Ref: 730-035 / 347936

Guidance Note

Schemes of arrangement and amalgamations under Part 15 of the Companies Act 1993

30 August 2017

TAKEOVERS PANEL

Background

1. Schemes of arrangement and amalgamations under Part 15 of the Companies Act 1993 ("schemes") are statutory Court-approved procedures that allow the reorganisation of the rights and obligations of shareholders and companies. Schemes involving Code companies are regulated under sections 236A and 236B of the Companies Act.

2. The section 236A and 236B schemes provisions were introduced to better align the schemes procedure under the Companies Act with the protections for shareholders under the Takeovers Code. The schemes provisions also align New Zealand's Code company reconstruction law more closely with the Australian regime.

3. Under section 236A, the Court cannot approve a scheme that affects the voting rights of a Code company unless: [1]

   (a) it is satisfied that the shareholders of the Code company will not be adversely affected by the use of a scheme rather than the Code to effect the change involving the Code company; or

   (b) the Court is presented with a no-objection statement from the Panel.

4. Under section 236A the Court is entitled to rely on the no-objection statement to approve a scheme. However, the Court does not have to approve a scheme merely because the Court has been presented with a Panel no-objection statement.

The Panel's approach

5. The Panel views schemes as a legitimate and valuable means for undertaking corporate transactions in New Zealand. The ability to carry out corporate transactions under a Companies Act process, rather than under the Code, provides economically sensible commercial flexibility.

6. The Panel encourages potential applicants for a no-objection statement to undertake early engagement with the Panel executive. The Panel will consider specific questions prior to an application for a no-objection statement. The Panel executive are happy to discuss draft proposals and review early drafts of documents on a confidential basis, in much the same way as the Panel executive review draft Code transaction documents.

The Panel's role

7. The Panel's role is to assist the Court. This can be done, for example, by:

   (a) reviewing scheme documents to ensure that appropriate information is placed before shareholders, that interest classes of shareholders have been adequately identified, and that other protections available to shareholders under the scheme are appropriate; and

[1] "*affects the voting rights*", in respect of an arrangement or amalgamation, means an arrangement or amalgamation that involves a change in the relative percentage of voting rights held or controlled by one or more shareholders.

(b) helping to ensure that matters that are relevant to the Court's decision are brought to the Court's attention.

No-objection statements

8. The Panel will consider applications for a no-objection statement on a case-by-case basis. The Panel is not required under the Companies Act to provide a no-objection statement and a scheme applicant is not required to apply for a no-objection statement. The Panel will consider providing a no-objection statement only at the request of an applicant.

9. When considering whether to give a no-objection statement, the Panel will consider the Code's disclosure requirements, the extent to which any separate interest classes of shareholders have been adequately identified under a scheme proposal, and the other protections available to shareholders under the scheme. As with takeovers under the Code, the Panel will express no views on the merits of a scheme.

10. In New Zealand, unopposed schemes are often considered by the Court 'on the papers', and there is no actual hearing. The Panel is not averse to this practice provided that, for schemes that fall within section 236A of the Companies Act, the Panel has given a no-objection statement.

11. The Panel may make submissions to the Court in relation to a scheme proposal whether or not it intends to give a no-objection statement. However, it will be less likely that the Panel would wish to make submissions or formally intervene in the Court process if it intends to give a no-objection statement.

12. It is likely that the Panel *would* wish to appear and make submissions to the Court if it has not provided a no-objection statement.

How to apply for a no-objection statement

<u>Early contact with the Panel is essential</u>

13. Under section 236A of the Companies Act, the applicant for final Court orders for a scheme under section 236(1) of the Companies Act must notify the Panel of the application at the same time as filing the application in Court.

14. However, to ensure that the Panel has had time to review the scheme documents and consider whether it will give a no-objection statement, the applicant for the scheme should provide draft scheme documents and any supporting material to the Panel well in advance of the application to the Court for *initial* orders under section 236(2) of the Companies Act.

15. When making an application to the Panel, the applicant must specify the dates by which the applications for initial Court orders and final Court orders are intended to be filed. The Panel will do its best to meet reasonable timeframes. The Panel generally requires a minimum of two weeks to review final drafts of the scheme documents and to consider whether to give a no-objection statement. This allows documents to be reviewed in parallel with the NZX (where relevant).

