

Takeovers Code (Fulton Hogan Limited) Exemption Amendment Notice 2014

Pursuant to section 45A(3) of the Takeovers Act 1993, the Takeovers Panel gives the following notice.

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Notice

1 Title

This notice is the Takeovers Code (Fulton Hogan Limited) Exemption Amendment Notice 2014.

2 Commencement

This notice comes into force on 12 September 2014.

3 Takeovers Code (Fulton Hogan Limited) Exemption Notice 2009 amended

- (1) This notice amends the Takeovers Code (Fulton Hogan Limited) Exemption Notice 2009.
- (2) In this notice, all references to clauses are to clauses of the Takeovers Code (Fulton Hogan Limited) Exemption Notice 2009.
- (3) The Takeovers Code (Fulton Hogan Limited) Exemption Notice 2009 remains unchanged except to the extent provided by this notice.

4 Clause 18 amended

- (1) Clause 18(a) is amended by replacing it with the following paragraph:
 - “(a) the maximum aggregate percentage of voting securities that may be transferred pursuant to Fulton intra-family transfers is approved by an ordinary resolution of the shareholders of Fulton Hogan before any

Fulton intra-family transfer, and none of the Fulton family shareholders, nor any person who is or was at the time an associate of a Fulton family shareholder, votes in favour of the resolution; and”.

(2) Clause 18(e) is amended by replacing it with the following paragraph:

“(e) the maximum number of voting securities that may be transferred under the exemptions in clause 17 pursuant to Fulton intra-family transfers in a 12-month period is voting securities that carry in aggregate not more than 15% of the total voting rights in Fulton Hogan at the commencement of the 12-month period; and”.

(3) Clause 18(f) is amended by replacing it with the following paragraph:

“(f) a transfer of voting securities that increases the voting control of a Fulton family shareholder is not to be taken into account in determining whether the maximum number of voting securities permitted to be transferred by paragraph (e) has been exceeded, if the increase in voting control resulting from that transfer is exempt from rule 6(1) of the Code under any of the following:

- (i) the Takeovers Code (Trustees of Family Trusts) Exemption Notice 2012:
- (ii) clauses 20, 21 or 22 of the Takeovers Code (Class Exemptions) Notice (No 2) 2001:
- (iii) any other exemption granted in respect of Fulton Hogan by the Panel; and”.

5 Clause 20 amended

(1) Clause 20(a) is amended by replacing it with the following paragraph:

“(a) the maximum aggregate percentage of voting securities that may be transferred pursuant to Hogan intra-family transfers is approved by an ordinary resolution of the shareholders of Fulton Hogan before any Hogan intra-family transfer, and none of the Hogan family shareholders, nor any person who is or was at the time an associate of a Hogan family shareholder, votes in favour of the resolution; and”.

(2) Clause 20(e) is amended by replacing it with the following paragraph:

“(e) the maximum number of voting securities that may be transferred under the exemptions in clause 19 pursuant to Hogan intra-family transfers in a 12-month period is voting securities that carry in aggregate not more than 15% of the total voting rights in Fulton Hogan at the commencement of the 12-month period; and”.

(3) Clause 20(f) is amended by replacing it with the following paragraph:

“(f) a transfer of voting securities that increases the voting control of a Hogan family shareholder is not to be taken into account in determining

whether the maximum number of voting securities permitted to be transferred by paragraph (e) has been exceeded, if the increase in voting control resulting from that transfer is exempt from rule 6(1) of the Code under any of the following:

- (i) the Takeovers Code (Trustees of Family Trusts) Exemption Notice 2012:
- (ii) clauses 20, 21 or 22 of the Takeovers Code (Class Exemptions) Notice (No 2) 2001:
- (iii) any other exemption granted in respect of Fulton Hogan by the Panel; and”.

Dated at Auckland this 11th day of September 2014.

D. O. Jones,
Chairperson

Statement of reasons

This notice amends the Takeovers Code (Fulton Hogan Limited) Exemption Notice 2009 (the “principal notice”).

In the principal notice, the Takeovers Panel (the “Panel”) granted exemptions to:

- each of the Fulton family shareholders (as that term is defined in the principal notice) from rule 6(1) of the Code, subject to conditions, in respect of any increase in that person’s voting control in Fulton Hogan Limited (“Fulton Hogan”) that results from a Fulton intra-family transfer (as that term is defined in the principal notice) of voting securities in Fulton Hogan (“voting securities”); and
- each of the Hogan family shareholders (as that term is defined in the principal notice) from rule 6(1) of the Code, subject to conditions, in respect of any increase in that person’s voting control in Fulton Hogan that results from a Hogan intra-family transfer (as that term is defined) of voting securities.

The exemptions referred to above are subject to conditions, including that the maximum number of voting securities that may be transferred pursuant to all Fulton intra-family transfers, or all Hogan intra-family transfers, respectively, in any 12-month period is voting securities that carry in aggregate not more than 5% of the total voting rights in Fulton Hogan at the commencement of the 12-month period, and for that purpose any transfer of voting securities effected under any other exemption granted in respect of Fulton Hogan by the Panel is not taken into account.

This notice amends the principal notice by amending those conditions to provide that:

- the aggregate limitation in any 12-month period in relation to the transfer of voting securities pursuant to Fulton intra-family transfers, or Hogan intra-family transfers, is, in each case, 15% of the total voting rights in Fulton Hogan at the commencement of the 12-month period; and
- a transfer of voting securities resulting in an increase in voting control which is exempted under the Takeovers Code (Trustees of Family Trusts) Exemption Notice 2012, or clauses 20, 21 or 22 of the Takeovers Code (Class Exemptions) Notice (No 2) 2001 by the Fulton family shareholders, or the Hogan family shareholders, as the case may be, is not taken into account for the purposes of the aggregate percentage limitation.

The Panel also:

- clarifies that, in clauses 18(a) and 20(a) of the principal notice, the shareholder approval must be obtained before any transfers undertaken in reliance on the principal notice; and
- amended clause 20(e) of the principal notice by deleting the now redundant words “after the date on which the voting control of the combined Hogan family shareholders equals or exceeds 20%”.

The Panel considers that it is appropriate and consistent with the objectives of the Code to amend the conditions for the same reasons as the granting of the exemptions in the principal notice. These are –

- the transactions covered by the exemption are confined to those that take place under Fulton Hogan’s constitution, the principal purpose of which is to facilitate transfers of voting securities between family interests, not changes of control of voting rights;
- there are restrictions on the transfer of voting securities that may take place in any 12-month period to limit the possibility of a change of control occurring without using one of the mechanisms of the Code; and
- intra-family transfers permitted by the exemption will not result in an effective change in the control of voting rights in Fulton Hogan.