

Takeovers Code (Martinborough Vineyard Estates Limited) Exemption Notice 2014

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 (Martinborough Vineyard Estates Limited) Exemption Notice 2014.

2 Application

This notice applies to acts or omissions occurring on or after 5 May 2014.

3 Expiry

This notice expires on the close of 31 January 2015.

4 Interpretation

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

acquisition notice means the acquisition notice that is required by rule 54 of the Code for a compulsory sale

Act means the Takeovers Act 1993

Code means the Takeovers Code under the Act

compulsory sale means a compulsory sale that occurs as a result of the offer

FFW means Foley Family Wines Limited

MVEL means Martinborough Vineyard Estates Limited

offer means the proposed full offer by FFW for all the equity securities in MVEL

outstanding security holder means a person who is the holder of outstanding securities in MVEL at the time the scrip consideration is allotted under a compulsory sale

overseas shareholder means a person who, at the time that the scrip consideration is allotted, under the offer or a compulsory sale, as the case may be, is registered as a shareholder in MVEL and whose address on MVEL's share register is not in New Zealand

scrip consideration means the ordinary fully paid shares in FFW offered to shareholders in MVEL under the offer, or to be allotted to outstanding security holders under a compulsory sale, as the case may be.

- (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 20 of Code

FFW is exempted from rule 20 of the Code to the extent that the scrip consideration under the offer relates to overseas shareholders.

6 Conditions of exemption in clause 5

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

- (a) FFW appoints a person to act as nominee for the offer who –
 - (i) is designated as an NZX Trading and Advising Firm by NZX Limited; and
 - (ii) is not, to the best of FFW's knowledge, under investigation by the Financial Markets Authority or NZX Limited; and
- (b) in a manner consistent with the terms of the offer, FFW procures the allotment to the nominee of the shares in FFW that would otherwise be allotted to overseas shareholders who accept the scrip consideration under the offer; and
- (c) FFW uses its best endeavours to ensure that the nominee, as soon as is reasonably practicable and in a manner consistent with the terms of the offer -
 - (i) sells the FFW shares that are allotted to the nominee under paragraph (b); and
 - (ii) FFW uses its best endeavours to ensure that the nominee, as soon as is reasonably practicable and in a manner consistent with the terms

of the offer relating to payment of consideration, pays to each overseas shareholder the relevant share of the proceeds from the sale of the FFW shares under subparagraph (i), net of any applicable brokerage costs and taxes, to which that shareholder is entitled; and

- (d) FFW indemnifies each overseas shareholder against any costs or losses incurred by that shareholder as a result of a failure by the nominee to comply with its obligations.

7 Exemption from rule 56 of Code

FFW is exempted from rule 56 of the Code to the extent that the scrip consideration under a compulsory sale relates to outstanding security holders who are overseas shareholders.

8 Conditions of exemption in clause 7

The exemption in clause 7 is subject to the conditions that –

- (a) FFW appoints a person to act as nominee for a compulsory sale who –
 - (i) is designated as an NZX Trading and Advising Firm by NZX Limited; and
 - (ii) is not, to the best of FFW's knowledge, under investigation by the Financial Markets Authority or NZX Limited; and
- (b) in a manner consistent with the terms of the acquisition notice, FFW procures the allotment to the nominee of the shares in FFW that would otherwise be allotted to outstanding security holders who are overseas shareholders; and
- (c) FFW uses its best endeavours to ensure that the nominee, as soon as is reasonably practicable and in a manner consistent with the terms of the acquisition notice,
 - (i) sells the FFW shares that are allotted to the nominee under paragraph (b); and
 - (ii) FFW uses its best endeavours to ensure that the nominee, as soon as is reasonably practicable and in a manner consistent with the terms of the acquisition notice relating to payment of consideration, pays to each outstanding security holder who is an overseas shareholder the relevant share of the proceeds from the sale of the FFW shares under subparagraph (i), net of any applicable brokerage costs and taxes, to which that shareholder is entitled; and
- (d) FFW indemnifies each outstanding security holder who is an overseas shareholder against any costs or losses incurred by that shareholder as a result of a failure by the nominee to comply with its obligations.

Dated at Auckland this 4th day of May 2014

[Signed]

D O Jones,
Chairperson.

Statement of reasons

This notice applies to acts or omissions occurring on or after 5 May 2014 and expires on 31 January 2015.

Foley Family Wines Limited (**FFW**) is proposing to make an offer for all the equity securities in Martinborough Vineyard Estates Limited (**MVEL**) (the **offer**). FFW proposes to offer MVEL shareholders ordinary fully paid shares in FFW as consideration for the offer (the **scrip consideration**).

The Takeovers Panel (the **Panel**) has exempted FFW, subject to conditions, from –

- (a) rule 20 of the Takeovers Code (**Code**), to the extent that the scrip consideration relates to shareholders who, at the time that the scrip consideration is allotted under the offer, are registered as shareholders in MVEL and whose address on MVEL's share register is not in New Zealand (**overseas shareholders**); and
- (b) rule 56 of the Code, to the extent that FFW allots scrip consideration to overseas shareholders under a compulsory sale that results from the offer (**compulsory sale**).

The conditions of the exemption provide that –

- FFW shares that would otherwise be allotted to overseas shareholders under the offer or under a compulsory sale will be allotted to a person appointed by FFW to act as nominee for the offer or compulsory sale; and
- FFW must ensure that the nominee, as soon as is reasonably practicable and in a manner consistent with the terms of the offer or the acquisition notice, sells the FFW shares and pays the net proceeds arising from the sale to the relevant overseas shareholders.

The Panel considers that the exemption is appropriate and consistent with the objectives of the Code because –

- it is impractical and unreasonably expensive in the context of the offer for FFW to make an offer to all shareholders on the MVEL share register on the same terms, as required by rule 20 of the Code, because of the costs of complying with the securities laws that apply in the various jurisdictions in relation to the overseas shareholders; and
- the conditions of the exemption require that the overseas shareholders that accept the scrip consideration under the offer will receive equivalent cash consideration and, accordingly, are not disadvantaged by not being able to accept the scrip consideration under the offer; and
- the exemption is consistent with the principle of providing in takeover transactions equal consideration to all shareholders of the same class; and
- it is important for competition for the control of Code companies that offerors are not precluded from offering securities as consideration in takeover transactions; and
- the exemption from rule 56 of the Code is consequential to the exemption from rule 20 of the Code.

Date of Notification in the *Gazette*: 15 May 2014
