



# Takeovers Code Approval Amendment Regulations 2018

Patsy Reddy, Governor-General

## Order in Council

At Wellington this 24th day of September 2018

Present:

Her Excellency the Governor-General in Council

These regulations are made under sections 19(1) and 46 of the Takeovers Act 1993—

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the recommendation of the Minister of Commerce and Consumer Affairs formulated and made in accordance with Part 2 of that Act.

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## Regulations

### 1 Title

These regulations are the Takeovers Code Approval Amendment Regulations 2018.

### 2 Commencement

These regulations come into force on 29 October 2018.

## Part 1

### Amendments to Takeovers Code Approval Order 2000 (other than amendments to Code)

### 3 Principal order

This Part amends the instrument that was previously called the Takeovers Code Approval Order 2000 (the **principal order**).

### 4 Name of principal order changed

- (1) As from the commencement of this regulation, the principal order is called the Takeovers Regulations 2000.
- (2) Replace clause 1 with:

#### 1 Title

These regulations are the Takeovers Regulations 2000.

### 5 New Part 1 heading inserted

After clause 1, insert:

## Part 1 Takeovers code

### 6 New Part 2 inserted

After clause 2, insert:

## Part 2 Fees

### 3 Interpretation

In this Part, unless the context otherwise requires,—

**Act** means the Takeovers Act 1993

**code** means the Takeovers Code under the Act.

### 4 Fees payable to Panel for applications

- (1) The Panel may require payment to it of—
  - (a) a fee of \$100 for an application referred to in subclause (2); and
  - (b) a fee calculated at the following hourly rates in respect of any of those applications:
    - (i) for work carried out by a member of the Panel, an hourly rate of \$200;
    - (ii) for work carried out by an officer or employee of the Panel who holds a qualification in accountancy, business, commerce, economics, or law, an hourly rate of \$145; and
  - (c) the costs incurred by the Panel for any of those applications in obtaining expert advice or expert assistance.
- (2) The fees and amounts set out in subclause (1) apply in respect of—
  - (a) an application for an exemption under section 45 of the Act;
  - (b) considering an application for an order under section 236(1) of the Companies Act 1993 that affects the voting rights of a code company (within the meaning of that term in section 236A of that Act), and indicating whether or not the Panel has an objection to the order;
  - (c) an application for a determination under section 48(2)(b) or 49(2)(b) of the Act;
  - (d) an application for approval under rule 39(c) of the code;
  - (e) an application for approval to act as an independent adviser under the code;
  - (f) an application for consent to withdraw an offer under rule 26(1) of the code;

- (g) an application for the appointment of an independent person under rule 58(1) of the code.

**5 Fees payable to Panel for meetings held under section 32 of Act**

- (1) The Panel may require payment to it of—
  - (a) a fee of \$1,000 in respect of a meeting that is requested by a third party to be held under section 32 of the Act; and
  - (b) a fee calculated at the following hourly rates in respect of a meeting held under section 32 of the Act and in respect of the exercise of any of the Panel’s powers under that section:
    - (i) for work carried out by a member of the Panel, an hourly rate of \$200;
    - (ii) for work carried out by an officer or employee of the Panel who holds a qualification in accountancy, business, commerce, economics, or law, an hourly rate of \$145; and
  - (c) the costs incurred by the Panel in obtaining, in respect of a meeting held under section 32 of the Act and in respect of the exercise of any of the Panel’s powers under that section, expert advice or expert assistance.
- (2) The fees and amounts set out in subclause (1) are payable, at the discretion of the Panel, either by—
  - (a) a third party who has requested that the Panel hold a meeting under section 32 of the Act; or
  - (b) a person against whom the Panel has made a determination under section 32(3)(b) of the Act.

**6 Costs payable to Panel**

The Panel may require payment to it of the costs incurred by it in the publication in the *Gazette* of a notice under the Legislation Act 2012 of an exemption notice under section 45 of the Act.

**7 Fees exclusive of GST**

The fees prescribed in regulations 4 and 5 are exclusive of goods and services tax.

**7 Takeovers (Fees) Regulations 2001 revoked**

The Takeovers (Fees) Regulations 2001 (SR 2001/160) are revoked.

## Part 2

### Amendments to Takeovers Code

#### 8 Takeovers Code amended

This Part amends the Takeovers Code set out in the Schedule of the instrument that was previously called the Takeovers Code Approval Order 2000.

