



Takeovers Code (Mainfreight Limited) Exemption Notice 2003

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 (Mainfreight Limited) Exemption Notice 2003.
- 2 **Application**
This notice applies to acts or omissions occurring on or after 1 September 2002.
- 3 **Expiry**
This notice expires on the close of 31 March 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)

control percentage means the percentage of voting rights in Mainfreight that a person holds or controls

Mainfreight means Mainfreight Limited

permitted share transfer means the transfer by Plested of 21 495 567 ordinary shares in Mainfreight to the trustees of the trust on 4 September 2002

permitted voting rights vesting means an arrangement under which the trustees of the trust vest control of all of the voting rights in 21 495 567 ordinary shares in Mainfreight in Plested

Plested means Bruce George Plested

trust means the Pie Melon Bay Trust established by deed of trust dated 24 September 1997

trustees means Bruce George Plested, Nancie Marie Plested, and Carl Gascoigne Howard-Smith.

- (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 6(1) of Code in respect of permitted share transfer

The trustees are exempted from rule 6(1) of the Code in respect of any increase in their control percentage in Mainfreight that arose from the permitted share transfer.

6 Exemption from rule 6(1) of Code in respect of permitted voting rights vesting

Plested is exempted from rule 6(1) of the Code in respect of any increase in his control percentage that arises from the permitted voting rights vesting.

Dated at Auckland this 4th day of March 2003.

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

[L.S.]

J. C. King,
Chairperson.

Statement of reasons of Takeovers Panel

This note is not part of the notice, but is intended to indicate its general effect.

This notice applies to acts or omissions occurring on or after 1 September 2002 and expires on 31 March 2003.

The Takeovers Panel (the **Panel**) has granted exemptions in respect of rule 6(1) of the Takeovers Code (the **Code**) to—

- the trustees of the Pie Melon Bay Trust (the **trust**); and
- Bruce George Plested (**Mr Plested**).

The trust is a discretionary family trust established under a deed of trust dated 24 September 1997 for the benefit of Mr Plested's immediate family and for other charitable, educational, and religious purposes, as directed by the trustees. The trustees are Mr Plested, his wife Nancie Marie Plested (**Mrs Plested**), and Carl Gascoigne Howard-Smith (**Mr Howard-Smith**), who is a solicitor. Mr Plested is the settlor of the trust.

On 4 September 2002, Mr Plested transferred 21 495 567 ordinary shares in Mainfreight Limited (**Mainfreight**) to the trust as part of a rearrangement of his private and financial affairs in accordance with professional advice. The shares transferred to the trust were substantially all the shares in Mainfreight previously held by Mr Plested. Compliance with the Code was overlooked. The need for an exemption has resulted from an apparently inadvertent breach of the Code.

The trustees of the trust have proposed that control of the voting rights in the shares transferred to the trust be vested solely in Mr Plested. This will result in the control of those voting rights being restored to the position that existed before the transfer of the shares.

The Panel considers that it is appropriate to grant an exemption to Mr Plested, Mrs Plested, and Mr Howard-Smith in their capacities as trustees of the trust because,—

- although the transfer of shares to the trustees resulted in a change in the formal control of the relevant voting rights in Mainfreight, there was no change in effective control; and
- the transfer of control of voting rights from the trustees back to Mr Plested, also subject to the Code, effectively restores the voting position to that which existed before the share transfer, again meaning that there was no change in effective control; and
- shareholders were not disadvantaged in not having the opportunity to vote on the transfer of the shares at a meeting of shareholders, as the reorganisation will have no real effect on Mainfreight shareholders.

The Panel considers that the exemption is consistent with the objectives of the Code because, as the reorganisation of Mr Plested's affairs and vesting of control of voting rights will not result in an effective change in control or disadvantage Mainfreight shareholders, it avoids unnecessary compliance costs that would be incurred if the exemption were not granted.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 13 March 2003.
This notice is administered by the Takeovers Panel.
