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RULE 16(b) CLASS EXEMPTION

A CONSULTATION PAPER ISSUED BY THE TAKEOVERS PANEL

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INTRODUCTION

1. The Panel is considering whether to grant a class exemption from rule 16(b) of the Takeovers Code (the “Code”) on the basis that exemptions from rule 16(b) are commonly granted by the Panel.
2. This paper discusses the Panel’s current approach in granting specific exemptions from rule 16(b), the appropriateness of granting a class exemption and the possible terms and conditions of a class exemption.

Request for comments on this paper

3. The Panel invites submissions on the issues raised in this paper and the options identified for addressing the issues.
4. The closing date for submissions is **2 October 2009**.
5. Submissions should be sent to the Takeovers Panel for the attention of Jennifer Fawcett–

By email - jennifer.fawcett@takeovers.govt.nz

By post - Takeovers Panel
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6. Any submissions received are subject to the Official Information Act 1982. The Panel may make submissions available upon request under that Act. If any submitter wishes any information in a submission to be withheld, the submission should contain an appropriate request (together with a clear identification of the relevant information and the reasons for the request). Any such request will be considered in accordance with the Official Information Act 1982.

EXECUTIVE SUMMARY

7. An allotment, under a rights issue or as a result of the conversion of securities, to a shareholder, which results in that shareholder holding or controlling (together with their associates) more than 20% of the total voting rights in a Code company, would require shareholder approval for the allotment under rule 7(d) of the Code. Rule 7(d) requires that that approval be sought in accordance with the shareholder meeting provisions which include compliance with rule 16 of the Code.
8. Rule 16 of the Code specifies the information that must accompany or be contained within a notice of meeting containing a proposed resolution in respect of an allotment of voting securities for the purposes of rule 7(d) of the Code. Rule 16(b) requires the notice of meeting to contain, or be accompanied by, disclosures of the exact number and percentage of voting securities to be allotted and the exact percentage of voting securities that would be held by the allottee after the allotment.
9. Often it can be impossible for the Code company to specify the exact numbers and percentages required to be disclosed under rule 16(b) because that information is dependant on a number of factors outside of the company's control. For example, where persons subscribe to rights to acquire shares under a rights issue, it may not be known what percentage of voting rights in the Code company they will hold as a result of the allotment, as that would be dependent upon whether, and to what degree, others subscribe under the rights issue.
10. If the exact number and/or percentage of shares to be allotted cannot be specified under rule 16(b), a prospective allottee will not be able to comply with rule 7(d). An exemption from the requirements of rule 7(d) and rule 16(b) will be necessary to enable the prospective allottee to seek shareholder approval for their proposed increase in voting control under the allotment.
11. The Panel has granted a number of exemptions that allow maxima to be stated in the notice of meeting for shareholder approval of allotments where this situation arises.
12. The Panel is currently considering whether to grant a class exemption from rule 16(b) on the basis that rule 16(b) exemptions are commonly sought and granted. Compliance costs may be reduced and efficiency increased if the types of transactions that most frequently result in exemption applications from rules 7(d) and 16(b) were dealt with in a class exemption. If the Panel grants a class exemption from rule 16(b), the Panel would also consider whether the exemption should be a short term solution until the Code is amended to enable maxima to be disclosed in the notice of meeting.

IDENTIFICATION OF THE PROBLEM

Status Quo

13. Control is defined in the Code as “having, directly or indirectly, effective control” of voting rights.¹

¹ Rule 3(1) of the Code.

14. Rule 6 of the Code (“the fundamental rule”) prevents any person (together with their associates) with less than 20% of the voting rights in a Code company from increasing their holding or controlling of voting rights in a Code company to more than 20%, unless they use one of the mechanisms in rule 7 of the Code. Rule 7 sets out the exceptions to the fundamental rule.
15. The underlying principle of the Code is that where there is a change of control of a Code company, the shareholders of the Code company either get the opportunity to participate in that change of control by receiving a takeover offer or they have the right to approve the outcome, being the acquisition or allotment of a Code-relevant parcel of shares, through a shareholder vote. The exceptions to the fundamental rule reflect that principle.
16. Rule 7(d) of the Code provides that a person may become the holder or controller of an increased percentage of the voting rights in a Code company:

“by an allotment to a person of voting securities in the code company or in any other body corporate if the allotment has been approved by an ordinary resolution of the code company in accordance with this code (the main provisions are contained in rules 16 to 19A)”.
17. A notice of meeting containing a proposed resolution in respect of an allotment of securities for the purposes of rule 7(d) of the Code must contain or be accompanied by the information specified in rule 16 of the Code.
18. Rule 16(b) of the Code requires the notice of meeting to contain, or be accompanied by:

“(b) particulars of the voting securities to be allotted, including –

 - (i) the number being allotted; and*
 - (ii) the percentage of the aggregate of all existing voting securities and all voting securities being allotted that that number represents; and*
 - (iii) the percentage of all voting securities that will be held or controlled by the person to whom the voting securities are being allotted after completion of the allotment; and*
 - (iv) the aggregate of the percentages of all voting securities that will be held or controlled by the person to whom the voting securities are being allotted and by that person’s associates after completion of the allotment;”*
19. In order to be able to make the disclosures required to be made under rule 16(b) of the Code, the Code company needs to know all of the following information at the time that the notice of meeting is prepared:
 - (a) the number of shares being allotted;
 - (b) the total number of shares that will be on issue immediately after the allotment; and