16. If the Panel has not had adequate time to consider the scheme documentation, the Panel will be unlikely to give a no-objection statement. If no application for a no-objection statement has been made, or if the Panel does not intend to issue a no-objection statement to an applicant, the Panel may seek to be heard at the initial Court proceedings. There, the Panel may object to the scheme or ask the Court to make orders on matters such as the information to be provided to shareholders or the identification of interest classes of shareholders.

Information disclosure

17. A scheme applicant and, if relevant, the scheme's promoter[2], should contact the Panel executive early in the process to agree the disclosures that should be made in the scheme documents.

18. The first step for a scheme applicant in determining the disclosures is a clause-by-clause analysis of the extent to which the disclosures required by Schedules 1 and 2 of the Code and rule 15 or rule 16 of the Code can be made – whether exactly as set out in the Code, or modified to better match the terms of, and the parties to, the proposed scheme. An explanation should be provided to the executive of why the modification or omission of a Code clause is necessary or desirable. Repetition and irrelevant Code-like language should be avoided. The Panel's goal is that shareholders are provided with effective disclosure, in clear and concise language.

Engage an independent adviser

19. In most cases, the Panel will provide a no-objection statement only for scheme proposals that are accompanied by an independent adviser's report. This independent adviser's report would be expected to be similar to a Code rule 21 report and, if necessary, a rule 22 report, on the merits of the transaction for each class of shareholders, and for each interest class of those shareholders, who will be asked to vote on the scheme.[3]

20. The independent adviser must be approved by the Panel for the purposes of providing the report. Full details of the Panel's policy and practice on approvals for independent advisers and reviewing independent adviser reports are contained in the *Guidance Note on Independent Advisers and the Takeovers Code*, which is available on the Panel's website www.takeovers.govt.nz.

---

[2] This Guidance Note refers to both the scheme applicant, which will usually be the relevant Code company, and the "promoter" of the scheme. The promoter may be an acquirer of the Code company's voting rights (where a takeover is undertaken as a scheme), or may be a person or persons seeking a merger with the Code company. In some cases, the promoter may be the Code company itself, or some other person benefitting from the scheme. Where there is more than one promoter involved, the reference to "promoter" should be read to include all the promoters.

[3] The Panel may not require an independent adviser's report in some circumstances. For example, a scheme may exclude a class of shares with a tiny percentage of the company's voting rights, and this may "*affect the voting rights*" of the Code company in a very minimal way. In such cases the Panel may consider the effect to be so small that it would not require an independent adviser's report as a pre-requisite to providing a no-objection statement.

Complex or novel issues

21. An application for a no-objection statement should carefully explain any complex or novel issues, or areas of uncertainty, concerning the scheme or its impact on shareholders. Any difficult or novel questions of law, or other matters on which expert advice has been obtained, that may be relevant to the Panel's consideration of the application for a no-objection statement should also be included. The better the Panel understands the issues, the more readily it will be able to decide whether or not it objects to the scheme.

Interest classes

22. Under the common law, and in accordance with section 236A of the Companies Act, a scheme must be considered and voted on by each interest class affected by the scheme. The requisite voting threshold needs to be achieved in each interest class if the scheme is to succeed.

23. When a scheme involves separate interest classes, the Panel expects the division of classes to be clearly disclosed in the scheme documents, together with an explanation of why the divisions have been drawn.

24. The interest classes are to be determined in accordance with Schedule 10 of the Companies Act as a starting point.[4]

25. Schedule 10 provides:

> *"…an interest class may be determined in accordance with the following principles:*
>
> (a) *shareholders whose rights are so dissimilar that they cannot sensibly consult together about a common interest are in different interest classes:*
>
> (b) *shareholders whose rights are sufficiently similar that they can consult together about a common interest are in the same interest class:*
>
> (c) *the issue is similarity and dissimilarity of shareholders' legal rights against the company (not similarity or dissimilarity of any interest not derived from legal rights against the company):*
>
> (d) *if the rights of different shareholders will be different under a proposed arrangement or amalgamation, then those shareholders are in different interest classes."*

26. Under Schedule 10, to determine interest classes, the parties need to look at the rights and obligations of shareholders and the effect of the scheme on them. Accordingly, if the scheme would result in a different legal effect for a group of shareholders, that group of shareholders should likely be considered as a different interest class for the purposes of voting on the scheme.