#### 9 Rule 3 amended (Interpretation)

- (1) In rule 3(1), insert in their appropriate alphabetical order:

**electronic** has the same meaning as in section 209 of the Contract and Commercial Law Act 2017

**non-electronic form** means paper or another non-electronic form

**overseas company** has the same meaning as in section 2(1) of the Companies Act 1993

**senior manager**, in relation to a person (A), means a person who is not a director but occupies a position that allows that person to exercise significant influence over the management or administration of A (for example, a chief executive or a chief financial officer)

**URL** means a World Wide Web uniform resource locator

- (2) Revoke rule 3(2).  
(3) In rule 3(4)(b), delete “or provides”.

#### 10 New rule 4AA and cross-heading inserted

After rule 4, insert:

##### 4AA General provision relating to statements

- (1) This rule applies if this code requires a statement to be—  
(a) included in a document; or  
(b) provided to another person.
- (2) A statement that is included or provided is not invalid just because it contains minor differences from the statement required by these rules as long as the statement still has the same effect and is not misleading.

*Transitional, savings, and related provisions*

#### 11 New rules 5A to 5C and cross-heading inserted

After rule 5, insert:

*How information or documents are given or sent***5A Information or documents must be given electronically to Panel**

Any information or document that a person must or may give or send to the Panel under this code must be sent to the Panel by—

- (a) emailing it to the Panel at an email address that is used by the Panel; or
- (b) using an information management facility (if any) that is provided by the Panel for this purpose and that is available on an Internet site maintained by or on behalf of the Panel; or
- (c) any other electronic means approved by the Panel.

**5B Information or documents must be given electronically or non-electronically to financial product holder**

- (1) Any information or document that a relevant person must or may give or send to a financial product holder under this code must be sent to the financial product holder as follows:
  - (a) in the case of an e-shareholder, by sending it by electronic means to the e-shareholder (for example, an email with an attachment or an email containing a URL for the information or document); or
  - (b) in the case of a financial product holder that is a company but is not an e-shareholder, by emailing it to the company at an email address that is used by the company; or
  - (c) in the case of a financial product holder that is an overseas company but is not an e-shareholder, by emailing it to the overseas company at an email address that is used by the overseas company; or
  - (d) in any other case, by sending it to the financial product holder in a non-electronic form.
- (2) Subclause (1)(d) applies (instead of subclause (1)(a), (b), or (c)) if the relevant person—
  - (a) does not have—
    - (i) an electronic address for the e-shareholder (in the case of subclause (1)(a)); or
    - (ii) an email address for the company or overseas company (in the case of subclause (1)(b) or (c)); or
  - (b) has an address referred to in paragraph (a) but knows that it is not correct.
- (3) If the information or document is sent under subclause (1)(a), (b), or (c), the relevant person—
  - (a) may also send the information or document in a non-electronic form (free of charge); and

- (b) must send the information or document in a non-electronic form (free of charge) within 1 working day after receiving a request from the financial product holder to send it in a non-electronic form.
- (4) In this rule,—
- e-shareholder**, in relation to information or a document that must or may be given or sent to a financial product holder under this code, means a person who—
- (a) is recorded in the code company’s financial products register as being a holder of financial products to which the information or document relates; and
- (b) has notified the code company under section 391(3A) of the Companies Act 1993 (whether or not that notification applies to the information or document that must or may be given or sent)
- relevant person** means—
- (a) a code company;
- (b) an offeror;
- (c) a dominant owner;
- (d) any person acting on behalf of any person referred to in paragraphs (a) to (c).

**5C Information or documents must be given electronically to code company and offeror**

- (1) This rule applies if any information or document must, under this code, be given or sent by—
- (a) an offeror to a code company (for example, a takeover notice under rule 41); or
- (b) a code company to an offeror (for example, a target company statement under rule 46); or
- (c) a dominant owner to a code company (for example, a notice under rule 51).
- (2) The information or document must be sent by—
- (a) emailing it to the recipient at an email address that is used by the recipient; or
- (b) any other electronic means agreed to by the parties.

**12 Rule 7 amended (Exceptions to fundamental rule)**

In rule 7(c), after “15”, insert “, 16A,”.

