



Takeovers Code (AFFCO Holdings 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 (AFFCO Holdings Limited) Exemption Notice 2002.

2 Application

This notice applies to acts or omissions occurring on or after 12 July 2002.

3 Expiry

This notice expires on the close of 31 December 2002.

4 Interpretation

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

Act means the Takeovers Act 1993

AFFCO means AFFCO Holdings Limited

agreements means the underwriting agreement between AFFCO and Talley's and the underwriting agreement between AFFCO and Toocooya, under which Talley's and

Toocooya each agree to take up their entitlements under the issue and to underwrite part of the issue

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

Dairy Meats transaction means the acquisition by Talley's and Toocooya of 75% and 25% respectively of Dairy Meats NZ Limited's rights entitlement under the issue at an acquisition price of 3 cents per right

issue means a pro rata renounceable rights issue of ordinary shares proposed to be offered in September 2002 by AFFCO to its ordinary shareholders on the basis of 1 right for every 1 existing ordinary AFFCO share held

notice of meeting means the notice of the shareholders' meeting that has been sent to AFFCO shareholders

shareholders' meeting means the meeting of AFFCO shareholders, to be held in September 2002 to consider whether or not to approve, for the purposes of rule 7(d) of the Code, the allotment of voting securities in AFFCO to Talley's and Toocooya under the agreements and separately to approve the Dairy Meats transaction

Talley's means Talley's Fisheries Limited

Toocooya means Toocooya Nominees 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 from rule 6(1) of Code

Talley's and Toocooya are each exempted from rule 6(1) of the Code to the extent that rule 6(2)(a) might deem them to be the holders or controllers of all the voting rights acquired by the other in respect of any increase or deemed increase in their control of voting rights in AFFCO—

- (a) arising from the allotment of voting securities on the conversion of the rights offered to them under the issue; or
- (b) by underwriting the shortfall under the agreements; or
- (c) arising from the Dairy Meats transaction and the consequent allotment of voting securities to them by AFFCO on the conversion of those rights.

6 Exemption from rule 7(d) of Code

Talley's and Toocooya are each exempted from rule 7(d) of the Code to the extent that that rule requires the notice of meeting to be in accordance with rule 16(b) of the Code in respect of any increase in their respective percentage of voting rights in AFFCO—

- (a) arising from the allotment of voting securities on the conversion of the rights offered to them under the issue; or
- (b) by underwriting the shortfall under the agreements; or
- (c) arising from the Dairy Meats transaction and the consequent allotment of voting securities to them by AFFCO on the conversion of those rights.

7 Exemption from rule 16(b) of Code

AFFCO is exempted from rule 16(b) of the Code.

8 Conditions

The exemptions in clauses 5, 6, and 7 are subject to the conditions that—

- (a) the notice of meeting contains particulars of the voting securities that may be allotted to Talley's and Toocooya respectively, including—
 - (i) the maximum number of voting securities in AFFCO that could be allotted to each of Talley's and Toocooya both under, or in terms of, the conversion to voting securities of the rights acquired under the issue or agreements; and
 - (ii) the percentage of the aggregate of all existing voting securities in AFFCO and all voting securities in AFFCO that could be allotted under the conversion to voting securities of the rights acquired under the issue that each of the maximum number of voting securities represents; and
 - (iii) the maximum percentage of all voting securities in AFFCO that could be held or controlled by each of Talley's and Toocooya after completion of the allotment of the maximum number of voting securities that could be allotted to each of them; and

- (b) the notice of meeting contains a statement of the consideration payable for the Dairy Meats transaction and when that consideration is payable; and
- (c) Talley's and Toocooya's maximum control percentages immediately following the allotments do not exceed 35% and 25% respectively; and
- (d) Talley's and Toocooya do not acquire any rights under the issue other than to the extent acquired—
 - (i) under their respective pro rata entitlements in the issue; and
 - (ii) as underwriters of the issue; and
 - (iii) under the Dairy Meats transaction; and
- (e) Talley's and Toocooya are not associates of each other for the purposes of the Code immediately following the allotment of voting securities on exercise of the rights obtained under the issue, the agreements, or the Dairy Meats transaction; and
- (f) the notice of meeting contains a summary of the terms and conditions of the exemptions granted in this notice.

Dated at Auckland this 21st day of August 2002.

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 12 July 2002 and expires on the close of 31 December 2002. The Takeovers Panel has granted exemptions to—

- Talley's Fisheries Limited (**Talley's**) and Toocooya Nominees Limited (**Toocooya**) in respect of rules 6(1) (through the potential application of rule 6(2)(a)) and 7(d) of the Takeovers Code (the **Code**); and

- AFFCO Holdings Limited (AFFCO) in respect of rule 16(b) of the Code.

AFFCO proposes to make a renounceable pro rata rights issue to its existing shareholders. It is proposed that this issue will be partially underwritten by Talley's and Toocooya. Talley's currently holds 19.9% and Toocooya 18.7% of the voting rights in AFFCO. It is likely, therefore, that the percentage of AFFCO voting rights held by each of Talley's and Toocooya will increase as a result of their underwriting of the issue.

Talley's and Toocooya have also agreed, subject to shareholder approval, to acquire 75% and 25% respectively of Dairy Meats NZ Limited's rights under the issue for 3 cents per right (the **Dairy Meats transaction**). Dairy Meats NZ Limited currently holds 9.35% of the voting rights in AFFCO.

If Talley's and Toocooya are required to take up the maximum number of shares that each may be required to subscribe for under the underwriting agreements and the Dairy Meats transaction, the percentage of voting rights held by Talley's would increase to 35% and those held by Toocooya to 25%.

AFFCO intends to obtain shareholder approval, in accordance with the Code, of—

- the potential allotment of shares to Talley's and Toocooya under the underwriting agreements; and
- the potential allotment of shares to Talley's and Toocooya through completion of the Dairy Meats transaction.

AFFCO is, however, unable to comply with the requirements of rule 16(b) of the Code prior to the completion of the issue, as AFFCO is not able to state in its notice of meeting—

- the precise number of shares that will be allotted to each of Talley's and Toocooya; and
- the exact percentage of AFFCO voting rights that will be held or controlled by each of Talley's and Toocooya after the allotment; and
- the total number of shares that will be on issue following the allotment.

These details can only be determined after the rights issue has been completed and all allotments of securities pursuant to the exercise of rights processed.

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

- shareholder underwriting agreements are an accepted means of raising equity capital in New Zealand and the Takeovers Panel should facilitate these arrangements by exemption:
- if the shareholders in AFFCO approve the maximum possible increase in the percentage of voting rights held by each of Talley's and Toocooya as a result of an allotment by AFFCO being achieved through mechanisms that are consistent with the provisions of the Code, then, by implication, they can be taken to have also approved any lesser percentage of control that may be obtained by each of Talley's and Toocooya through these mechanisms following the allotments:
- the exemption sought is limited to the new ordinary shares issued to Talley's and Toocooya by AFFCO. This arises from their respective entitlements under the issue and under the underwriting agreements and/or under the Dairy Meats transaction, the allotment of which will have been approved by non-associated shareholders to a maximum level:
- rule 6(2)(a) of the Code is an anti-avoidance measure. In this instance, the fundamental rule is not being avoided because non-associated shareholders will have the opportunity to approve the allotment of securities to Talley's and Toocooya under rule 7(d) of the Code.

The Takeovers Panel considers that the exemptions are consistent with the objectives of the Code because the non-associated shareholders of AFFCO will have an opportunity to vote on the potential allotments of voting securities.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 22 August 2002.
This notice is administered by the Takeovers Panel.