27. However, the common law also needs to be considered. For example, in respect of shareholders being able to sensibly consult together about a common interest, where a

[4] In *Re New Zealand Oil & Gas Limited* [2015] NZHC 39 at [13] – [19].

shareholder is, or is related to the scheme promoter, the related shareholder will likely have to vote in a separate interest class from the other shareholders.[5]

28. The Panel will not expect different interest classes to be identified unnecessarily.

29. While association is not a feature of the Schedule 10 interest class determination, association will be relevant to disclosure in the scheme documents and may restrict the scheme promoter's ability to acquire voting securities outside of the scheme.

Voting

30. The voting requirements must be disclosed in the scheme documents, consistently with the requirements of section 236A(4) of the Companies Act.

31. For the purposes of section 236A(4)(a), the Code company's shareholders may only approve the scheme by a resolution approved by a majority of 75% or more of the votes of the shareholders in each interest class entitled to vote and voting on the question ("the shares voted at the meeting").

32. The resolution must also be approved by a simple majority of all of the eligible voting rights. Valid votes by proxy or representative are included for counting the shares voted at the meeting. If the number of valid votes cast approving the scheme, taken together, equate to more than 50% of the Code company's total voting rights, then the voting threshold for approving the resolution has been met (if the 75% threshold has also been met by each interest class).

Voting intentions of promoter

33. If any promoter under the proposed scheme is a shareholder of the Code company, and will be eligible to vote at the scheme shareholder meeting(s), a statement of the voting intentions of the promoter and its associates will be required by the Panel. This statement must be enforceable by the Panel by way of deed poll. A standard form deed poll is attached as Schedule B to this Guidance Note.

Voting agreements

34. A scheme promoter may wish to enter into voting agreements prior to undertaking the scheme. The promoter will need to take care not to breach the Code's 20% threshold in rule 6, since a voting agreement necessarily confers an element of control over voting rights. A public statement may provide a mechanism for declaring voting intentions where a voting agreement cannot be entered into because it would result in the acquirer breaching rule 6 of the Code.

35. In considering the identification of interest classes as part of an application for a no-objection statement, the Panel will assess voting agreements on a case-by-case basis. A voting agreement between the scheme promoter and a shareholder who is not, or does not

[5] See *Re Hellenic & General Trust Ltd* [1976] 1 WLR 123, in which a scheme was rejected by the Court as a 53% shareholder ought to have been placed in a separate class for voting purposes, as it was a wholly-owned subsidiary of the bidder. For further examples see *Advicewise People Ltd v Trends Publishing International Ltd* [2016] NZHC 2119, *Aston Resources Ltd* [2012] FCA 229 and *Re Cashcard Australia Limited* (2004) 48 ACSR 738.

become, related to the scheme promoter is unlikely to result in the Panel forming the view that the shareholder should vote in a separate interest class.[6] A statement of voting intention is unlikely to result in the Panel forming the view that the shareholder should vote in a separate interest class.

36. A voting agreement for a scheme will not, on its own, result in an assumed association between parties to the agreement. The Panel will assess whether the terms of a voting agreement may give rise to a potential association in the context of a proposed scheme, on a case-by-case basis.

Panel consideration of the Code's protections for shareholders

37. The Code contains a number of protections for shareholders beyond information disclosure. These protections, for example, limit the types of conditions that an offeror can rely on for avoiding the transaction, and require timely payment to shareholders. The Panel will expect that the 'target' company directors in a scheme have given appropriate weight to the shareholder protections that would have existed in a Code regulated offer, and to be satisfied that it is appropriate in the circumstances if some or all of those protections are not included in the scheme.

38. When assessing a scheme, the Panel may consider the extent to which it is reasonable, given the scheme's particular set of circumstances, for the protections normally available to shareholders under a Code regulated offer to be absent. Circumstances which may influence the Panel could include there being no independent directors on the 'target' company board, or the inclusion of conditions that depend on the judgement of a party to the scheme, or the fulfilment which is in the power, or under the control of, a party to the scheme.

Apply for a no-objection statement and send supporting documents to the Panel

39. The information that the Panel expects to receive in an application for a no-objection statement is listed in Schedule A to this Guidance Note.