- (c) the number of shares that will be held or controlled by the allottee (including those to be allotted), and that allottee's associates immediately after the allotment.
20. If the above information is unknown, in the absence of an express exemption from the Panel, the allottee and the Code company will not be able to comply with rules 7(d) and 16(b) of the Code. Examples of the circumstances that can result in this uncertainty include:
- (a) underwriters of share issues may not know how many shares they will subscribe for under the allotment as it is dependent upon whether, and to what degree, others subscribe;²
 - (b) subscribers to rights to acquire shares under a rights issue who may not know what percentage of voting rights in the Code company they will hold as a result of the allotment as it is dependent upon whether, and to what degree, others subscribe;
 - (c) persons exercising rights to convert convertible securities into voting securities who may not know the total voting rights that will be on issue at the time of their conversion and allotment because there are other holders of the convertible securities who may or may not also exercise their conversion rights;
 - (d) persons exercising options to be allotted voting securities who may not know the total voting rights that will be on issue at the time they may elect to exercise their options because there are other holders of options who may or may not exercise them.
21. The Panel has granted a number of exemptions from rules 7(d) and 16(b) of the Code where these situations have arisen. The exemptions have been granted subject to conditions which effectively modified the disclosure requirements in rule 16(b) so that, rather than expressing the exact numbers and/or percentages, the notice of meeting would express the *potential maximum* numbers and/or percentages.
22. The Panel has stated, in its statements of reasons for the granting of these exemptions, that it considers the exemptions to be appropriate and consistent with the objectives of the Code because:
- (a) It is impossible to comply with rule 16(b) by stating the actual number of voting securities to be allotted and the relevant percentages in the notice of meeting, as these numbers and percentages are dependent on a number of factors outside of the company's control;
 - (b) All non-associated shareholders would have an opportunity to vote on the potential allotment of voting securities;

² While professional underwriters can rely on the Takeovers Code (Professional Underwriters) Exemption Notice 2004, and need not obtain shareholder approval, it is relatively common for share issues to be underwritten by an existing shareholder rather than by a professional underwriter.

- (c) If the non-associated shareholders approve the potential maximum allotment of voting securities, then, by implication, the shareholders also approve any lesser percentage of voting rights that may be acquired as a result of the transaction;
 - (d) transactions of this kind (rights issues, the issue of convertible securities etc) are acknowledged methods of providing incentives to shareholders to participate in and contribute to a company's growth as well as providing a company with a means of raising equity capital in New Zealand. The Panel should facilitate these arrangements by granting appropriate exemptions where necessary.
23. In November 2006, the Panel adopted an internal policy setting out standard conditions that would normally be expected to be imposed for exemptions from rule 16(b) of the Code (“standard conditions”). The standard conditions were developed in response to the growing number of exemptions being sought from rule 16(b), to ensure appropriate safeguards against abuse of the flexibility provided by the exemptions and to ensure consistency.
24. The standard conditions require:
- (a) the notice of meeting contains, or is accompanied by, the following particulars of the voting securities that may be allotted:
 - (i) the maximum number of voting securities that could be allotted to the person under the relevant transaction;
 - (ii) the maximum number of voting securities that could be allotted to the person, expressed as a percentage of the total voting securities on issue after completion of all allotments under the relevant transaction;
 - (iii) the maximum percentage of all voting securities that could be held or controlled by the person to whom the voting securities are being allotted after completion of the relevant transaction;
 - (iv) the aggregate of the maximum percentages of all voting securities that could be held or controlled by the person to whom the voting securities are being allotted and by that person’s associates after completion of the relevant transaction;³
 - (b) all relevant voting control maxima are calculated on the basis that there is no change to the number of voting securities on issue between the date of the notice of meeting and the completion of the relevant transaction other than as a result of the relevant transaction;

³ If there is more than one proposed allottee and some or all of them are associates of each other (“exempted associates”), the aggregate maximum percentages must be disclosed for each exempted associate on the basis that: (a) the exempted associates are associates; and (b) the exempted associates are not associates.

