



Takeovers Code (Infinity Group Limited) Exemption Notice 2001

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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Notice

- 1 Title**
 This notice is the Takeovers Code (Infinity Group Limited) Exemption Notice 2001.
- 2 Application**
 This notice applies to acts or omissions occurring on or after 9 November 2001.
- 3 Expiry**
 This notice expires on the close of 31 March 2002.
- 4 Interpretation**
 - (1) In this notice, unless the context otherwise requires,—
 - Act** means the Takeovers Act 1993
 - Active** means Active Equities Limited
 - agreement** means the underwriting agreement between Active and Infinity dated 12 November 2001

Code means the Takeovers Code approved by the Takeovers Code Approval Order 2000 (SR 2000/210)

Infinity means Infinity Group Limited

meeting means the meeting of Infinity's shareholders held in December 2001 to consider whether or not to approve, for the purposes of rule 7(d) of the Code, the allotment of the securities to Active under the agreement

notice of meeting means the notice of the meeting that has been sent to Infinity's shareholders

offer means the pro-rata offer of up to 23.03 million securities to Infinity's shareholders

securities means the new ordinary shares in Infinity that are being offered under the offer.

- (2) 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 16(b) of Code

Infinity is exempted from rule 16(b) of the Code in respect of the notice of meeting.

6 Exemption from rule 7(d) of Code

Active is exempted from rule 7(d) of the Code in respect of any increase in its percentage of the voting rights in Infinity that arises from the allotment of securities under the offer and the agreement to the extent that that provision requires the notice of meeting to be in accordance with rule 16(b) of the Code.

7 Conditions

The exemptions in clauses 5 and 6 are subject to the conditions that the notice of meeting contains particulars of the securities that may be allotted to Active under the offer and the agreement, including—

- (a) the maximum number of securities that could be allotted to Active under the offer and the agreement; and
- (b) the percentage of the aggregate of all existing securities and all securities that could be allotted under the offer that that maximum number represents; and

- (c) the maximum percentage of all voting securities that could be held or controlled by Active after completion of the allotment of that maximum number of securities that could be allotted to Active.

Dated at Wellington this 11th day of December 2001.

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

[L.S.]

John King,
Chairperson.

Statement of reasons of Takeovers Panel

This notice applies to acts or omissions occurring on or after 9 November 2001 and expires on the close of 31 March 2002.

The Takeovers Panel has granted exemptions to—

- Infinity Group Limited (**Infinity**) in respect of rule 16(b) of the Code; and
- Active Equities Limited (**Active**) in respect of rule 7(d) of the Code.

Infinity proposes to make a renounceable pro-rata offer of approximately 23 million ordinary shares to its existing shareholders. It is proposed that the offer of shares (other than 12 381 338 shares to which certain shareholders are entitled) will be underwritten by Active, which currently holds approximately 35% of the voting rights in Infinity. It is likely, therefore, that the percentage of Infinity voting rights held by Active will increase as a result of it underwriting the offer. If Active is required to take up the maximum number of shares that it may be required to subscribe for under the underwriting agreement (being 10 644 852 shares), the percentage of voting rights held by Active will increase to 50.35%.

Infinity intends to obtain shareholder approval of the allotment of shares to Active in accordance with the Code.

Infinity is, however, unable to comply with the requirements of rule 16(b) of the Code prior to the completion of the offer as Infinity is not able to state in its notice of meeting—

- the precise number of shares that will be allotted to Active under the underwriting agreement; and
- the exact percentage of Infinity voting rights that will be held or controlled by Active after the allotment of that number of shares to it.

These details can only be determined after the offer of shares has closed and all applications under it have been processed.

The Takeovers Panel considers that it is appropriate to grant the exemptions because—

- shareholder underwriting agreements are an accepted means of raising equity capital in New Zealand and the Takeovers Panel should facilitate these arrangements by exemption; and
- if the shareholders in Infinity approve the maximum possible increase in the percentage of voting rights held by Active as a result of the allotment to it under the offer and the underwriting agreement, then, by implication, they can be taken to have also approved that Active may increase its percentage of voting rights by a lesser amount.

The Takeovers Panel considers that the exemptions are consistent with the objectives of the Code because the non-associated shareholders of Infinity will have an opportunity to vote on the allotment of voting securities to Active.

Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 13 December 2001.

This notice is administered by the Takeovers Panel.