Panel's procedure for giving the no-objection statement

Letter of intention

40. The Panel recognises that the scheme applicant may want to give an indication at the initial Court hearing of the Panel's views on the scheme. If the Panel is satisfied with the draft scheme documentation, the identification of the interest classes of shareholders, and the terms of the scheme, it will be likely to have no objection to the scheme. In these circumstances, the Panel will provide a letter prior to the initial hearing ("letter of intention") for the applicant to produce to the Court indicating that the Panel is minded to issue a no-objection statement on the basis of the information considered by the Panel at that stage.

41. The letter of intention is likely to be in a form similar to that set out in Schedule C of this Guidance Note.

[6] The inclusion of common 'deal protection' restrictions in a voting agreement, such as restrictions on the sale of shares and/or non-solicitation undertakings, will not, in itself, give rise to a separate interest class.

42. The Panel's position set out in the letter of intention may change if the scheme's circumstances change. The Panel's position *will* change if a person engages in misleading or deceptive conduct, or in conduct that is likely to mislead or deceive, in relation to the scheme. Rule 64 of the Code applies to conduct in relation to a proposed scheme, until such time as section 236B of the Companies Act applies (i.e., final Court orders are given), exempting the transaction from the Code.[7]

No-objection statement

43. The Panel will state in writing that it has no objection to a scheme if an applicant satisfies the Panel that:[8]

    (a) all material information relating to the scheme proposal has been disclosed;

    (b) the standard of disclosure to all shareholders has been equivalent to the standard that would be required by the Code in a Code-regulated transaction;

    (c) the interest classes of shareholders were adequately identified; and

    (d) the other matters referred to in this Guidance Note have been addressed, and there are no other reasons for the Panel to object to the scheme.

44. The Panel will express no view on the merits of the scheme. The granting of a no-objection statement or a letter of intention does not indicate any view on the merits of the scheme by the Panel.

45. If the Panel provides a no-objection statement it will be issued to the applicant just prior to the filing for the second Court hearing, at which the Court makes final orders regarding the scheme (usually to approve the scheme and give effect to it). This ensures that the Panel has had an opportunity to observe the entire scheme process and satisfy itself that there have been no material changes to the circumstances of the scheme and no material changes to the information it considered in advance of the hearing for initial Court orders. A statement outlining any material changes (or if none, a statement to this effect) should be included in the application for a no-objection statement.

46. The Panel's no-objection statement is likely to be in a form similar to that set out in Schedule D of this Guidance Note.

---

[7] *Code Word 22*, which is available on the Panel's website (www.takeovers.govt.nz), discusses how the Panel applies rule 64.

Rule 64 of the Code provides that :

(1) A person must not engage in conduct that is—

(a) conduct in relation to any transaction or event that is regulated by the Code; and

(b) misleading or deceptive or likely to mislead or deceive.

(2) A person must not engage in conduct that is—

(a) incidental or preliminary to a transaction or event that is or is likely to be regulated by the Code; and

(b) misleading or deceptive or likely to mislead or deceive.

[8] The Panel will have been satisfied of these matters in respect of the draft documents and information, for the giving of the letter of intention.

Panel Court appearances

47. If the Panel does not give a letter of intention in relation to the scheme, and the Panel objects to the scheme, the Panel would likely seek to be heard at the initial Court hearing and possibly also the final Court hearing.

48. The Panel may also seek to appear before the Court, regardless of whether or not it objects to the scheme, if:

    (a) there are issues that the Panel considers should be raised before, or addressed by, the Court;

    (b) it has become aware of conduct that may breach rule 64 of the Code or section 44 of the Takeovers Act;[9] or

    (c) it has concerns about the conduct of the scheme meetings.

49. The Panel will ordinarily not appear at the second hearing if it has no objection to the scheme.

Objection by a shareholder

50. Under the Companies Act, shareholders are entitled to make submissions to the Court on the scheme whether or not a no-objection statement is given.

51. A shareholder or other interested party may submit an objection to the Panel. The Panel may consider such an objection when determining whether to provide a no-objection statement.

52. The Panel will treat applications for a no-objection statement in confidence, so this situation would only be likely to arise where the scheme promoter or Code company has publicly stated that a no-objection statement is being sought, or after the initial hearing when the scheme documents have been sent to shareholders (including any letter of intention from the Panel).