- (c) each proposed allottee does not become the holder or controller of an increased percentage of voting securities, except as a result of the relevant transaction, until the completion of the transaction or until the last allotment of the voting securities, as the case may be (“an other means increase”);
 - (d) there is no change of control of any corporate entities who have the benefit of the exemption until the completion of the relevant transaction or the last allotment of the voting securities as the case may be;
 - (e) the proposed allottee does not increase its voting control at any time during the duration specified in the exemption to a percentage above the maximum percentage of voting securities that it could hold or control as disclosed to shareholders in the notice of meeting;
 - (f) full particulars of the issue of voting securities are disclosed in the notice of meeting;
 - (g) the notice of meeting contains a summary, in a form approved by the Panel, of the terms and conditions of the exemption;
 - (h) the notice of meeting displays a disclaimer that the Panel is neither endorsing nor supporting the accuracy or reliability of the contents of the notice of meeting nor implying it has a view on the merits of the allotment;
 - (i) the form of the notice of meeting is approved by the Panel;
 - (j) in cases where shareholder approval is obtained for a series of allotments occurring over several years, disclosures are also made about the control positions of the exempted persons, in the Code company’s annual reports.
25. In addition to complying with rule 16 of the Code, an allotment to be approved by shareholders under rule 7(d) of the Code must also comply with rules 17 to 19A of the Code. Broadly, these rules set out:
- (a) Restrictions on voting on resolutions to approve the allotment (*rule 17*);
 - (b) The requirement that there be a report for shareholders prepared by an independent adviser (*rule 18*);
 - (c) The requirement that there be a directors’ recommendation (*rule 19*); and
 - (d) Documents to be provided to the Panel (*Rule 19A*).
26. The policy behind the conditions of rule 16(b) exemptions is to ensure that shareholders have the necessary information to make a fully informed decision when deciding whether to approve any increases in voting control.
27. As stated in the statements of reasons for these exemptions, if the non-associated shareholders approve the potential maximum allotment of voting securities, then, by

implication, the shareholders also approve any lesser percentage of voting rights that may be acquired as a result of the transaction.

28. It follows that, if the potential maximum control position disclosed to shareholders for the purposes of approving the allotment were likely to be exceeded (say, because there was a reduction of the number of shares on issue during the period over which the allotments were taking place), another shareholder approval would be required. If the actual numbers and percentages for the further proposed increase could not be stated at that time, a further rule 16(b) exemption would also be required in relation to the new shareholder approval.

Examples of Rule 16(b) exemptions granted by the Panel

29. The Panel has granted 35 exemptions from rule 16(b).⁴ Examples include:

- Takeovers Code (BLIS Technologies Limited) Exemption Notice 2009: BLIS Technologies Limited (“BLIS”) proposed a pro-rata renounceable rights issue under which every shareholder would receive a right to subscribe for one preference share for every 45 ordinary shares held. The preference shares would automatically convert to ordinary shares after three years. The rights issue would be fully underwritten by Edinburgh Equity Nominee Limited (“Edinburgh”), a major shareholder in BLIS with greater than 20% of the total voting rights. Edinburgh would also be given an option to subscribe for a further 1,000,000 preference shares in certain circumstances. Accordingly, shareholder approval was to be sought for the allotments to Edinburgh on conversion of the preference shares allotted to it under the rights issue, the underwriting arrangement and the option. However, the disclosures that were required under rule 16(b) could not be made because it was uncertain as to what extent the rights issue would be undersubscribed or whether Edinburgh would exercise its option.
- Takeovers Code (Infratil Limited) Exemption Notice 2008: A group of associated shareholders in Infratil Limited (“Infratil”) who, in aggregate controlled more than 20% of the company, held warrants that they intended to exercise. Shareholder approval was to be sought under rule 7(d) for the increase to the associated shareholders’ voting control resulting from the exercise of their warrants. However, the rule 16(b) numbers and percentages could not be disclosed because there was uncertainty as to when and to what extent the warrants would be exercised, and regarding the capital structure of Infratil immediately following the exercise.
- Takeovers Code (Synlait Limited) Exemption Notice 2008: Synlait Limited (“Synlait”) granted an earn-out entitlement to three founding shareholders as a result of a restructuring of that company. Those three shareholders were

⁴ These are listed in Appendix A. The Panel has also granted two exemptions from rules 7(c) and 15(b) of the Code (the Takeovers Code (Dairy Trust Limited) Exemption Notice 2008 and the Takeovers Code (Designer Textiles (NZ) Limited) Exemption Notice 2002). The disclosure requirements for a notice of meeting containing a resolution for shareholder approval of an acquisition under rule 7(c) of the Code are set out in rule 15(b). Rule 15(b) mirrors the disclosure requirements in rule 16(b).

associates and held, in aggregate, more than 20% of the voting rights in Synlait. Under the earn-out entitlement those three shareholders had the right to be issued ordinary shares (and redeemable preference shares) in Synlait, up to a cumulative maximum value of \$12,000,000, dependent on the growth of certain specified assets for the periods ending 31 May 2007, 2008, 2009, 2010 and 2011. Synlait and the three founding shareholders wished to seek shareholder approval for any allotments resulting from the earn-out entitlement under rule 7(d). However, the rule 16(b) information would not be known at the time the notice of meeting was prepared because the number of voting securities to be allotted to the founding shareholders was uncertain, as it depended on the extent of the growth of the specified assets.