**13 Rule 10 amended (When offeror does not hold or control more than 50% of voting rights)**

- (1) In rule 10(1A), replace the definition of **voting period** with:

**voting period** is a period that commences with the date of the offer and ends—

- (a) on or before the fifth working day before the date first specified in the offer (under rule 24(2)) as the end of the offer period; and
- (b) on or after the tenth working day after the date on which the offer document is sent in accordance with rule 43B.

- (2) In rule 10(2), replace “2 days of” with “2 working days after”.

**14 Rule 15 amended (Notice of meeting: acquisition of voting securities)**

- (1) In rule 15(f), delete “to the effect”.
- (2) In rule 15(g), replace “the person acquiring the voting securities” with “each person identified under paragraph (a)(i) and (ii)”.

**15 Rule 16 amended (Notice of meeting: allotment of voting securities)**

- (1) Replace rule 16(a) with:

(a) the identity of the following:

- (i) the allottee; and
- (ii) (if different from the allottee) any person who will become a controller of an increased percentage of voting securities in the code company as a result of the allotment or allotments; and

- (2) In rule 16(f), delete “to the effect”.

- (3) Replace rule 16(g) with:

(g) a statement by each person identified under paragraph (a)(i) and (ii) setting out particulars of any agreement or arrangement (whether legally enforceable or not) that has been, or is intended to be, entered into between the person and any other person (other than between that person and the code company in respect of the matters referred to in paragraphs (a) to (e)) relating to the allotment or allotments, holding, or control of the voting securities to be allotted, or to the exercise of voting rights in the code company; and

**16 New rules 16A to 16C and cross-heading inserted**

After rule 16, insert:

*Copy of financial products register***16A Holder may request copy of financial products register**

- (1) A holder of voting securities to which an acquisition or allotment referred to in rule 7(c) or (d) relates may request that the code company send to the holder a copy of its financial products register relating to those voting securities.
- (2) The request may be made only during the period beginning on the day on which the notice of meeting is sent under rule 15 or 16 and ending immediately before the date of the meeting.
- (3) The request must include a statement confirming that—
  - (a) the request is made under this rule; and
  - (b) the holder will only use the information supplied under rule 16B for the purpose of communicating, before the date of the meeting, with other holders of the voting securities about the acquisition or allotment referred to in rule 7(c) or (d).

**16B Code company must send copy of financial products register**

- (1) The code company must, within 1 working day after receiving a request from a holder under rule 16A, send to the holder—
  - (a) a copy of the code company's financial products register relating to the voting securities to which the acquisition or allotment relates; and
  - (b) a list of e-shareholders and an electronic address for each of those e-shareholders; and
  - (c) for every company (A) or overseas company (A) that is recorded in the code company's financial products register as being a holder of voting securities to which the acquisition or allotment relates (but is not an e-shareholder), the last known email address (if any) that is used by A.
- (2) The information sent under subclause (1) must be prepared as at the close of the date on which the request is received.
- (3) The code company must send to the Panel a copy of the request made by the holder at the same time as it sends the copy of the register to the holder under this rule.
- (4) In this rule, **e-shareholder** means a person who—
  - (a) is recorded in the code company's financial products register as being a holder of voting securities to which the acquisition or allotment relates; and
  - (b) has notified the code company under section 391(3A) of the Companies Act 1993 (whether or not that notification applies to information or documents that must or may be given or sent by another holder of voting securities to which the acquisition or allotment relates).

**16C Restriction on holder's use of financial products register information**

- (1) The holder may only use the information that is sent under rule 16B in good faith, in a reasonable manner, and for the purpose of communicating, before the date of the meeting, with other holders of the voting securities about the acquisition or allotment referred to in rule 7(c) or (d).
- (2) The holder must not disclose the information to another person unless the holder believes, on reasonable grounds, that disclosure is for the purpose set out in subclause (1).

**17 Rule 18 amended (Independent adviser's report)**

- (1) After rule 18(3)(b), insert:
  - (c) a copy of the full report must, on and after the date of the notice of meeting, be made available on an Internet site maintained by or on behalf of the code company, and a URL for the report on that site must be included in the notice of meeting.
- (2) After rule 18(4), insert:
- (5) The copy of the full report that is made available under subclause (3)(c) may be removed from the Internet site after the date that is 60 working days after the date of the meeting.

**18 Rule 19A amended (Documents for Panel in respect of shareholder meetings)**

- (1) In rule 19A(1), delete “, in hard copy and (if possible) electronic form,”.
- (2) In rule 19A(2), delete “, in hard copy and (if possible) in electronic form,”.

