exercised prior to that decrease.

This exemption relates to a non-renounceable pro rata rights issue that OCD intends to undertake. The rights issue is proposed to have a record date of 10 February 2012 and an intended allotment date of 7 March 2012. Talley's proposes to acquire AFFCO NZ's shares in OCD via the transfer prior to the record date.

Talley's intends to take up its full pro rata entitlement under the rights issue. However, in the absence of an exemption, Talley's may not be able to take up that entitlement under the rights issue because by

doing so Talley's may increase its voting control of OCD by more than 5%. The issues around the application of rule 7(e) of the Code to Talley's following the transfer referred to above may similarly cast doubt on the application of clause 8(2)(b)(ii) of the Class Exemptions Notice in this situation.

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

- the exemption is consistent with both the policy underlying, and relevant conditions applying to, clause 8 of the Class Exemptions Notice; and
- the exemption is a natural consequence of granting the first exemption referred to above.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 1 March 2012.

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Notes

1 General

This is a reprint of the Takeovers Code (Open Country Dairy Limited) Exemption Notice (No 2) 2012. The reprint incorporates all the amendments to the notice as at 1 April 2013, 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 (Open Country Dairy Limited) Exemption Notice (No 2) 2012 (SR 2012/28): clause 3

Wellington, New Zealand:
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