- Takeovers Code (A2 Corporation Limited) Exemption Notice 2008: A2 Corporation Limited (A2) proposed a pro-rata renounceable rights issue. The rights issue was underwritten by A2's major shareholder, Mountain Road Investments Limited ("Mountain Road"), which held about 54% of the shares on issue. If the rights issue was undersubscribed, Mountain Road's obligations would result in it increasing its voting control, triggering the fundamental rule. Shareholder approval was to be sought under rule 7(d). However, due to uncertainties in the level of participation in the rights issue, the exact rule 16(b) disclosures could not be made.
- Takeovers Code (Phitek Systems Limited) Exemption Notice 2008: In late 2008, Phitek Systems Limited ("Phitek") proposed a pro-rata non-renounceable rights issue. The rights issue was for shares and options. Certain large shareholders in Phitek held over 20% of the voting rights in Phitek, either alone or with associates. Those shareholders had undertaken to take up at least their pro-rata entitlement under the rights issue. If the rights issue was undersubscribed, their voting control, with associates, would increase above 20%, triggering the fundamental rule. Any subsequent exercise of their options would also result in increases to their voting control above the 20% level, triggering the fundamental rule. Accordingly, shareholder approval was to be sought. However, due to uncertainties in the level of participation in the rights issue the notice of meeting disclosures required by rule 16(b) could not be made.
- Takeovers Code (Sealegs Corporation Limited) Exemption Notice 2007: Two major shareholders/employees of Sealegs Corporation Limited ("Sealegs") were to be issued options in the company. The exercise of the options would have resulted in those shareholders triggering the fundamental rule. Shareholder approval was to be sought for the proposed exercise under rule 7(d). However, the rule 16(b) information could not be disclosed because the number of options that would ultimately be exercised by those shareholders would not be known until the expiry of the options. Additionally, if there were a change to the capital structure of Sealegs over the exercise period, the number of shares issued on the exercise of the options would be adjusted accordingly.

The Problem

30. The Panel has so far granted 35 exemptions from rule 16(b). They equate to approximately 20% of all exemptions granted. The Panel has rarely, if ever, declined any exemptions sought from rule 16(b).
31. Rule 16(b) exemptions are of a technical nature and in that sense are very straight forward. However, the transactions to which they relate tend to be relatively complex, resulting in a considerable time and cost burden on the resources of both the applicant allottee(s) and the Code company.
32. It can take up to six weeks for the Panel to complete the exemption process. Applications to the Panel for a rule 16(b) exemption can cost an applicant anywhere between \$4,000 and \$10,000 in fees charged by the Panel, depending on the complexity of the issues.⁵
33. In addition to the Panel's fees, applicants will be likely to have to pay for the fees charged by their advisers.

POLICY OBJECTIVES

34. To determine whether the current regime or alternatives would provide a net benefit, options will be assessed against the objectives in section 20 of the Takeovers Act. It should be noted that some of these objectives, such as efficiency and procedural and substantive fairness tend to compete with each other. Accordingly a balance needs to be struck between such goals.
35. Section 20 sets out the following objectives of the Code:
 - (a) Encouraging the efficient allocation of resources;
 - (b) Encouraging competition for the control of Code companies;
 - (c) Assisting in ensuring that the holders of securities in a takeover are treated fairly;
 - (d) Promoting the international competitiveness of New Zealand's capital markets;
 - (e) Recognising that the holders of securities must ultimately decide for themselves the merits of a takeover offer;
 - (f) Maintaining a proper relation between the costs of compliance with the Code and the benefits resulting from its existence.
36. A further relevant policy objective is certainty and transparency of decision making.

⁵ Under the Takeovers (Fees) Regulations 2001, the Panel charges an application fee of \$112.50 and an hourly rate charge of \$163 for time spent by professional officers and employees in processing the application, and \$225 for time spent by Panel Members (excluding GST).

OPTIONS AND ANALYSIS

Introduction

37. Set out below are the proposed options. In summary they are:
- (a) Retain the status quo.
 - (b) Amend the Takeovers Code.
 - (c) Grant a class exemption from rule 16(b) of the Code.
 - (d) Grant a class exemption from rule 16(b) of the Code but Panel also determines whether a particular proposed transaction falls within the exempted class.

Option 1: Maintain status quo

38. Under this option, the Panel would continue to consider exemptions from rule 16(b) of the Code on a case-by-case basis.

Analysis of Option 1

39. Option 1 would not alleviate the current cost/efficiency burden associated with processing individual exemptions. Rule 16(b) exemptions relate to a relatively minor and technical issue, but result in relatively high processing costs. Accordingly, it does not appear to maintain a proper relation between the costs of compliance with the Code and the benefits resulting from its existence.
40. The Panel has rarely, if ever, declined an exemption sought from rule 16(b) of the Code.
41. For the reasons above, maintaining the status quo is not the preferred option.

Option 2: Amend rule 16(b) of Takeovers Code to allow disclosure of maxima

42. Under this option, rule 16(b) of the Code would be amended to mirror the rule 16(b) specific exemptions granted by the Panel so that, if the exact numbers and percentages required to be disclosed under rule 16(b) are unknown, the potential maxima are required to be disclosed in the notice of meeting. Rule 16(b) would also be amended to include the other standard conditions as follows:
- (a) all relevant voting control maxima calculated on the basis that there is no change to the number of voting securities on issue;
 - (b) the allottee does not become the holder or controller of an increased percentage of voting securities, except as a result of the relevant transaction, that is, the “no other means increase” condition (see Part II of this paper for a further discussion of this condition);

- (c) there is no change of control of any corporate entities who have the benefit of the exemption (see Part II of this paper for a further discussion of this condition);
- (d) the allottee cannot increase its voting control above the maximum percentage of voting securities disclosed to shareholders in the notice of meeting (see Part II for a further discussion of this condition);
- (e) full particulars of the issue of voting securities are disclosed in the notice of meeting;
- (f) the Panel approves the form of the notice of meeting; and
- (g) where shareholder approval is obtained for a series of allotments occurring over several years, disclosures are made in the Code company's annual reports.

