



Takeovers Code (Data Advantage 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 (Data Advantage Limited) Exemption Notice 2001.

2 Commencement

This notice comes into force on 18 October 2001.

3 Interpretation

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

Act means the Takeovers Act 1993

Aqua Advantage means Aqua Advantage (New Zealand) Limited, a wholly-owned subsidiary of Data Advantage

Baycorp means Baycorp Holdings Limited

Baycorp shareholders means the holders of shares in Baycorp at the relevant time

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

Data Advantage means Data Advantage Limited

information memorandum means the information memorandum prepared for the Baycorp shareholders that includes information material to the decision of Baycorp shareholders whether to vote at the meeting in favour of the resolution of Baycorp shareholders proposed in connection with the merger proposal

meeting means the Baycorp shareholders meeting held to vote on the resolutions approving the merger proposal

merger proposal means the proposal to merge Baycorp and Data Advantage by way of a scheme, which will include—

- (a) the issue of 1.56 ordinary voting shares in Data Advantage for each ordinary voting share in Baycorp held by the Baycorp shareholders:
- (b) the acquisition by Data Advantage, through and by Aqua Advantage, of all of the issued ordinary voting shares in Baycorp:
- (c) the issue by Aqua Advantage to Data Advantage of 1 share in the capital of Aqua Advantage for each Data Advantage share issued to the Baycorp shareholders:
- (d) the amalgamation of Aqua Advantage and Baycorp, with Baycorp becoming the surviving company and the shares in the amalgamated company being held by Data Advantage

Schedules means Schedules 1 and 2 of the Code

scheme means a scheme of arrangement approved by the High Court of New Zealand pursuant to Part XV of the Companies Act 1993 on terms that were provided to the Panel.

- (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.
- (3) For the purposes of clause 4(2)(f), **Baycorp shareholder** or **shareholder** means the persons recorded on the Baycorp share register as holders of shares in Baycorp at the date of the meeting.

4 Exemption

- (1) Data Advantage and Aqua Advantage are exempted from rule 6(1) of the Code in respect of any increase in their control of voting rights in Baycorp that results from the merger proposal.

- (2) The exemption is subject to the conditions that—
- (a) the merger proposal is implemented pursuant to a scheme; and
 - (b) the information memorandum includes—
 - (i) the information, statements, or certificates specified in clauses 4, 5, 6, 7, 8, 10, 11, 14, 15, 16, and 19 of Schedule 1 of the Code, and
 - (ii) the information, statements, or certificates specified in clauses 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, and 26 of Schedule 2 of the Code; and
 - (c) the information included in the information memorandum under paragraph (b) is changed to recognise that—
 - (i) the acquisition by Data Advantage through and by Aqua Advantage of the Baycorp shares as part of the merger proposal is through the scheme; and
 - (ii) where Data Advantage is the offeror, Baycorp is the target company; and
 - (iii) the 6-month period referred to in the schedules is based on the last practicable date before the date of the information memorandum; and
 - (d) the information included in the information memorandum under paragraph (b) states the clauses of the Code that would, but for this exemption, require that information to be given; and
 - (e) the notice to Baycorp shareholders of the meeting—
 - (i) generally complies with rule 15 of the Code (other than rules 15(f) and 15(g)) in relation to the acquisition of voting securities of Baycorp; and
 - (ii) includes a statement that the acquisition of all the voting securities of Baycorp is permitted by the exemption; and
 - (f) the resolution to be put to the Baycorp shareholders at the meeting to consider the merger proposal is passed by both—
 - (i) a 75% majority of the votes of those shareholders entitled to vote and voting on the resolution at the meeting (whether voting in person or by proxy), and being more than 50% of the total voting rights of Baycorp; and

- (ii) a 50% majority by number of those shareholders entitled to vote and voting on the resolution at the meeting (whether voting in person or by proxy); and
- (g) neither Data Advantage nor any of its associates holds or controls any voting rights in respect of the voting securities of Baycorp on the date this notice comes into force nor the date of the meeting; and
- (h) the directors of Baycorp obtain a report from an independent adviser approved by the Panel on the merits of the merger proposal, having regard to the interests of the Baycorp shareholders, as if the report were required by, and being prepared for, the purposes of rule 18 of the Code, and the report is included with, or accompanies, the distribution of the information memorandum.

Dated at Wellington this 12th day of October 2001.

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

[L.S.]

D. J. Quigg,
Member.

Statement of reasons of Takeovers Panel

This notice, which comes into force on 18 October 2001, exempts Data Advantage Limited and its wholly-owned subsidiary Aqua Advantage (New Zealand) Limited, subject to certain conditions, from complying with rule 6(1) of the Code in respect of the acquisition by them of all of the shares in Baycorp Holdings Limited as a result of a merger proposal entered into pursuant to Part XV of the Companies Act 1993.

Data Advantage and Baycorp intend merging to form 1 group. Following the proposed merger, Data Advantage will become Baycorp's parent company. Under the agreed terms of the merger, it is proposed that Data Advantage exchanges 1.56 shares in itself (**new Data shares**) for every 1 existing Baycorp share (**Baycorp**

shares). The Baycorp shares will be transferred to a New Zealand subsidiary of Data Advantage as consideration for the issue of new Data shares to those holders of Baycorp shares. The New Zealand subsidiary of Data Advantage and Baycorp will subsequently be amalgamated with the surviving entity being Baycorp and the Baycorp shares will be cancelled.

Data Advantage and its associates will accordingly, as a result of this transaction, “hold or acquire” more than 20% of the voting rights in Baycorp.

The merger is to be by way of a scheme of arrangement under Part XV of the Companies Act 1993, by court order, and subject to a resolution of Baycorp shareholders being passed by the requisite majority set out in this exemption.

The merger of Data Advantage, through its wholly-owned subsidiary Aqua Advantage (New Zealand) Limited, with Baycorp is subject to the Code because it is to be effected in a manner that results in the voting control of Baycorp being acquired by Data Advantage.

The Panel has decided that any application for the granting of exemptions from the Code to allow the achievement of a takeover through a scheme of arrangement under Part XV of the Companies Act 1993 should be treated on its merits, with the Panel having particular regard to the extent to which the terms of the scheme are consistent with the objectives of the Code and the disciplines of the Code.

The Panel has received, at its request, a statement from Baycorp explaining why the merger was sought to be effected by means of a scheme of arrangement under the Companies Act 1993 rather than as a takeover offer made pursuant to the Code.

The exemption is appropriate because it will enable the merger of Data Advantage and Baycorp (if the merger is approved by the requisite majority of shareholders of both companies) to be achieved in a manner that is commercially efficient for the 2 parties while retaining adherence to the disciplines and objectives of the Code.

The exemption is consistent with the objectives of the Code because—

- the merger proposal provides for fair treatment of all shareholders of Baycorp in that all shareholders in Baycorp will receive shares in Data Advantage on the same terms; and

- the merger proposal provides for the provision of information and of advice (from an independent adviser) to the shareholders of Baycorp that is consistent with the information that would have been provided under a Code offer; and
 - from the point of view of the international competitiveness of the New Zealand capital markets and harmonisation with the business rules in Australia, it is important that similar transactions should be able to be carried out in a similar manner whether in New Zealand or Australia.
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Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 18 October 2001.

This notice is administered by the Takeovers Panel.
