



Takeovers Code (Normandy NFM 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 (Normandy NFM Limited) Exemption Notice 2001.
- 2 Commencement**
This notice comes into force on 30 November 2001.
- 3 Expiry**
This notice expires on the close of 30 June 2002.
- 4 Interpretation**
- (1) In this notice, unless the context otherwise requires,—
- Act** means the Takeovers Act 1993
- Code** means the Takeovers Code approved by the Takeovers Code Approval Order 2000 (SR 2000/210)
- non-Australasian shareholder** means a holder of shares in Otter who, immediately before Normandy takes up their shares under the offer, has registered an address in Otter's

share register that is outside of New Zealand, Australia, or any of Australia's external territories

Normandy means Normandy NFM Limited

offer means the offer made by Normandy for all of the shares in Otter

Otter means Otter Gold Mines Limited

small shareholder means a person who, immediately before Normandy takes up their shares under the offer, holds less than 3 000 shares in Otter.

- (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 Non-Australasian shareholder exemption

- (1) Normandy is exempted from rule 20 of the Code in so far as the offer relates to non-Australasian shareholders.
- (2) The exemption is subject to the conditions that—
- (a) Normandy appoints a nominee for the non-Australasian shareholders who—
 - (i) is authorised to conduct securities business in Australia; and
 - (ii) is in good standing with the Australian Securities and Investments Commission; and
 - (iii) is not, to the best of Normandy's knowledge, under investigation by that body; and
 - (b) Normandy transfers to the nominee the shares in Normandy that would otherwise be transferred to the non-Australasian shareholders under the offer; and
 - (c) Normandy uses its best endeavors to ensure that the nominee, as soon as is reasonably practicable, sells the Normandy shares and distributes to each non-Australasian shareholder their proportion of the sale proceeds net of any applicable brokerage costs and stamp duties; and
 - (d) Normandy indemnifies each non-Australasian shareholder against any costs or losses suffered as a result of any failure by the nominee to perform its obligations in a proper manner.

6 Small shareholder exemption

- (1) Normandy is exempted from rule 20 of the Code in respect of the facility that allows each small shareholder to direct Normandy to transfer to a nominee the shares in Normandy that would otherwise be transferred to the small shareholder under the offer.
- (2) The exemption is subject to the conditions that—
 - (a) Normandy appoints a nominee for the small shareholders who—
 - (i) is authorised to conduct securities business in Australia; and
 - (ii) is in good standing with the Australian Securities and Investments Commission; and
 - (iii) is not, to the best of Normandy's knowledge, under investigation by that body; and
 - (b) if a small shareholder elects to use the facility, Normandy transfers to the nominee the shares in Normandy that would otherwise be transferred to that shareholder under the offer; and
 - (c) Normandy uses its best endeavors to ensure that the nominee, as soon as is reasonably practicable, sells the Normandy shares and distributes to each small shareholder their proportion of the sale proceeds net of any applicable brokerage costs and stamp duties; and
 - (d) Normandy indemnifies each small shareholder against any costs or losses suffered as a result of the failure by the nominee to perform its obligations in a proper manner.

Dated at Wellington this 29th day of November 2001.

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

[L.S.]

K. J. O'Connor,
Member.

Statement of reasons of Takeovers Panel

The Takeovers Panel has exempted Normandy NFM Limited (**Normandy**) from compliance with rule 20 of the Takeovers Code in 2 situations.

Rule 20 of the Code requires an offer to be made on the same terms and provide the same consideration for all securities of the same class.

The exemptions involve a takeover offer by Normandy in relation to all of the shares in Otter Gold Mines Limited (**Otter**). The offer involves Normandy making a scrip offer to Otter's shareholders. The offer includes an offer to a small number of shareholders who are spread across a significant number of jurisdictions outside of Australia and New Zealand and who hold a minimal percentage of voting rights.

The first exemption applies in respect of offers to shareholders who are resident outside of Australia and New Zealand. It provides that any shares of Normandy that would otherwise be transferred to those shareholders of Otter that accept the offer will be transferred to a nominee appointed by Normandy. That nominee is required, as soon as is reasonably practicable, to sell the shares and to pass on the net proceeds to the shareholder. Conditions are imposed to ensure that the nominee is of good standing and that shareholders are protected against the nominee's failure to perform its duties in a proper manner.

The Takeovers Panel considers that it is appropriate to grant the exemption for the following reasons:

- it is not practicable for Normandy to make an offer to all of the shareholders of Otter on the same terms, as required by rule 20 of the Code, because of the costs of complying with the securities law that applies in the various jurisdictions;
- shareholders of Otter would otherwise be denied the opportunity to consider a takeover offer from Normandy.

The Takeovers Panel considers that the exemption is consistent with the objectives of the Code because—

- the exemption is consistent with the principle of providing equal consideration to all shareholders in the target company, while recognising the unreasonable compliance costs of having to comply with the securities law that applies in various jurisdictions, in circumstances in which share scrip is offered

as consideration and shareholdings outside of Australia and New Zealand are minimal; and

- it is important for competition for the control of Code companies that offerors are not precluded from offering scrip as consideration in takeover transactions.

The second exemption applies in respect of the facility that allows persons who hold less than 3 000 shares in Otter to direct Normandy to transfer to a nominee the shares in Normandy that would otherwise be transferred to them under the offer. The ability to direct Normandy to transfer shares to a nominee is not available to other shareholders. The facility provides for the sale of shares at a discounted brokerage rate.

The Takeovers Panel considers that it is appropriate to grant the exemption because holders of small parcels of Otter shares would be left holding parcels of Normandy shares considered unmarketable by the Australian Stock Exchange and therefore difficult for the shareholders to deal with.

The Takeovers Panel considers that the exemption is consistent with the objectives of the Code because the exemption is consistent with the principle of providing equal consideration to all shareholders in the target company while at the same time promoting efficiency in the market by providing a mechanism for holders of small parcels of shares to dispose of their shares at reasonable cost.

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

Date of notification in *Gazette*: 6 December 2001.

This notice is administered by the Takeovers Panel.