Analysis of Option 2

- 43. Option 2 would achieve certainty and reduce compliance costs for market participants, when compared to the status quo.
- 44. Under Option 2 the Panel would have exactly the same regulatory oversight role as under the status quo, including approving the independent adviser responsible for providing a report for shareholders on the merits of the proposed allotment(s) and approving the form of the notice of meeting.
- 45. Option 2 would provide transparency for the market. Any person who wished to be able to increase their control percentage in a Code company as a result of an allotment, or a series of allotments, would simply have to ensure that the disclosure and other compliance terms set out in rule 16(b) were complied with.
- 46. However, the Code is a statutory regulation and the Panel can do no more than recommend changes to it. There are processes required to be followed by the central Government departments responsible for processing proposals for changes to the law. A proposal to change the Code would take time to implement, and the Panel has no control over whether its recommendation would be implemented.
- 47. A residual concern for the Panel is that the transactions that create the inability to state the disclosures under rule 16(b) (i.e. without an exemption) tend to be quite complex. The Panel believes it is important, as a market regulator, that it carefully considers and understands the nature of the transaction before it grants a rule 16(b) exemption so that it is confident the conditions of exemption will ensure that all relevant disclosures are made so shareholders can make a fully informed decision.

Option 3: Class exemption

- 48. Under this option a class exemption would be granted from rule 16(b).

49. The class exemption would provide that, if the exact numbers and/or percentages required to be disclosed under rule 16(b) are unknown, the potential maxima must be disclosed for the notice of meeting.
50. The possible form which the exemption might take, including the appropriate conditions, is discussed in Part II of this paper. The conditions could be the same as, or similar to, the current standard conditions for rule 16(b) exemptions or they could be modified as discussed in Part II of this paper.

Analysis of Option 3

51. Option 3 could be implemented by the Panel quite quickly and a class exemption could take immediate effect.
52. Option 3 would provide certainty for the market because those proposing to increase their control percentage under a transaction that falls within the terms and conditions of exemption would have the certainty that the exemption is in place. They would not have to specifically seek an exemption from the Panel (with the corresponding delays and uncertainty over whether the Panel would grant it).
53. Option 3 would result in greater efficiency when compared with the status quo and potentially maintain a proper relation between the costs of compliance with the Code and the benefits resulting from its existence. Persons seeking to rely on the class exemption would no longer have to make applications to the Panel. This would reduce their compliance costs.
54. There is the possibility that there could be inappropriate reliance on a class exemption. However, the potential for mischief is mitigated by virtue of the Panel's involvement in approving independent advisers for the transactions and approving the form of the notice of meeting, as well as the Panel executive's monitoring role in reviewing the notices of meeting and independent adviser reports.
55. The activities above give the Panel insights into proposed transactions. The Panel members, as market participants themselves, have an understanding of the context of market transactions that give rise to this issue. This assists the Panel in encouraging independent advisers to take due consideration of all relevant factors for their reports on the merits of a proposed transaction. It also enables the Panel to consider whether there are any other compliance concerns underlying the transaction.⁶
56. Accordingly, not only will the Panel be aware of a person's reliance on the class exemption, it also would have considerable interaction with the parties and information about the transaction. This interaction would provide a solid basis for determining whether it should make enforcement enquiries or exercise its enforcement powers.

⁶ For example, it may become apparent that parties involved in the transaction should be considered to be associates (for the purposes of the Code), and this can have a number of disclosure or Code breach implications, both of which the Panel can follow up on.

57. For the reasons above Option 3 appears to meet the efficiency and shareholder participation and fairness objectives, as well as those relating to the balance between compliance costs and compliance benefits, and transparency.
58. In addition, Option 3 maintains sufficient regulatory oversight mechanisms to ensure that the Panel can adequately monitor and enforce the exemption.
59. Accordingly, Option 3 is a preferred option.

Option 4: Class exemption plus Panel approval of transaction

60. This option proposes a class exemption as for Option 3, but would also require an additional level of approval by the Panel. The Panel would approve that the proposed transaction fell within one of the exempted classes. The exemption could not be relied upon without first obtaining that Panel approval.