53. The Panel may seek the scheme applicant's and/or promoter's views on any objections the Panel has received from shareholders or third parties, and the identity of the complainant may be kept confidential if that were considered appropriate or necessary in the circumstances.

---

[9] Section 44 of the Takeovers Act provides:

(1) A person must not—

(a) furnish information, produce a document, or give evidence to the Panel or a member, officer, or employee of the Panel knowing it to be false or misleading; or

(b) attempt to deceive or knowingly mislead the Panel or a member, officer, or employee of the Panel in relation to any matter before it.

General matters

Option holders and holders of other convertible securities

54. The Panel considers that the information that option holders and the holders of other securities convertible into shares require when considering whether or not to approve a scheme should be of the same standard as the information provided to shareholders.

Offers of scrip

55. Where the scheme involves securities as consideration, shareholders should be provided with sufficient information about the securities to allow them to decide how they will vote on the resolutions put before them. The independent adviser's report will need to consider the merits of the scrip consideration, and may include a valuation, particularly if the scrip offered is not listed and frequently traded. The Panel would expect to review drafts of any disclosure documents for the scrip consideration at the time a no-objection statement was applied for.[10]

Third parties

56. Some schemes are part of transactions that depend on the actions of third parties, for example, scheme consideration may be issued by an entity that is not otherwise a party to the scheme.

57. The Panel would expect that third parties in these situations should be made legally bound to fulfil their obligations. For example, the Panel may request that a third party become contractually bound to provide the relevant benefits.

58. Depending on the significance of the third party arrangements to the scheme, the scheme applicant or promoter may need to submit relevant documentation to the Panel for its consideration and, in certain cases, explain the arrangements in the explanatory memorandum for shareholders.

Clear, concise, and effective scheme documents

59. The Panel expects user-friendly scheme documents for shareholders. Drafting should follow a clear and concise style, with minimal use of jargon and repetition, and with plain English used where possible. If information is summarised, a balanced view of any advantages and disadvantages should be provided.

60. More specifically, scheme documents should be:

    (a) Clear:

        (i) use plain language;

        (ii) use a font and font size that are easily readable;

[10] In a scrip takeover undertaken as a scheme, where some shareholders receive scrip, and others the cash equivalent via a nominee process, the common law principle that separate interest classes should not be unnecessarily identified, may apply even though shareholders have different legal rights as against the company. This was the approach taken in Michael Hill International Ltd [2016] NZHC 1393.

(iii) be logically ordered and easy to navigate;

(iv) highlight important information; and

(v) explain complex information in plain language and include a clear explanation of any necessary jargon;

(b) Concise:

(i) use short sentences;

(ii) avoid unnecessary repetition;

(iii) highlight important information in balanced summaries;

(iv) use diagrams and graphs effectively; and

(v) minimise the use of brand information, photographs and other images;

(c) Effective:

(i) give adequate and accurate information about the scheme; and

(ii) convey an accurate and balanced impression.

Disclaimers

61. While appropriate disclaimers are permissible, disclaiming a party's responsibility for a scheme document has the potential to be misleading. Parties should not attempt to disclaim liability for contravention of the prohibition on misleading or deceptive conduct. The Panel suggests parties avoid the use of disclaimers that are broad and catch-all.

62. In addition, where a letter of intention is given, the Panel requires that the scheme documents contain, or be accompanied by, the following statement:

Role of Takeovers Panel and High Court

The fact that the Takeovers Panel has provided a letter of intention indicating that it does not intend to object to the scheme, or that the High Court has ordered that a meeting be convened, does not mean that the Panel or the Court:

(a) has formed any view as to the merits of the proposed scheme or as to how shareholders should vote (on this matter shareholders must reach their own decision); or

(b) has prepared, or is responsible for the content of, the scheme documents or any other material.

Code applies until final orders made

63. While there is a statutory exemption from the Code in section 236B of the Companies Act, in respect of the scheme transaction, the Code continues to apply up until the Court makes its final orders, under section 236(1), that the scheme is binding on the Code

company. Any non-compliance with the Code (including, for example, rule 64 in respect of statements of voting intention), up until the final orders are made, may be addressed by the Panel taking enforcement action under section 32 of the Takeovers Act 1993.[11]

Fees

64. Under the Takeovers (Fees) Regulations 2001 the Panel is able to charge for certain aspects of its work, including the processing of no-objection statement applications.

