



TAKEOVERS PANEL
TE PAE WHITIMANA

**Takeovers Code (Foodstuffs North Island Limited)
Exemption Notice 2019**

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 (Foodstuffs North Island Limited) Exemption Notice 2019.

2 Application

This notice applies to acts or omissions occurring on or after 22 January 2019.

3 Expiry

This notice expires on the close of 21 January 2024.

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

Foodstuffs Members' Protection Trust means the trust established by the trust deed

Tetrad means Tetrad Corporation Limited

trust deed means the trust deed of the Foodstuffs Members' Protection Trust dated 23 June 1988 as amended and in force on 21 November 2019

trustee means a person appointed as a trustee of the Foodstuffs Members' Protection Trust in accordance with the trust deed

- (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 Foodstuffs North Island Limited.
- (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 Exemptions from rule 6(1) of Code

- (1) Every person who becomes a trustee is exempted from rule 6(1) of the Code in relation to any increase in that person's voting control as a result of being appointed as a trustee.
- (2) Every person who is a trustee is exempted from rule 6(1) of the Code in relation to any increase in that person's voting control as a result of a reduction in the number of trustees.

6 Conditions of exemptions

The exemptions in clause 5 are subject to the conditions that—

- (a) the trust deed retains –
 - (i) the co-operative concept referred to in Recital A; and
 - (ii) the prohibition on the trustees selling shares in Tetrad that is provided in clause 17.03 of the trust deed; and
- (b) the appointment of a new trustee or reduction in the number of trustees –
 - (i) reflects a bona fide reorganisation of the Foodstuffs Members' Protection Trust or is the result of an event beyond the control of the trustees; and
 - (ii) does not have a collateral purpose of enabling a person to increase the person's voting control or the extent to which that person shares in the voting control in Foodstuffs North Island Limited, otherwise than in compliance with the Code; and
 - (iii) but for rule 6(2) of the Code, would not result in any increase in the percentage of voting rights in Foodstuffs North Island Limited held or controlled by the trustees or the extent to which the trustees share in the voting control in Foodstuffs North Island Limited.

Dated at Auckland this 15th day of January 2019

[signed]

A Coupe
Chairperson

Statement of Reasons

This notice applies to acts or omissions occurring on or after 22 January 2019 and expires on 21 January 2024.

Foodstuffs North Island Limited (**Foodstuffs**) is a Code company by virtue of having 50 or more shareholders and 50 or more share parcels. Foodstuffs Members' Protection Trust (**Foodstuffs Trust**) is a trust established to ensure the continuity of the "co-operative concept" referred to in the trust deed establishing the Foodstuffs Trust and which enables Foodstuffs' members to operate as a co-operative of grocers owning and operating their own businesses.

The trustees of the Foodstuffs Trust (**trustees** or, each individually, **trustee**) indirectly hold and control a voting interest in Foodstuffs through a holding company, Tetrad Corporation Limited (**Tetrad**).

Foodstuffs has three classes of shares (class A, B and C) on issue. Tetrad holds all the class C shares in Foodstuffs. The class C voting rights, when exercised, comprise voting rights in Foodstuffs sufficient to control the passing of an ordinary or special resolution.

From time to time, there may be appointments or retirements of, or unforeseen events befalling, trustees.

The Takeovers Panel (the **Panel**) has granted exemptions from rule 6(1) of the Takeovers Code (the **Code**) to every trustee in respect of any increases in that person's voting control in Foodstuffs resulting from –

- the appointment of that person as a trustee; or
- the reduction in number of trustees.

The Panel considers that it is appropriate and consistent with the objectives of the Code to grant the exemptions because, –

- every trustee who exercises control over the voting rights in Foodstuffs does so in his or her capacity as a trustee and is subject to the duties and obligations arising under the trust deed of the Foodstuffs Trust and at law; and
- the exemption applies only where the appointment of a new trustee or a reduction of the number of trustees relates to a reorganisation of the Foodstuffs Trust, or an event beyond the control of the trustees, and the Code is not intended to inhibit the governance arrangements for changes of trustees of trusts; and
- there would be no disadvantage to the shareholders of Foodstuffs in not having the opportunity to vote on a trustee's appointment, or the reduction in the number of trustees, as it would not have any real effect on those shareholders; and
- the exemption avoids unnecessary compliance costs that would be incurred if it were not granted.

Date of Notification in the *Gazette*: 22 January 2019