Analysis of Option 4

61. Option 4 would result in a small degree of greater efficiency when compared with the status quo. Applications would need to be made to the Panel for approval of the transaction. It would only marginally reduce the role of the Panel executive, because Panel staff would be assessing applications, drafting reports for the Panel and administering Panel approvals under the class exemption. However, once a class exemption is in place it would remove the need for the Parliamentary Counsel Office to draft exemption notices in respect of the transactions falling within the class exemption. This would reduce the time for processing applications by, perhaps, a week or so.
62. Option 4 would also give applicants for a Panel approval under the class exemption a degree of certainty (to the extent that they were confident the transaction would fall within the exempted classes and therefore that they would obtain a Panel approval). In addition the conditions of exemption would be known, because they would be already set out in the class exemption.
63. This option gives the Panel a hands-on role under the class exemption. By giving the Panel the power to (effectively) approve a person's reliance on the class exemption (i.e., by approving the transaction as one that falls within the exempted class) the Panel can review the proposed transaction to ensure that it is not inconsistent with the Code.
64. The Panel can only grant exemptions where to do so would be appropriate and consistent with the objectives of the Code. Amongst the principal objectives of the Code are the principles that shareholders are treated fairly and given adequate time and information to make an un-coerced and fully informed decision. The Panel's standard conditions for rule 16(b) exemptions contribute to these objectives, for what has turned out to have been so far a very diverse range of transactions.
65. Rule 16(b) exemptions are largely technical in nature and only modify the disclosure requirements for a notice of meeting. Rule 16(b) exemptions do not exempt from compliance with the fundamental rule of the Code itself. An exemption from rule

16(b) in relation to a transaction would not affect the Panel's power to enforce the Code if it transpired that an aspect of that transaction was inconsistent with the Code.

66. The Panel is seeking feedback on the extent to which an approval role for the Panel would be appropriate for a rule 16(b) class exemption. In particular:
- (a) Is it a sensible proportionate regulatory approach to have the Panel scrutinising each transaction to give an approval to its falling within the exempted class? To consider that question from another perspective, would the Panel already have sufficient opportunity to intervene in a transaction proposed to be effected under a rule 16(b) class exemption (as described under Option 3) without also having an approval role as anticipated by Option 4?
 - (b) Would an approval role for the Panel support or devalue the role of the Code company directors in making their recommendations for shareholders under the notice of meeting requirements?
 - (c) Might an approval role for the Panel hinder the potential efficiency objective of a class exemption?
 - (d) Alternatively, would the confidence that a Panel approval might give to shareholders and the market outweigh the loss of efficiency for the transacting shareholders?

CONCLUSION/PREFERRED OPTION

67. The Panel's preferred options are either of Option 3 or Option 4, that is, that the Panel grants a class exemption from rule 16(b) of the Code, with, or without, Panel approval on a case-by-case basis of the transactions that may fall within the exempted class.
68. The intended impact of the Panel's exemption role is the improvement in the functioning of the market by alleviating unintended or unreasonable consequences arising from the strict application of the Code. If the Panel did not grant exemptions from rule 16(b), it would be considerably more difficult for Code companies with cornerstone shareholders (i.e., who must comply with the Code to increase their control percentage) to undertake the raising of equity capital or to provide increased equity in the Code company as consideration for services to the company, and so on. The Panel facilitates these transactions by granting exemptions.
69. It is timely to consider granting a class exemption from rule 16(b) of the Code at least for the more common types of transactions that result currently in applications for exemptions from rule 16(b). The Panel has to date not been confronted by a proposed transaction in respect of which it considered that the granting of a rule 16(b) exemption would not be appropriate or consistent with the Code.
70. The Panel is very concerned to get the right balance between enabling efficiency through granting of class exemptions and being a responsible market regulator.
71. It is recognised that if a class exemption were granted from rule 16(b) and it proved to be effective, the Panel should then consider whether to amend the Code.

72. The Panel seeks feedback on all of the options canvassed and welcomes any other proposals (and the reasons for those proposals) that market participants might have.
73. The Panel is particularly keen to have the views of market participants on which of Options 3 or 4 would be more appropriate.
74. More discussion is required on the form that a class exemption might take, the classes of transactions that might be included, and the conditions that might be included. These issues are discussed below in Part II of the paper.

PART II - THE FORM OF A RULE 16(B) CLASS EXEMPTION

75. If a class exemption is to be the preferred approach, whether it be under Option 3 or 4 (i.e. with, or without, Panel approval on a case-by-case basis of the transactions that may fall within the exempted class), further consideration is needed on the form that the class exemption would take.
76. This part of the paper first considers the scope of a class exemption. It then discusses possible issues with the standard conditions of exemption and explores the possibility of modifying those conditions.

Scope of class exemption

What classes of transactions should a class exemption from rule 16(b) cover?

77. Section 45(1)(b) provides the Panel with the power to exempt, from compliance with any provision of the Code, any class of persons,⁷ any class of transactions,⁸ or any class of offers.⁹
78. The Panel suggests that a class exemption from rule 16(b) should cover the three most common or straight forward types of transactions that are the subject of rule 16(b) specific exemptions, that is, rights issues, underwrites by shareholders and the exercise of options.
79. At any time after its promulgation (if Option 3 or 4 were implemented), persons could apply to the Panel to add a new class of transaction to the class exemption. The Panel could at that time consider the appropriateness of expanding the class exemption. If the Panel found that the class exemption was being relied upon inappropriately, it could remove a class or classes of transactions, or revoke the class exemption completely.

Should the class exemption be limited to a single allottee per exempted transaction?

80. The standard conditions of specific rule 16(b) exemptions can be lengthy and complicated, particularly where multiple associated allottees wish to rely on the exemption.
81. The Panel is interested in market views as to whether it would be sensible to limit the exemption so that it only applies to a single allottee per exempted transaction. Or, whether such a limitation might unnecessarily limit the utility of having a class exemption.