**19 Rule 24 amended (Offer period)**

Replace rule 24(2) with:

- (2) The offer period must—
  - (a) commence with the date of the offer; and
  - (b) be not shorter than 20 working days from that date, and not longer than 60 working days from that date.

**20 Rule 24A amended (Extension of offer period)**

In rule 24A(4), replace “90 days beginning with” with “60 working days beginning from”.

**21 Rule 24B amended (Extension of offer period in case of full offer conditional at outset as to level of acceptances)**

In rule 24B(2), replace “60 days beginning on” with “40 working days beginning from”.

**22 Rule 24C amended (Extension of offer period if minimum acceptance condition satisfied or waived in final week)**

- (1) In rule 24C(1)(b), replace “7 days” with “5 working days”.
- (2) In rule 24C(2), replace “14 days” with “10 working days”.

**23 Rule 25 amended (Conditions)**

In rule 25(3A), replace “not be later than 14 days, or, if the acquisition requires statutory approval, 30 days” with “be within 10 working days, or, if the acquisition requires statutory approval, 20 working days”.

**24 Rule 29 amended (Timing of variation)**

- (1) Replace rule 29(1) with:
  - (1) An offer may not be varied, and a variation notice may not be sent, later than the tenth working day before the end of the offer period.
  - (2) In rule 29(2), replace “14 days” with “10 working days”.

**25 Rule 32 amended (Procedure on variation of consideration and consideration alternatives)**

In rule 32(1), replace “no later than 7 days” with “within 5 working days”.

**26 Rule 33 amended (Offer to specify date for payment of consideration)**

In rule 33(2), replace “must not be later than 7 days after the later of” with “must be within 5 working days after the latest of”.

**27 Rule 34 replaced (Withdrawal of acceptance for non-payment of consideration)**

Replace rule 34 with:

**34 Withdrawal of acceptance for non-payment of consideration**

- (1) If the consideration is not sent within the period specified in the offer to any person whose financial products are taken up under the offer, the person may withdraw acceptance of the offer by—
  - (a) giving written notice to the offeror of the person’s intention to withdraw acceptance of the offer; and
  - (b) no less than 5 working days after giving notice under paragraph (a), giving written notice to the offeror withdrawing acceptance of the offer.
- (2) The right to withdraw acceptance of the offer does not apply if the person receives the consideration before the written notice is given under subclause (1)(b).

**28 Rule 36 amended (Acquisitions)**

- (1) In rule 36(1)(b), replace “no later than 14 days” with “on or before the tenth working day”.
- (2) In rule 36(2)(a), replace “no later than the day” with “within 1 working day”.

**29 Rule 41A amended (Offeror’s notification obligations when takeover notice sent)**

Replace rule 41A(3) with:

- (3) Within 1 working day after receiving a request, the offeror must send (electronically, if possible, and free of charge) a copy of the takeover notice and of any of the documents that accompanied it under rule 41 to any person who requests them.

**30 Rule 42 amended (Target company’s notification obligations when takeover notice received)**

- (1) In rule 42(1)(a), replace “notify the licensed market operator in writing” with “send to the licensed market operator notice”.
- (2) Replace rule 42(3) with:
- (3) Within 1 working day after receiving a request, the target company must send (electronically, if possible, and free of charge) a copy of the takeover notice and of any of the documents that accompanied it under rule 41 to any person who requests them.

**31 Rule 42A amended (Target company must give offeror class notice)**

In rule 42A(2), replace “Not later than 2 days” with “Within 2 working days”.

**32 Rule 42B replaced (Target company must send offeror copy of financial products register)**

Replace rule 42B with:

**42B Target company must send offeror copy of financial products register**

- (1) The target company must, within 2 working days after the record date, send to the offeror—
  - (a) a copy of the target company’s financial products register relating to the financial products to which the offer relates as at the record date; and
  - (b) a list of e-shareholders and an electronic address for each of those e-shareholders; and
  - (c) for every company (A) or overseas company (A) that is recorded in the target company’s financial products register as being a holder of financial products to which the offer relates (but is not an e-shareholder), the last known email address (if any) that is used by A.
- (2) In this rule and rules 42C and 42D, **e-shareholder** means a person who—

- (a) is recorded in the target company's financial products register as being a holder of financial products to which the offer relates; and
- (b) has notified the target company under section 391(3A) of the Companies Act 1993 (whether or not that notification applies to information or documents that must or may be given or sent by the offeror or another holder of financial products to which the offer relates).

