

Takeovers Code (Tru-Test Corporation Limited) Exemption Notice (No. 2) 2014

Pursuant to section 45 of the Takeovers Act 1993, the Takeovers Panel, being satisfied of the matters set out in section 45(6) of that Act, gives the following notice.

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Notice

1 Title

This notice is the Takeovers Code (Tru-Test Corporation Limited) Exemption Notice (No. 2) 2014.

2 Application

This notice applies to acts or omissions occurring on or after 21 February 2014.

3 Revocation

- (1) The Takeovers Code (Tru-Test Corporation Limited) Exemption Notice 2014 is revoked.
- (2) This notice is revoked on the close of 15 September 2014.

4 Interpretation

(1) In this notice, unless the context otherwise requires,-

Act means the Takeovers Act 1993

approved maximum percentage means the maximum percentage of the remaining maximum number that KTT could hold or control after the September buyback and the placement

approved placement maximum number means the maximum number of voting securities that Tru-Test may issue to KTT under the placement

approved September buyback maximum number means the maximum number of voting securities that Tru-Test could acquire under the September buyback

Code means the Takeovers Code under the Act

February buyback means acquisition by Tru-Test on 21 February 2014 of the voting securities held by Gallagher Holdings Limited

February calculation date means the date used for determining the matters referred to in clause 8(c)

KTT means KTT Limited Partnership, registered pursuant to the Limited Partnerships Act 2008 on 13 July 2012

meeting means the meeting of shareholders that is to be held on or about 29 August 2014 to consider, among other things, whether or not to approve:

(a) the September buyback;

(b) the placement; and

(c) KTT's increased voting control as a result of the February buyback

notice of meeting means the notice of meeting in respect of the meeting

placement means the allotment of 5,714,285 voting securities to KTT by Tru-Test, pursuant to an agreement between KTT and Tru-Test signed on or about 6 August 2014, to be completed on or about 9 September 2014

relevant voting securities means the number of voting securities held by KTT that represents the percentage by which KTT increased its voting control as a result of the February buyback

remaining maximum number means the number of voting securities on issue after the placement, assuming the approved September buyback maximum number is acquired by Tru-Test under the September buyback

September buyback means the acquisition by Tru-Test of up to a maximum of 9,523,809 voting securities, pursuant to an offer dated on or about 7 August 2014, to be completed on or about 10 September 2014

September calculation date means the date used for determining the matters referred to in clause 6(b)

shareholder means a holder of voting securities

Tru-Test means Tru-Test Corporation Limited

voting security means a voting security in Tru-Test.

- (2) In this notice, a reference to a person increasing voting control is a reference to the person becoming the holder or controller of an increased percentage of voting rights in Tru-Test.
- (3) Any term or expression that is defined in the Act or the Code and used, but not defined, in this notice has the same meaning as in the Act or the Code.

5 Exemption from rule 6(1) of Code in respect of September buyback and placement

KTT is exempted from rule 6(1) of the Code in respect of any increase in KTT's voting control as a result of the September buyback and the placement.

6 Conditions of exemption in clause 5

The exemption in clause 5 is subject to the conditions that –

- (a) the September buyback and the placement are approved by an ordinary resolution of shareholders; and
- (b) the notice of meeting containing the proposed resolution to approve the September buyback and the placement must contain, or be accompanied by -
 - (i) the full particulars of the September buyback and the placement; and
 - (ii) a statement of the name of KTT as a person, and the identity of any other person, who will become a controller of an increased percentage of voting securities as a result of the September buyback and the placement; and
 - (iii) the following particulars:
 - (A) the approved September buyback maximum number of voting securities:
 - (B) the percentage of all voting securities on issue prior to the placement that the approved September buyback maximum number represents: and
 - (iv) the consideration for the September buyback and the placement, or the manner in which the consideration will be determined, and when it will be payable; and
 - (v) the reasons for the September buyback and the placement; and
 - (vi) the following particulars of the voting securities that may be issued by Tru-Test to KTT under the placement:
 - (A) the approved placement maximum number:

- (B) the percentage of the remaining maximum number that the approved placement maximum number represents:
 - (C) the approved maximum percentage:
 - (D) the maximum percentage of the remaining maximum number that KTT and KTT's associates could hold or control, in aggregate: and
- (vii) a statement to the effect that the increase in KTT's voting control that would result from the September buyback and the placement would, if approved by shareholders, be permitted as an exception to rule 6(1) of the Code in reliance on the exemption in clause 5 of this exemption notice; and
- (viii) a statement by KTT setting out any particulars of any agreement or arrangement (whether legally enforceable or not) that has been, or is intended to be, entered into between KTT and any other person (other than between KTT and Tru-Test in respect of the matters referred to in subparagraphs (i) to (vi)) relating to the allotment, holding, or control of voting securities, or the exercise of the voting rights in Tru-Test; and
- (ix) a report from an independent adviser, in relation to the September buyback and the placement, that complies with rule 18 of the Code as if -
 - (A) references in that rule to an acquisition under rule 7(c) of the Code were references to the September buyback and the placement; and
 - (B) the references to a notice of meeting were references to the notice of meeting referred to in this exemption; and
- (x) a statement by the directors of Tru-Test, in relation to the September buyback and the placement, that complies with rule 19 of the Code as if the reference in that rule to an acquisition under rule 7(c) of the Code were a reference to the September buyback and the placement; and
- (xi) the assumptions on which the particulars referred to in subparagraphs (iii) and (vi) are based, which must include the assumptions referred to in paragraph (c); and
- (xii) the September calculation date; and
- (c) for the purposes of paragraph (b)(xi), the assumptions are the following:
 - (i) that shareholders approve the resolution referred to in clause 8(a); and

- (ii) that the number of voting securities is the number of voting securities on issue at the September calculation date; and
 - (iii) that there is no change in the total number of voting securities on issue between the date of the notice of meeting and the September calculation date, other than as a result of the September buyback and the placement; and
 - (iv) that KTT does not participate in the September buyback; and
 - (v) that Tru-Test acquires the approved September buyback maximum number of voting securities; and
 - (vi) that Tru-Test issues the approved placement maximum number of voting securities; and
 - (vii) any other assumptions that are reasonably necessary to ensure that shareholders are provided with the material information required for them to be able to determine whether to approve the resolution; and
- (d) the proposed resolution referred to in paragraph (b) must be put to shareholders in the same notice of meeting, and at the same meeting, as the proposed resolution referred to in clause 8(c); and
 - (e) neither KTT, nor any associate of KTT, may vote in favour of the proposed resolution referred to in paragraph (b); and
 - (f) the notice of meeting is in a form approved by the Panel.

7 Exemption from rule 6(1) of Code in respect of February buyback

KTT is exempted from rule 6(1) of the Code in respect of the increase in KTT's voting control as a result of the February buyback.

8 Conditions of exemption in clause 7

The exemption in clause 7 is subject to the conditions that –

- (a) the increase in KTT's voting control as a result of the February buyback must be approved by an ordinary resolution of shareholders; and
- (b) the notice of meeting containing the proposed resolution to approve the increase in KTT's voting control as a result of the February buyback must contain, or be accompanied by, the following:
 - (i) the full particulars of the February buyback;
 - (ii) a statement of the name of KTT as a person, and the identity of any other person, who became a controller of an increased

percentage of voting rights in Tru-Test as a result of the February buyback:

- (iii) the following particulars of the relevant voting securities:
 - (A) the number of relevant voting securities:
 - (B) the percentage of all voting securities that that number of relevant voting securities represents:
 - (C) the percentage of all voting securities that will be held or controlled by KTT if the shareholder approval referred to in paragraph (a) is given:
 - (D) the aggregate percentage of all voting securities that will be held or controlled by KTT and KTT's associates if the shareholder approval referred to in paragraph (a) is given:
- (iv) the reasons for:
 - (A) the increase in KTT's voting control as a result of the February buyback; and
 - (B) the proposed resolution to approve the increase in KTT's voting control as a result of the February buyback:
- (v) a statement to the effect that the increase in KTT's voting control as a result of the February buyback, if approved by shareholders, will be permitted as an exception to rule 6(1) of the Code in reliance on the exemption in clause 7 of this exemption notice:
- (vi) a report from an independent adviser, in relation to KTT's increase in voting control as a result of the February buyback, that complies with rule 18 of the Code as if -
 - (A) references in that rule to an acquisition under rule 7(c) of the Code were references to the relevant voting securities acquired under the February buyback; and
 - (B) the references to a notice of meeting were references to the notice of meeting referred to in this exemption:
- (vii) a statement by the directors of Tru-Test, in relation KTT's increase in voting control as a result of the February buyback, that complies with rule 19 of the Code as if the reference in that rule to an acquisition under rule 7(c) of the Code was a reference to the relevant voting securities acquired under the February buyback:

- (viii) the February calculation date:
- (ix) the assumptions on which the particulars referred to in subparagraph (iii) are based which must include -
 - (A) that the total number of voting securities does not take account of the September buyback and the placement; and
 - (B) that there has been no change to the total number of voting securities between the date of the February buyback and the February calculation date; and
 - (C) any other assumptions that are reasonably necessary to ensure that shareholders are provided with the material information required for them to be able to determine whether to approve the resolution; and
- (c) until the shareholders approve the proposed resolution referred to in clause 8(c), the voting rights attached to the relevant voting securities must not be exercised:
- (d) the proposed resolution referred to in clause 8(c) must be put to shareholders in the same notice of meeting, and at the same meeting, as the proposed resolution referred to in paragraph 6(b):
- (e) neither KTT, nor any associate of KTT, may vote on the proposed resolution referred to in paragraph (c):
- (f) the notice of meeting is in a form approved by the Panel.

9 Additional conditions

The exemptions in clause 5 and 7 are subject to the following additional conditions:

- (a) at the same time that the notice of meeting is sent to shareholders, Tru-Test must send to the Panel, in electronic form, a copy of the notice of meeting and any documents accompanying it that relate to the meeting:
- (b) if, before the meeting, a person publishes or sends to shareholders a statement or information that relates to the meeting but that was not required by the Code to be published or sent, Tru-Test, upon obtaining a copy of such statement of information, must send to the Panel, in electronic form, a copy of that statement or information.

Dated at Auckland this 8th day of August 2014

[signed]
D O Jones,
Chairperson

Statement of reasons

This notice applies to acts or omissions occurring on or after 21 February 2014 and expires on 15 September 2014.

The Takeovers Panel (the **Panel**) has granted exemptions for KTT Limited Partnership (**KTT**) from rule 6(1) of the Takeovers Code in respect of any increase in the voting rights in Tru-Test Corporation Limited (**Tru-Test**) held or controlled by KTT as a result of –

- the allotment of voting securities to KTT by Tru-Test pursuant to an agreement between Tru-Test and KTT (the **Placement**) and the subsequent acquisition by Tru-Test of its own voting securities, pursuant to an offer to all shareholders in Tru-Test (the **Buyback**); and
- the non-pro rata buyback by Tru-Test on 21 February 2014 of the voting securities held by Gallagher Holdings Limited (the **February Buyback**).

Placement and Buyback

The Buyback is being undertaken to create a liquidity event for Tru-Test. To help fund the Buyback, Tru-Test is undertaking the Placement to KTT. KTT is not expected to accept the offer under the Buyback.

As a result of the Placement and Buyback, KTT will increase its voting control in Tru-Test above the 20% threshold in rule 6(1) of the Code. The voting control increase, in the case of the Buyback, may be approved by the non-associated shareholders of Tru-Test under clause 4 of the Takeovers Code (Class Exemptions) Notice (No 2) 2001 (**Clause 4**) and, in the case of the Placement, under rule 7(d) of the Code. However, the information that is required under rule 7(d) to be included in the notice of meeting for the approval of the Placement would not take account of the Buyback. Likewise, the information that is required under Clause 4 to be included in the notice of meeting for the approval of the Buyback would not take account of the Placement. Accordingly, it is not possible for Tru-Test to disclose in a manner that would be useful for the shareholders of Tru-Test the maximum numbers and percentages of voting securities in Tru-Test that KTT will hold or control after both the Placement and Buyback are completed.

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

- it is not possible to state the maximum number of voting securities to be allotted and the relevant percentages required under Clause 4 and rule 7(d) to be stated in the notice of meeting to take into account the Buyback happening contemporaneously with the Placement:
- the conditions of the exemption ensure shareholders receive one set of integrated disclosures which closely mirrors schedule 1 of the Takeovers Code (Class Exemptions) Notice (No 2) 2001 and rules 7 and 16 to 19B of the Code:
- the conditions of the exemption enable the non-associated shareholders to approve the potential maximum increase in voting control by KTT taking into account the effect of the Placement and Buyback together.

February Buyback

KTT was relying on clause 5 of the Takeovers Code (Class Exemptions) Notice (No 2) 2001 in respect of the increase in its voting control in Tru-Test as a result of the February Buyback. Given that KTT is seeking the approval of shareholders of Tru-Test for the increase of KTT's voting rights in Tru-Test as a result of the Placement and Buyback, KTT sought an exemption from the Panel so that it could also seek approval to retain the increase in its voting control as a result of the February Buyback.

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

- the conditions of the exemption closely mirror the shareholder approval mechanism in rule 7(c) of the Code
 - shareholders have the opportunity to approve or decline KTT's increase in voting control resulting from the February Buyback.
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