

Takeovers Code (Terra Vitae Vineyards Limited) Exemption Notice 2021

Pursuant to section 45 of the Takeovers Act 1993, the Takeovers Panel, being satisfied of the matters set out in section 45(6) of that Act, gives the following notice.

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Notice

1 Title

This notice is the Takeovers Code (Terra Vitae Vineyards Limited) Exemption Notice 2021.

2 Application

This notice applies to acts or omissions occurring on or after 24 August 2021.

3 Expiry

This notice expires on the close of 31 August 2022.

4 Interpretation

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

Act means the Takeovers Act 1993

Code means the Takeovers Code under the Act

completion date means that day on which any specified person increases their voting control as a result of the transaction

FFWL means FFWL Limited (In Receivership)

IGL means Indevin Group Limited

material terms announcement means an announcement setting out the material terms of the transaction

specified persons means the following persons:

- (a) IGL:
- (b) Harrogate Trustee Limited:
- (c) Gregory Tomlinson

Terra Vitae means Terra Vitae Vineyards Limited

transaction means the acquisition by IGL of all of the shares in VMEL from FFWL under a sale and purchase agreement dated 1 August 2021

USX means the New Zealand Unlisted Securities Exchange

VMEL means Villa Maria Estate Limited.

- (2) In this notice, a reference to a person increasing voting control is a reference to the person becoming the holder or controller of an increased percentage of voting rights in Terra Vitae.
- (3) 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 the Code

Each of the specified persons is exempt from rule 6(1) of the Code in respect of any increase in their voting control in Terra Vitae resulting from the transaction.

6 Conditions of exemption

The exemption in clause 5 is subject to the conditions that—

- (a) on or before the completion date, IGL and VMEL provide a material terms announcement to Terra Vitae and request that Terra Vitae post the material terms announcement on the USX announcements platform on or before the completion date; and
- (b) if the material terms announcement is not posted on the USX announcements platform on or before the completion date, VMEL publishes the material terms announcement in the “News” section of its website, such that it is readily accessible by members of the public, and keeps the announcement published and accessible for not less than one year.

Dated at Auckland this 31st day of August 2021

[Signed]

R A Coupe
Chair

Statement of Reasons

This notice applies to acts or omissions occurring on or after 24 August 2021 and expires on the close of 31 August 2022.

References to voting control in this statement of reasons are references to the holding or control of voting rights in Terra Vitae Vineyards Limited (**Terra Vitae**).

The Takeovers Panel (the **Panel**) has granted an exemption from rule 6(1) of the Takeovers Code (the **Code**) for each of the following persons:

- Indevin Group Limited (**IGL**);
- Harrogate Trustee Limited (**Harrogate**); and
- Gregory Tomlinson,

(together, the **specified persons**).

Villa Maria Estate Limited (**VMEL**) owns 8,756,361 shares (representing 21.89% of the total number of shares on issue) in Terra Vitae, and controls the voting rights attached to those shares. Terra Vitae shares are quoted on the New Zealand Unlisted Securities Exchange (the **USX**).

VMEL and Terra Vitae are parties to a long-term grape supply and vineyard management agreement (the **supply and management agreement**).

IGL has entered into a conditional agreement to acquire all of the shares (and corresponding voting rights) in VMEL from FFWL Limited (In Receivership) (the **transaction**). As a result of completion of the transaction, IGL will control the voting rights in Terra Vitae currently held by VMEL.

IGL is majority owned (91.17%) by Harrogate in Harrogate's capacity as trustee of the Brandywine Trust. Gregory Tomlinson has the power to appoint and remove the trustee of the Brandywine Trust. Accordingly, completion of the transaction will result in each of Harrogate and Gregory Tomlinson indirectly controlling VMEL's voting rights in Terra Vitae by virtue of these ownership and control arrangements.

The specified persons have each been granted an exemption from rule 6(1) of the Code in respect of any increase in their voting control resulting from the transaction.

The conditions of the exemption are designed to help ensure that the underlying purpose of the Code is still fulfilled by requiring disclosure of material terms of the transaction. Accordingly, the exemption applies only if—

- on or before the day on which any specified person increases their voting control as a result of the transaction (the **completion date**), IGL and VMEL provide an announcement setting out the material terms of the transaction (a **material terms announcement**) to Terra Vitae and request that Terra Vitae post the material terms announcement on the USX announcements platform on or before the completion date; and
- if the material terms announcement is not posted on the USX announcements platform on or before the completion date, VMEL publishes the material terms announcement in the "News" section of its website, such that it is readily accessible by members of the public, and keeps the announcement published and accessible for not less than one year.

The Panel considers that it is appropriate and consistent with the objectives of the Code to grant the exemption for the following reasons:

- acquiring control of the voting rights in Terra Vitae could not reasonably be regarded as a significant purpose of the acquisition of the shares in VMEL because:
 - the value of the shares in Terra Vitae held or controlled by VMEL represents a small percentage of VMEL's enterprise value (this percentage falls significantly under the 25% "value test" threshold which the Panel uses as a prima facie proxy for assessing the purpose of an upstream acquisition);
 - VMEL's control of Terra Vitae flows largely from the supply and management agreement rather than its holding or control of Terra Vitae shares:
- similarly, in light of the lack of trading in Terra Vitae shares, a sell-down of VMEL's Terra Vitae shares (before or after completion) would likely be unduly burdensome and potentially have adverse effects for other shareholders:
- for the reasons set out in the bullet points above, the costs of compliance with the Code for the transaction are not proportionate to the benefits resulting from it. Instead, the exemption maintains a proper relation between the costs of compliance with the Code and the benefits resulting from it by avoiding disproportionate compliance costs that would be incurred if a full takeover offer were made or approval sought from Terra Vitae's shareholders:
- the shareholders of Terra Vitae will not be disadvantaged by not having the opportunity to vote on the transaction. This is because:
 - the transaction does not increase VMEL's voting control. The other shareholders of Terra Vitae (excluding interests associated with George Fistonich) hold or control a majority of the shares in Terra Vitae and will continue to do so following the acquisition of shares in VMEL:
 - VMEL will continue to be bound by the supply and management agreement and Terra Vitae will continue to be entitled to enforce the supply and management agreement in accordance with its terms and irrespective of changes in the shareholding of its largest single shareholder:

This ensures that shareholders are treated fairly. It also ensures that their right to decide for themselves the merits of any increase in VMEL's holding or control of voting rights in Terra Vitae is not affected:

- the exemption encourages the efficient allocation of resources by providing certainty that the transaction may proceed.

Date of Notification in the *Gazette*: Friday, 3 September 2021