**42C Holder may request copy of financial products register**

- (1) A holder of financial products to which an offer relates may request that the target company send to the holder a copy of its financial products register relating to those financial products.
- (2) The request may be made only during the period (the **request period**) that starts when the takeover notice is sent and ends at the end of the offer period.
- (3) The request must include a statement confirming that—
  - (a) the request is made under this rule; and
  - (b) the holder will only use the information supplied under rule 42D for the purpose of communicating, during the request period, with other holders of the financial products to which the offer relates about the offer.

**42D Target company must send copy of financial products register**

- (1) The target company must, within 1 working day after receiving a request from a holder under rule 42C, send to the holder—
  - (a) a copy of the target company's financial products register relating to the financial products to which the offer relates; and
  - (b) a list of e-shareholders and an electronic address for each of those e-shareholders; and
  - (c) for every company (A) or overseas company (A) that is recorded in the target company's financial products register as being a holder of financial products to which the offer relates (but is not an e-shareholder), the last known email address (if any) that is used by A.
- (2) The information sent under subclause (1) must be prepared as at the close of the date on which the request is received.
- (3) The target company must send to the Panel a copy of the request made by the holder at the same time as it sends the copy of the register to the holder under this rule.

**42E Restriction on holder's use of financial products register information**

- (1) The holder may only use the information that is sent under rule 42D in good faith, in a reasonable manner, and for the purpose of allowing the holder to communicate, during the request period, with other holders of the financial products to which the offer relates about the offer.

- (2) The holder must not disclose the information to another person unless the holder believes, on reasonable grounds, that disclosure is for the purpose set out in subclause (1).

**33 Rule 43A amended (Record date)**

- (1) In rule 43A(2), replace “not be more than 10 days” with “be on or after the eighth working day”.
- (2) In rule 43A(3), replace “no later than 2 days” with “on or before the second working day”.

**34 Rule 43B replaced (When offer must be sent)**

Replace rule 43B with:

**43B When offer must be sent**

The offeror must send the offer in accordance with rule 43(1) on a date that is—

- (a) within 3 working days after the date of the offer specified under rule 44(1)(c); and
- (b) during the period beginning on the day that is 10 working days, and ending 20 working days, after the takeover notice relating to the offer has been sent to the target company.

**35 Rule 44 amended (Offer document)**

- (1) After rule 44(1)(b)(iii), insert:
- (iiia) any variation that is made in accordance with subclause (4) to correct an obvious technical error that is minor in nature; and
- (2) After rule 44(1), insert:
- (1A) If the additional information referred to in subclause (1)(d)(iii) contains an error or is otherwise false or misleading or is likely to mislead,—
- (a) that information must be amended to correct the defect, including by updating any outdated information and making any reasonable consequential amendments; and
- (b) the offer must contain, or be accompanied by, a statement—
- (i) that the information has been changed from the information that was contained in, or that accompanied, the takeover notice; and
- (ii) of the reasons for the change.
- (3) In rule 44(3)(b), replace “not less than 7 days” with “on or before the fifth working day”.
- (4) After rule 44(3), insert:
- (4) The offer may be varied under subclause (1)(b)(iiia) only if—

- (a) the offeror has requested the prior written approval of the directors of the target company for the variation; and
  - (b) the directors of the target company have not, within 1 working day after the request is made, given their written approval for the variation under subclause (1)(b)(ii); and
  - (c) the Panel has given its prior written approval for the variation.
- (5) Subclause (1)(d)(iii) is subject to subclause (1A).

**36 Rule 46 amended (Target company statement)**

- (1) In rule 46(1)(a)(i) and (ii), replace “14 days” with “10 working days”.
- (2) After rule 46(2), insert:
- (3) The target company must send, within 1 working day after receiving a request referred to in clause 18(1) or (3A)(c) of Schedule 2, a non-electronic copy of the document that is requested (free of charge).
- (4) If, under clause 19(1) of Schedule 2, only a summary of the full report under rule 21 is provided, a copy of the full report must be made available on an Internet site maintained by or on behalf of the target company until the date that is 60 working days after the date on which the target company statement is sent to the offeror.

