



Takeovers Code (TrustPower 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 (TrustPower Limited) Exemption Notice 2003.

2 Application

This notice applies to acts or omissions occurring on or after 26 March 2003.

3 Expiry

This notice expires on the close of 30 June 2003.

4 Interpretation

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

acquisition means an acquisition by TrustPower of its own voting securities in terms of the buyback offer

Act means the Takeovers Act 1993

AGL means The Australian Gas Light Company and its subsidiary AGL NZ Limited

Alliant means Alliant International New Zealand Limited

buyback offer means the offer that was made by TrustPower to acquire its own voting securities dated 26 March 2003 and that closed on 24 April 2003

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

Infratil means Infratil Limited and its subsidiaries Infratil Investments Limited and Infratil 1998 Limited

meeting means the meeting of TrustPower shareholders to be held to consider the acquisition and the proposed increases in the holding or control of voting rights in TrustPower resulting from the acquisition and at which the resolutions to approve the acquisition and those increases are to be put

TECT means the trustees of the Tauranga Energy Consumer Trust established by a deed of trust dated 21 December 1993 (as varied)

Te Maunga means Te Maunga Power Limited

TrustPower means TrustPower 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

AGL, Alliant, Infratil, TECT, and Te Maunga are exempted from rule 6(1) of the Code in respect of any increase in their holding or control of voting rights in TrustPower that results from the acquisition.

6 Conditions

The exemption is subject to the following conditions:

- (a) the shareholders of TrustPower must approve, by a separate ordinary resolution in respect of each person that relies on this exemption to increase its holding or control of voting rights in TrustPower, the acquisition and the increase in holding or control of voting rights resulting from the acquisition;
- (b) neither the person that is relying on this exemption to increase its holding or control of voting rights in TrustPower nor any person who is or was, at any time in the period beginning on 26 March 2003 and ending at

- the time when the increase in the holding or control of voting rights occurs, an associate of that person may vote in favour of the resolution in respect of that person:
- (c) the notice of the meeting must contain, or be accompanied by, the following matters in respect of the acquisition:
- (i) particulars of the voting securities that may be acquired by TrustPower, including—
 - (A) the maximum number of voting securities that may be acquired; and
 - (B) the percentage of all voting securities of TrustPower that the maximum number of voting securities represents; and
 - (ii) the consideration for the acquisition, or the manner in which the consideration would be determined, and when the consideration would be payable; and
 - (iii) the reasons for the acquisition; and
 - (iv) a report (or a summary of a report) from an independent adviser in relation to the acquisition that—
 - (A) complies with rule 18 of the Code (as if the references in that rule to any proposed acquisition under rule 7(c) of the Code and the notice of meeting referred to in rule 15 of the Code were references to the acquisition and the notice of the meeting, respectively); and
 - (B) also has specific regard to the interests of those shareholders of TrustPower who have either accepted or rejected the buyback offer (other than AGL, Alliant, Infratil, and TECT); and
 - (v) a statement by the directors of TrustPower in relation to the acquisition that complies with rule 19 of the Code (as if the reference in that rule to any acquisition under rule 7(c) of the Code were a reference to the acquisition); and
 - (vi) advice that any shareholder who has accepted the buyback offer (other than AGL, Alliant, Infratil,

- and TECT) is entitled to withdraw their acceptance of the buyback offer without penalty until 5 working days after the date of the meeting; and
- (vii) details of the way in which TrustPower will assist, in the period until 5 working days after the meeting, any shareholder who wishes to sell their shares in TrustPower; and
- (viii) a prominent statement as follows:

The Takeovers Panel has required the following statement to be included in this notice:

On 16 April 2003, the Takeovers Panel determined that the procedures being followed by TrustPower for its buyback, purportedly in compliance with clause 4 of the Takeovers Code (Class Exemptions) Notice (No 2) 2001, would result in a breach of rule 6 of the Code by shareholders who intend to increase their voting control percentage through the buyback. However, the Panel has granted a specific exemption to the 4 major shareholders of TrustPower and to some of their subsidiaries and to Te Maunga Power Limited. The principal effect of this exemption is that TrustPower must provide the other shareholders who have previously accepted its buyback offer (without the benefit of an independent adviser's report on the merits of the buyback) the opportunity to withdraw their acceptances. This opportunity must be provided until 5 working days after the date on which the company's meeting is held, that is until [.....]. TrustPower is also being required to provide assistance to shareholders who may have previously rejected the buyback offer to sell their shares on the market.