⁷ An example of a class exemption for a class of persons is clause 11 of the Takeovers Code (Class Exemptions) Notice (No 2) 2001, for lenders and receivers.

⁸ An example of a class exemption for a class of transaction is clause 4 of the Class Exemptions, for buybacks of its own shares by a Code company.

⁹ An example of a class exemption for a class of offers is the Takeovers Code (Unmarketable Parcels) Exemption Notice 2003.

Should the class exemption be limited to transactions of short duration?

82. The Panel would also be interested in receiving feedback on whether the class of transactions should be limited to transactions of short duration (for example should allotments have to be completed within a 12 month period in order to qualify for coverage by the class exemption?).
83. While rights issues would normally fall well within this timeframe, the exercise period for options is commonly two or more years. Transactions that occur over a long period of time increase the complexity of the decision for shareholders in deciding whether or not to approve of the transaction. However, the granting or issuing of options (and the undertaking of rights issues) are amongst the more straight forward of the types of transactions for which rule 16(b) exemptions have been sought.
84. The tradeoffs in considering this issue include:
- (a) the potential for reduced ability to rely on the class exemption (e.g., because options, the exercise period for which is longer than 12 months, would not fall within the exempted classes); and
 - (b) complex conditions of exemption to cover off the potential for transactions which occur over a period that is 12 months or greater, and therefore adequate ongoing disclosures for shareholders in the secondary market who should have full information when considering whether or not to invest in the Code company.

Review of standard conditions of exemption

85. The specific exemptions from rule 16(b) of the Code that have been granted by the Panel so far have been subject to the standard conditions as discussed in Part I of this paper.
86. The standard conditions of rule 16(b) exemptions, require that:
- (a) the notice of meeting contains, or is accompanied by, the following particulars of the voting securities that may be allotted;
 - (i) the maximum number of voting securities that could be allotted to the person under the relevant transaction;
 - (ii) the maximum number of voting securities that could be allotted to the person, expressed as a percentage of the total voting securities on issue, after completion of all allotments under the relevant transaction;
 - (iii) the maximum percentage of all voting securities that could be held or controlled by the person to whom the voting securities are being allotted after completion of the relevant transaction;

- (iv) the aggregate of the maximum percentages of all voting securities that could be held or controlled by the person to whom the voting securities are being allotted and by that person's associates after completion of the relevant transaction. If there is more than one proposed allottee relying on the exemption for a particular transaction ("exempted persons"), and some or all of those exempted persons are associates of each other ("exempted associates"), the aggregate maximum percentages should be disclosed for each exempted person on the basis that: (a) the exempted associates are associates; and (b) the exempted associates are not associates;
- (b) all relevant voting control maxima have been calculated on the basis that there is no change to the number of voting securities on issue between the date of the notice of meeting and the completion of the relevant transaction except as a result of the relevant transaction;
- (c) each proposed allottee does not become the holder or controller of an increased percentage of voting securities, except as a result of the relevant transaction, until the completion of the transaction or until the last allotment of the voting securities, as the case may be;
- (d) there is no change of control of any corporate entities who have the benefit of the exemption until the completion of the relevant transaction or the last allotment of the voting securities as the case may be;
- (e) the proposed allottees cannot increase their voting control at any time during the duration specified in the exemption to a percentage above the maximum percentage of voting securities that they could hold or control as disclosed to shareholders in the notice of meeting;
- (f) full particulars of the allotment are disclosed in the notice of meeting;
- (g) the notice of meeting contains a summary, in a form approved by the Panel, of the terms and conditions of the exemption;
- (h) the notice of meeting displays a disclaimer that the Panel is neither endorsing nor supporting the accuracy or reliability of the contents of the notice of meeting nor implying it has a view on the merits of the allotment;
- (i) the form of the notice of meeting is approved by the Panel;
- (j) in cases where shareholder approval is obtained for allotments occurring or potentially occurring over several years, disclosures are also made about the control positions of the exempted persons, in the Code company's annual reports.

87. The Panel has identified a number of issues with the standard conditions above. Each of these issues is discussed below.¹⁰
88. Market participants are invited to identify other issues and to give their views on the extent to which they agree or disagree with the issues that the Panel has identified.

Issue 1: No other means increase condition

89. Applicants seeking exemptions from rule 16(b) of the Code have raised concerns about the standard condition that the exempted person must not increase their voting control as a result of any transaction other than the transaction that is the subject of the exemption (“no other means increase condition”). The no other means increase condition applies even though any other means increases in control must be undertaken in compliance with the Code.
90. The issue usually only arises where the transaction that is the subject of the exemption is undertaken over a long period of time, for example, options that may be exercised over several years.
91. The no other means increase condition has the effect that, if the exempted person increases by any other means, and complies with the Code in every respect for that other means transaction, that is, seeks shareholder approval, obtains an independent adviser report etc, they will lose the benefit of the exemption, unless the Panel agrees to grant an amendment exemption that modifies the no other means increase condition.
92. If the exempted person loses the benefit of the exemption, they will not be able to continue to increase their control percentage as a result of the transaction that was the subject of the exemption (e.g. by exercising options) unless they seek a second shareholder approval for that transaction (including obtaining another independent adviser’s report). A new rule 16(b) exemption may also be required for the second shareholder approval because exact numbers and percentages may not be able to be disclosed.
93. It could be argued that it is unduly onerous and unfair to require the exempted person to have to seek a second shareholder approval for the original transaction. On the other hand, it may be appropriate that, unless the exempted person comes back to the Panel for an amendment to the exemption originally granted, shareholders should have the full extent of Code protections in response to a further proposed increase in control by the exempted person.
94. The purpose of the no other means increase condition is so that the Panel can ensure that, for the purposes of obtaining shareholder approval for the ‘other means increase’, the disclosures in the notice of meeting for that ‘other means increase’ also take into account the ongoing increases under the original exemption. The Panel would achieve this by making it a condition of an exemption amending the no other