**37 Rule 47 amended (Documents that must be sent to Panel or that Panel may require)**

- (1) In rule 47(1), replace “given or sent to the Panel in hard copy and (if possible) in electronic form” with “sent to the Panel”.
- (2) In rule 47(2), delete “given or”.
- (3) In rule 47(3), replace “form” with “format”.
- (4) In rule 47(4), delete “in hard copy and (if possible) in electronic form”.

**38 Rule 48 amended (Notification of altered offer document)**

In rule 48, replace “notify the target company, as soon as practicable before it sends the offer document in accordance with rule 43(1),” with “send to the target company, as soon as practicable before it sends the offer document in accordance with rule 43(1), notice”.

**39 Rule 49A amended (Offeror must notify Panel, etc, of increases in acceptances of offer)**

- (1) In rule 49A(1), replace “notify the Panel and the target company in writing” with “send to the Panel and the target company notice”.
- (2) In rule 49A(2), replace “provide the licensed market operator with the same notification” with “send to the licensed market operator the same notice”.

**40 Rule 49C amended (Notice of conditions to which offer subject 14 days before end of offer period)**

- (1) In the heading to rule 49C, replace “14 days” with “10 working days”.
- (2) In rule 49C(1), replace “not earlier than 14 days before the end of the offer period and not later than 7 days before the end of the offer period” with “on a relevant day”.
- (3) After rule 49C(1), insert:
  - (1A) In subclause (1), **relevant day** means a day that is—
    - (a) on or after the tenth working day before the end of the offer period; but
    - (b) on or before the fifth working day before the end of the offer period.

**41 Rule 54 amended (Acquisition notice)**

In rule 54(2) and (3), replace “not later than 30 days” with “within 20 working days”.

**42 Rule 57 amended (Determination of consideration in other cases)**

- (1) In rule 57(2), replace “14 days” with “10 working days”.
- (2) In rule 57(5)(b) and (6)(b), replace “1 day of” with “1 working day after”.

**43 Rule 58 amended (Expert determination)**

In rule 58(4), replace “28 days” with “20 working days”.

**44 Rule 59 amended (Return of instrument of transfer)**

In rule 59(1), replace “21 days” with “15 working days”.

**45 Rule 60 amended (Payment of consideration if documents returned)**

In rule 60(1), replace “7 days” with “5 working days”.

**46 Rule 61 amended (Payment of consideration if documents not returned)**

In rule 61(1), replace “7 days after the expiration of the 21-day period” with “5 working days after the expiry of the 15-working-day period”.

**47 Schedule 1AA amended**

- (1) In Schedule 1AA, replace the cross-heading above clause 1 with:

**Part 1**  
**Transitional provisions relating to Takeovers Code Approval**  
**Amendment Regulations 2014**

- (2) In Schedule 1AA, after clause 3, insert the Part 2 set out in the Schedule of these regulations.

**48 Schedule 1 amended**

- (1) In Schedule 1, replace clause 2 with:

**2 Offeror and its directors**

- (1) The name, postal address, and electronic address of the offeror.
- (2) If the offeror is not an individual, the name of—
- (a) every director of the offeror; and
  - (b) every person who will become a controller of an increased percentage of voting securities in the target company as a result of the acquisition under the offer.

- (2) In Schedule 1, clause 4, replace “14 days” with “10 working days”.

- (3) In Schedule 1, replace clause 7(1)(c) with:

- (c) in the case of multiple transactions on any day to which this subclause applies,—
- (i) the total number of securities acquired or disposed of on that day, in each class; and
  - (ii) the weighted average consideration per security per class; and
  - (iii) the date of the transactions.

- (4) In Schedule 1, heading to clause 11, replace “**officers**” with “**senior managers**”.

- (5) In Schedule 1, clause 11, replace “senior officers” with “senior managers”.

- (6) In Schedule 1, replace clause 14(3) with:

- (3) A statement that—
- (a) statements made under this clause are consistent with any information that has been given by the offeror to any regulatory body (in New Zealand or in an overseas jurisdiction) in relation to the offer; or
  - (b) the offeror is not required to give, and has not given, any information to any regulatory body (in New Zealand or in an overseas jurisdiction), other than the Panel, in relation to the offer.

**49 Schedule 2 amended**

- (1) In Schedule 2, replace clause 3 with:

**3 Target company**

The name, postal address, and electronic address of the target company.

- (2) In Schedule 2, clause 5(1)(a), replace “senior officer” with “senior manager”.

