



## Takeovers Code (Pacific Retail Group Limited and ElderCare New Zealand Limited) Exemption Notice 2002

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 (Pacific Retail Group Limited and ElderCare New Zealand Limited) Exemption Notice 2002.
- 2 Application**  
This notice applies to acts or omissions occurring on or after 6 November 2002.
- 3 Expiry**  
This notice expires on the close of 6 November 2003.
- 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)
    - Cullen Group** means Cullen Group Limited

**Cullen Investments** means Cullen Investments Limited  
**current shareholders of Victoria Equities** means Eric John Watson, Leslie Watson Archer, Martin Goldfinch, and Philip Newland

**ElderCare** means ElderCare New Zealand Limited

**notes** means the convertible notes issued by ElderCare to Cullen Investments on 2 November 2001

**Pacific Retail** means Pacific Retail Group Limited

**transfer** means the transfer to Cullen Group of Eric John Watson's entire legal and beneficial title to the issued share capital of Cullen Investments

**Trust** means Valley Trust established by a trust deed dated 31 October 2002

**trust deed** means the trust deed of the Trust in force as at 31 October 2002

**Victoria Equities** means Victoria Equities Limited.

- (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

Cullen Group, Victoria Equities, and the current shareholders of Victoria Equities are exempted from rule 6(1) of the Code in respect of—

- (a) any increase in their control of voting rights in Pacific Retail that results from the transfer; and
- (b) any increase in their control of voting rights in ElderCare that results from the conversion of the notes after the transfer.

## 6 Conditions

The exemption is subject to the following conditions:

- (a) Victoria Equities, as trustee of the Trust, must be the only shareholder of Cullen Group;
- (b) the trust deed must provide that—
  - (i) Eric John Watson is the only “appointer” (as that term is defined in the trust deed):

- (ii) the beneficiaries of the trust are Eric John Watson and any individuals and charities appointed by him; and
- (iii) the approval of Eric John Watson must be obtained before the trust deed is amended.

Dated at Auckland this 2nd day of December 2002.

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

[L.S.]

D. O. Jones,  
Deputy Chairperson.

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#### Statement of reasons

This notice applies to acts or omissions occurring on or after 6 November 2002, and expires on 6 November 2003.

Eric John Watson, who currently holds or controls all of the shares in Cullen Investments Limited (**Cullen Investments**), proposes to reorganise his shareholdings and to transfer all of his shares in Cullen Investments to Cullen Group Limited (**Cullen Group**). All of the shares in Cullen Group are held by Victoria Equities Limited (**Victoria Equities**) as trustee of the Valley Trust, which is controlled by Eric John Watson.

As Cullen Investments holds or controls more than 20% of the voting rights in Pacific Retail Group Limited (**Pacific Retail**), the proposed reorganisation will result in Cullen Group, Victoria Equities, and the current shareholders of Victoria Equities holding or controlling more than 20% of the voting rights in Pacific Retail.

Cullen Investments also holds convertible notes issued by ElderCare New Zealand Limited (**ElderCare**). The conversion of these notes into ElderCare shares would be a breach of rule 6(1) of the Takeovers Code (the **Code**) if the associates of Cullen Investments were to hold more than 20% of the voting rights in ElderCare, unless one of the exceptions in rule 7 of the Code applies.

The Panel has previously granted an exemption to Cullen Investments in respect of the conversion of the convertible notes issued by ElderCare (SR 2002/201 refers), but this exemption does not extend to Cullen Group, Victoria Equities, or the shareholders of Victoria Equities.

The Takeovers Panel has granted an exemption from rule 6(1) of the Code to Cullen Group, Victoria Equities, and the current shareholders of Victoria Equities. Cullen Group, Victoria Equities, and the current shareholders of Victoria Equities are exempted in respect of—

- any increase in their control of voting rights in Pacific Retail that results from the acquisition by Cullen Group of shares in Cullen Investments; and
- any increase in their control of voting rights in ElderCare that results from the conversion of ElderCare convertible notes after the acquisition by Cullen Group of shares in Cullen Investments.

The Panel considers that—

- it is appropriate to grant the exemption because—
  - although the proposed reorganisation would result in an indirect change in the form of control of Pacific Retail and ElderCare, there would be no effective change in the control of voting rights in those companies; and
  - shareholders of Pacific Retail or ElderCare will not be disadvantaged in not having the opportunity to vote on the proposed reorganisation at a meeting of shareholders, as the proposed reorganisation will have no real effect on those shareholders; and
- the exemption is consistent with the objectives of the Code because—
  - the proposed reorganisation will not result in an effective change in control of Pacific Retail or ElderCare, nor will it disadvantage shareholders of those companies; and

- the exemption avoids unnecessary compliance costs that would be incurred if it were not granted.
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Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 5 December 2002.

This notice is administered by the Takeovers Panel.

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