65. The usual hourly rates, set out in the Fee Regulations, apply for the time of the Panel executive and the Panel members for considering a no-objection statement application. Applicants will be billed monthly.

[11] Section 32(1) of the Takeovers Act provides:
The Panel may, at any time, if it considers that a person may not have acted or may not be acting or may intend not to act in compliance with the Takeovers Code, after giving that person such written notice of the meeting as the Panel considers appropriate in the circumstances, but in no case exceeding 7 days, hold a meeting for the purpose of determining whether to exercise its powers under this section.

Publication history

This is the fifth edition of the Guidance Note and is current as at **30 August 2017**

Schedule A- Information required for no-objection statement application

I. General

An application for a no-objection statement should include the following information:

(a) who is applying;

(b) the anticipated filing dates for initial Court orders and final Court orders;

(c) the names of any Panel members who may be conflicted in relation to the application;

(d) an overview of the terms of the proposed scheme and its effects on the holders and controllers of voting securities in the subject Code company;

(e) copies of relevant supporting documents, such as any voting agreements, (whether executed or in draft), company constitutions, shareholder agreements, etc.

(f) the criteria and the date for determining:

(i) the persons who are to participate in the scheme;

(ii) the persons who are entitled to vote at the meeting(s) of scheme participants;

(iii) the division of shareholders into interest classes, and the reasons for the division(s); and

(iv) the persons who will be bound by the scheme if it is approved by the Court;

(g) a draft notice of meeting (see II, below);

(h) a draft explanatory memorandum (see III below) that contains or is accompanied by:

(i) the disclosures contained in Schedules 1 and 2 and rules 15 and 16 of the Code that would apply, whether in whole or in part, and 'modified' as necessary, to the scheme proposal;

(ii) a report from an independent adviser who is approved by the Panel for the purpose of writing the report;

(i) if applicable, any securities law disclosure document; and

(j) a list identifying the location in the draft explanatory memorandum of the disclosures referred to in paragraph I(h)(i), above.

II. Notice of meeting

The Panel would expect the notice of meeting sent to shareholders to fairly and clearly inform the recipients by including:

(a) the proper business of the meeting;

(b) the scheme proposed for each class of security that is subject to the scheme; and

(c) if applicable, a deed poll declaring the voting intentions of the promoter and its associates, in the form set out in Schedule B of this Guidance Note.

III. Explanatory memorandum

The Panel would expect the explanatory memorandum for shareholders to contain the following information:

(a) a clear introduction;

(b) a summary of the transaction;

(c) a proposed timetable for completion of the scheme;

(d) the reasons for the scheme being undertaken;

(e) a statement regarding whether a no-objection statement from the Panel has been applied for;

(f) identification of the independent directors, and if there are none, a statement to that effect;

(g) the information described in section I(h) above;

(h) particulars of the key documents relating to the scheme, including any conditions that need to be met for the scheme to take effect;

(i) a clear description of the statutory voting thresholds;

(j) the rights of shareholders to object to the scheme;

(k) disclosure of any voting agreement relating to the scheme, for each shareholder party to the agreement (if entered into before finalising the scheme documents), any deed poll, and any public statements of voting intention; and

(l) the inclusion of the following statement:

Role of Takeovers Panel and High Court

The fact that the Takeovers Panel has provided a letter of intention indicating that it does not intend to object to the scheme, or that the High Court has ordered that a meeting be convened, does not mean that the Panel or the Court:

(a) has formed any view as to the merits of the proposed scheme or as to how shareholders should vote (on this matter shareholders must reach their own decision); or

(b) has prepared, or is responsible for the content of, the scheme documents or any other material.

IV. Final stage in application

Before giving a no-objection statement, the Panel requires:

(a) marked-up versions showing all changes to scheme documents (including to any report by an independent adviser who has been approved by the Panel in relation to the scheme) as between the draft documents, provided to the Panel at the issuing of the letter of intention, and the final documents the shareholders received; and

(b) assurance that all material information, including any additional, or changed, voting agreements entered into after finalising the scheme documents, has been communicated in writing to the shareholders entitled to vote on the scheme.