- (3) In Schedule 2, clause 5(3)(a) and (b), replace “senior officers” with “senior managers”.

- (4) In Schedule 2, heading to clause 8, after “**offeror**”, insert “**or of related company**”.
- (5) In Schedule 2, clause 8(1), replace “senior officer” with “senior manager”.
- (6) In Schedule 2, replace clause 8(2) with:
  - (2) If the offeror is a company, the number, designation, and percentage of equity securities of any class of each related company of the offeror held or controlled by the target company and each director and senior manager of the target company and their associates.
  - (3) If none of the persons referred to in subclauses (1) and (2) hold or control any equity securities of the offeror or any related company of the offeror, a statement to that effect.
- (7) In Schedule 2, heading to clause 9, after “**offeror**”, insert “**or of related company**”.
- (8) In Schedule 2, after clause 9(1)(a), insert:
  - (ab) the number and designation of any equity securities of any related company of the offeror that were acquired or disposed of by the persons referred to in clause 8 during the 6-month period referred to in clause 6(1); and
- (9) In Schedule 2, heading to clause 11, replace “**officers**” with “**senior managers**”.
- (10) In Schedule 2, clause 11, replace “senior officers” with “senior managers” in each place.
- (11) In Schedule 2, heading to clause 12, replace “**officers**” with “**senior managers**”.
- (12) In Schedule 2, clause 12, replace “senior officers” with “senior managers”.
- (13) In Schedule 2, heading to clause 13, replace “**officers**” with “**senior managers**”.
- (14) In Schedule 2, clause 13(1), replace “senior officer” with “senior manager”.
- (15) In Schedule 2, clause 13A(1), replace “senior officers” with “senior managers”.
- (16) In Schedule 2, clause 15(3), delete “to the effect”.
- (17) In Schedule 2, replace clause 18(1) with:
  - (1) A statement that the offeree may request from the target company a non-electronic copy of the most recent annual report of the target company.
- (18) In Schedule 2, clause 18(3), after “subclause (2)”, insert “(or made available under subclause (3A))”.
- (19) In Schedule 2, after clause 18(3), insert:
  - (3A) If the half-yearly report or interim report required under subclause (2) or (3) is published on an Internet site maintained by or on behalf of the target company,

the target company statement may, instead of including a copy of that report under subclause (2) or (3), include a statement—

- (a) that a copy of the half-yearly report or the interim report (as the case may be) is available on that Internet site; and
- (b) of the URL for the copy of the report on that site; and
- (c) that a non-electronic copy of the half-yearly report or the interim report (as the case may be) will be sent to any offeree on request.

(20) In Schedule 2, after clause 19(2)(a), insert:

- (ab) a statement that a copy of the full report is available on an Internet site maintained by or on behalf of the target company, and of the URL for that report made available under rule 46(4); and

## Schedule

### New Part 2 inserted into Schedule 1AA

r 47(2)

#### Part 2

#### Provision relating to Takeovers Code Approval Amendment Regulations 2018

#### 4 **Matters before commencement of Takeovers Code Approval Amendment Regulations 2018**

The takeovers code that is in force immediately before the commencement of the Takeovers Code Approval Amendment Regulations 2018 (the **pre-2018 amendment code**) continues to apply, and the takeovers code as amended by the Takeovers Code Approval Amendment Regulations 2018 does not apply, to—

- (a) any offer made pursuant to a takeover notice that has been sent to a target company before the commencement of the Takeovers Code Approval Amendment Regulations 2018;
- (b) any compulsory sale or voluntary sale pursuant to an acquisition notice that is sent by the dominant owner who becomes the dominant owner by reason of acceptances of an offer to which paragraph (a) applies;
- (c) any notice of meeting of shareholders to be held for the purposes of rule 7(c) or (d) of the pre-2018 amendment code that has been sent to shareholders before the commencement of the Takeovers Code Approval Amendment Regulations 2018.

Michael Webster,  
Clerk of the Executive Council.

## Explanatory note

*This note is not part of the regulations, but is intended to indicate their general effect.*

These regulations, which come into force on 29 October 2018, amend the Takeovers Code Approval Order 2000.

*Part 1* of these regulations—

- renames the order the Takeovers Regulations 2000 (the **2000 regulations**):
- inserts a *new Part 2* into the 2000 regulations. *New Part 2* replaces the Takeovers (Fees) Regulations 2001, which are revoked. The fees have been carried over without change, except that the fees are expressed as being exclusive of goods and services tax rather than inclusive.