- (d) the notice of the meeting must contain, or be accompanied by, the following matters in respect of the separate resolution required to be considered by the shareholders of TrustPower in respect of each person that is relying on this exemption to increase its holding or control of voting rights in TrustPower:

- (i) the identity of the person to which the resolution relates and its associates; and
- (ii) the potential maximum percentage of all voting securities in TrustPower that the person that is the subject of the resolution would hold or control if the maximum number of voting securities were acquired; and
- (iii) the potential maximum aggregate percentages of all voting securities in TrustPower that the person that is the subject of the resolution and the person's associates would hold or control if the maximum number of voting securities were acquired; and
- (iv) a statement to the effect that any increase in the holding or control of voting rights of the person that would result only from the acquisition by TrustPower of its own voting securities, if approved, would be permitted as an exception to rule 6 of the Code under a specific exemption granted by the Panel:
- (e) the notice of the meeting and its accompanying documentation must be sent to the shareholders of TrustPower at least 10 working days before the meeting is held;
- (f) any shareholder of TrustPower (other than AGL, Alliant, Infratil, or TECT) who has accepted the buyback offer in whole or in part must be entitled, until 5 working days after the date of the meeting, to withdraw that acceptance without penalty;
- (g) TrustPower must assist, in the period until 5 working days after the date of the meeting, any shareholder who wants to sell their TrustPower shares;
- (h) rules 18 and 19 of the Code must be complied with in relation to the acquisition (as if the references in those rules to any proposed acquisition under rule 7(c) of the Code and the notice of meeting referred to in rule 15 of the Code were references to the acquisition and the notice of the meeting, respectively):

- (i) TrustPower must provide the Panel with a copy of the notice of the meeting and accompanying documentation for review at least 2 working days before the documents are sent to shareholders;
- (j) the meeting must occur on or before 20 June 2003.

Dated at Auckland this 12th day of May 2003.

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

[L.S.]

D. O. Jones,
Deputy Chairperson.

Statement of reasons of Takeovers Panel

This notice applies to acts or omissions occurring on or after 26 March 2003, and expires on 30 June 2003.

The Takeovers Panel has granted an exemption to—

- AGL, Alliant, Infratil, and TECT, the 4 major shareholders of TrustPower; and
- Te Maunga, a company jointly owned by Infratil and Alliant, which holds a proxy to exercise the voting rights attaching to all the shares in TrustPower held by Infratil and Alliant.

The exemption relates to a buyback undertaken by TrustPower purportedly in compliance with clause 4 of the Takeovers Code (Class Exemptions) Notice (No 2) 2001. The Panel determined on 16 April 2003 that following the intended course would result in a breach of rule 6 of the Code.

The Takeovers Panel considers that it is appropriate to grant the exemption because—

- shareholders not relying on the exemption will receive independent advice on the merits of the transaction before they are committed to their decision to accept the offer and before they are asked to vote to approve the buyback in that—
 - the exemption enables those shareholders who have already accepted the offer (other than AGL, Alliant,

Infratil, and TECT) to withdraw that acceptance and provides that TrustPower must assist those shareholders who rejected the offer to sell their TrustPower shares once they have received the independent adviser's report on the merits of the offer:

- the exemption accords shareholders (other than AGL, Alliant, Infratil, and TECT) an opportunity to change their decision whether to accept the offer after receiving independent advice on the control positions that may emerge as a result of the offer being accepted or rejected by the persons relying on this exemption;
- the TrustPower buyback was unusual in terms of there being 4 major shareholders holding approximately 90% in aggregate of the voting securities. Other factors are that TrustPower proceeded with its buyback on advice, in an area of the Takeovers Code not previously tested by the Takeovers Panel, and that the offer was nearly complete.

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

- it assists the holders of securities and ensures that they are treated fairly; and
 - it recognises that the holders of securities must ultimately decide for themselves the merits of the offer; and
 - it requires the adequate provision to shareholders of information that is needed by shareholders to make a properly informed decision on whether or not to accept the offer; 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*: 15 May 2003.
This notice is administered by the Takeovers Panel.