Schedule B – Template form of Deed Poll

[**Template subject to amendment by the Panel relating to particular scheme**]

This DEED POLL is made on the [DD] day of [month] 20[YY]
BY **[Promoter]** ("short name")

[Associate of Promoter] ("short name")

IN FAVOUR OF THE TAKEOVERS PANEL

BACKGROUND

This deed poll is made in relation to a proposed scheme of arrangement or amalgamation made under Part 15 of the Companies Act 1993 involving [description of proposed transaction] ("proposed transaction").

[Short name of promoter] is the promoter of the proposed transaction. [Short name of associate of promoter] is associated with [short name of promoter] for the purposes of the Takeovers Code.

The Takeovers Panel requires a statement, enforceable by the Panel by way of deed poll, of the voting intentions of [short name of promoter or associate] in relation to the proposed transaction.

BY THIS DEED POLL [Short name of promoter or associate] agrees that:

(a) it holds [X number] shares with voting rights attached in [name of the company] which is subject to the proposed scheme of arrangement or amalgamation; and

(b) it will vote <u>in favour</u> of the proposed transaction [X number] shares, or such greater number, being all of the shares with voting rights attached that are held in [name of the company] by [name of promoter or associate] at the record date for the meeting called to consider and approve the proposed transaction.

The provisions of this document constitute promises intended to confer benefits on the Takeovers Panel, pursuant to the Contract and Commercial Law Act 2017.

Notwithstanding any other provision of this deed poll, this deed poll may be varied or revoked by agreement between [short name of promoter or associate] and the Takeovers Panel, without the approval of any other person on whom this deed poll confers a benefit.

[Note: This provision is to be summarised in the meeting materials so as to ensure compliance with section 15 of the Contract and Commercial Law Act 2017.]

This deed is governed by and shall be construed in accordance with New Zealand law.

SIGNED AS A DEED POLL

[Short name of promoter or associate] hereby acknowledges the terms of this deed poll and agrees to be bound by them.

Signed by:

_____ Signature of Director
_____ Name of Director

_____ Signature of Director
_____ Name of Director

_____ Signature of Director
_____ Name of Director

_____ Signature of Director
_____ Name of Director

Schedule C – Template Letter of Intention

Letter of Intention

[Explanation of specific scheme]

We refer to the scheme of arrangement between [insert name of company] and its [shareholders / option holders / specify particular class of shareholders or option holders]. [insert further details of the scheme of arrangement if necessary] ("scheme of arrangement").

The Takeovers Panel has formed an initial view, based on the information that has been provided to the Panel, that it intends at this stage to issue a no-objection statement in respect of the above scheme of arrangement prior to the second Court hearing.

The Panel expresses no view on the merits of the scheme of arrangement.

This advice is given having regard to the Panel's policy on schemes of arrangement as set out in the Panel's Guidance Note "Schemes of arrangement and amalgamations under Part 15 of the Companies Act 1993", dated 30 August 2017.

Yours faithfully

Schedule D – Template No-objection Statement

[Further explanation of specific scheme]

We refer to the [scheme of arrangement] between [insert name of company] and its [shareholders/option holders/specify particular class of shareholders or option holders]. [Insert further details of the scheme of arrangement if necessary] ("scheme of arrangement").

Based on the information that has been provided to the Takeovers Panel, the Panel has no objection to the scheme of arrangement approved by shareholders on [DD Month YYYY]. This no-objection statement is provided on the condition that the Panel is informed of any material changes to the scheme of arrangement between the date of the shareholder meeting on [DD Month YYYY] and the date of final orders.

The Panel is satisfied that:

(a) all material information relating to the scheme proposal has been disclosed;

(b) the standard of disclosure to all shareholders has been equivalent to the standard that would be required by the Code in a Code-regulated transaction;

(c) the interest classes of shareholders have been adequately identified; and

(d) the other matters referred to in the Panel's Guidance Note on Schemes of Arrangement have been addressed, and there are no other reasons for the Panel to object to the scheme.

The Panel expresses no view on the merits of the scheme of arrangement.

This advice is given having regard to the Panel's policy on schemes of arrangement as set out in the Panel's Guidance Note "Schemes of arrangement and amalgamations under Part 15 of the Companies Act 1993", dated 30 August 2017.

Yours faithfully