*Part 2* of these regulations amends the Takeovers Code. In summary,—

- *new rule 4AA* clarifies that a statement provided under the code is not invalid just because it contains minor differences from a required statement:
- *new rules 5A to 5C* relate to how information or documents are given or sent under the code. The new rules provide for information or documents to be given electronically. In particular, information or documents must be given electronically to—
  - the Panel:
  - a financial product holder that is a company or overseas company:
  - a financial product holder who has notified the code company under section 391(3A) of the Companies Act 1993 that they wish to receive documents by electronic means:
  - a target or other code company:
- various provisions relating to time periods have been amended to make them more consistent and to refer to working days rather than ordinary days:
- rules 15 and 16 (which relate to the notice of meeting for the acquisition or allotment of voting securities under rule 7(c) or (d)) are amended. A statement required under rule 15(g) or 16(g) currently only relates to agreements or arrangements entered into by the person acquiring the securities or the allottee (as the case may be). This is extended to cover agreements or arrangements entered into by any other person who will become a controller of an increased percentage of voting securities as a result of the acquisition or allotment:
- *new rule 16A* allows a holder of voting securities to which an acquisition or allotment referred to in rule 7(c) or (d) relates to request a copy of the code company's financial products register. *New rule 16B* requires the company to send the register together with an electronic address for each company that is a

holder and for each holder who has notified the company under section 391(3A) of the Companies Act 1993 that they wish to receive documents by electronic means. *New rule 16C* restricts the use of that information to communications about the acquisition or allotment:

- rule 18 (which relates to the independent adviser's report) is amended. If only a summary of the report is included in the notice of meeting, the amendment requires a copy of the full report to be made available on the code company's Internet site:
- *new rule 42B* requires a target company to send to the offeror a copy of its financial products register together with an electronic address for each company that is a holder and for each holder of financial products to which the offer relates who has notified the company under section 391(3A) of the Companies Act 1993 that they wish to receive documents by electronic means. *New rule 42C* allows a holder of financial products to which the offer relates to request a copy of that register. *New rule 42D* requires the target company to send the register together with those electronic addresses. *New rule 42E* restricts the use of that information to communications about the offer:
- rule 44 (which relates to the offer document) is amended to provide for variations to correct an obvious technical error that is minor in nature. Rule 44 is also amended to provide for the additional information that is contained in, or that accompanies, the takeover notice under rule 41(4) to be corrected when it is contained in, or accompanies, the offer:
- rule 46 (which relates to the target company statement) is amended. If only a summary of the full independent adviser's report is included in the target company statement, the amendment requires a copy of the full report to be made available on the target company's Internet site:
- Schedule 1 of the code (which relates to information that must be contained in, or must accompany, the takeover notice and offer document) is amended—
  - to require an electronic address of the offeror; and
  - to require the name of each director of an offeror and each person who will become a controller of an increased percentage of voting securities in the target company:
  - to clarify the statement under clause 14 relating to the offeror's intentions for material changes to the target company. Currently, a statement is required that the information is consistent with information given to regulators. The amendment deals with the case where the offeror is not required to give, and has not given, any information to any regulatory body (in New Zealand or in an overseas jurisdiction), other than the Panel, in relation to the offer:
- Schedule 2 of the code (which relates to information that must be contained in, or must accompany, the target company statement) is amended—

- to require a postal address and an electronic address of the target company; and
- to replace references to senior officers with references to senior managers. This term has been clarified to mean a person who is not a director but who occupies a position that allows that person to exercise significant influence over the management or administration of the entity (for example, a chief executive or a chief financial officer); and
- to require information about the target company's or its senior managers' ownership of, or trading in, the equity securities of each related company of the offeror (in addition to information about ownership of, and trading in, the equity securities of the offeror); and
- to provide for half-yearly reports and interim reports of the target company to be made available from its Internet site instead of being set out in the target company statement.

The changes made by these regulations do not apply to certain matters started before commencement of the regulations (for example, an offer made under a takeover notice sent to the target company before commencement). *See new Part 2 of Schedule 1AA* inserted by *regulation 47* and the *Schedule* of these regulations.

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 27 September 2018.

These regulations are administered by the Ministry of Business, Innovation, and Employment.