¹⁰ Some of these issues are similar to those raised in the Panel’s discussion paper on the class exemption for buybacks, published on 4 May 2009.

means increase condition in the original exemption, that those disclosures are made in the notice of meeting for shareholder approval of that other means increase.

95. The no other means increase condition is not intended to prevent the exempted person from increasing by another means during the exemption period. Preventing capital restructurings is not generally an outcome sought by a market regulator like the Panel.

Clause 10 Class Exemption

96. There are instances where an ‘other means increase’ might not require shareholder approval, in which case there are no issues about disclosure of information. For example, an exempted person may wish to rely on the class exemption in clause 10 of the *Takeovers Code (Class Exemptions) Notice (No. 2) 2001* (“the Clause 10 Class Exemption”).¹¹
97. The Clause 10 Class Exemption enables a person to restore their control percentage to the level that it held immediately prior to a non-pro rata allotment of voting securities which results in the person's voting control being diluted, provided that that increase occurs within six months of the decrease.
98. In relying on the Clause 10 Class Exemption the exempted person could not increase above the maxima permitted under a rule 16(b) exemption without breaching the conditions of the rule 16(b) exemption (and therefore being subject to enforcement action by the Panel). Accordingly, there is no mischief in enabling reliance to be had on the Clause 10 Class Exemption, but it would provide more flexibility for an exempted person under a rule 16(b) exemption.
99. The Panel approved the Clause 10 Class Exemption on the basis that the strict application of the Code would be unduly harsh if a person’s voting control was diluted as a result of an allotment to another person or persons, and the diluted person was not able to restore that voting control.
100. The Panel considers that it may be appropriate for an exempted person under a rule 16(b) exemption to increase under the Clause 10 Class Exemption, in the same manner that other shareholders in the Code company are able to do so, without losing the benefit of the rule 16(b) exemption.
101. The Panel is considering the possibility of modifying the no other means increase condition so that the exempted person will not lose the benefit of the rule 16(b) exemption for an ‘other means increase’. However, under the modification, shareholder approval must be obtained for the ‘other means increase’, and full disclosure must be made in the notice of meeting about the transactions that are the subject of the rule 16(b) exemption, including any adjustments to the disclosures that were made under the rule 16(b) exemption.

¹¹ The Panel has recently granted one exemption that enabled a rule 16(b) exempted person to rely on the clause 10 class exemption as a permitted ‘other means increase’ under an existing rule 16(b) exemption by relying on the Clause 10 Class Exemption (the Takeovers Code (Pike River Coal Limited) Exemption Notice 2009).

102. This proposed modification would be consistent with what has been proposed in the Panel's Class Exemptions for Buybacks Discussion Paper that was published on 4 May 2009.

Issue 2: No increase above permitted maximum

103. Another issue, related to the first issue, is whether the standard condition that the exempted person must not increase their holding or controlling of voting rights in the Code company above the permitted maximum, as specified for the notice of meeting, (the "maximum percentage condition") is unduly restrictive.
104. It is possible that an 'other means increase' (discussed in the preceding paragraphs) would cause the exempted person to exceed the maximum percentage of voting securities that could be held or controlled by the exempted person as disclosed in the notice of meeting for the allotment.
105. In cases where the permitted maximum is exceeded, the maximum percentage condition will be triggered and the exempted person would lose the benefit of the rule 16(b) exemption. This would be the case, even though the exempted person had sought shareholder approval for the 'other means increase' that resulted in them exceeding the permitted maximum.
106. If the 'no other means increase' condition was modified but the maximum percentage condition remained, it would add only a limited amount of flexibility to a rule 16(b) class exemption.
107. Accordingly, the Panel is considering whether to modify the maximum percentage condition, so that the exempted person can increase above the permitted maximum percentage as a result of an 'other means increase'. However, shareholder approval must be obtained for the 'other means increase' and full disclosure must be made in the notice of meeting about the transactions that are the subject of the exemption, including any adjustments to the disclosures made under the rule 16(b) exemption (e.g. the new permitted maximum).

Issue 3: 'Potential Maxima' not always 'Likely Maxima'

108. Some applicants for exemptions from rule 16(b) of the Code, have queried the meaning of "maximum" in relation to the requirement to disclose the maximum numbers or percentages "that could be allotted", that is, the potential maxima.
109. The conditions of rule 16(b) exemptions require that the *maximum* numbers that could be allotted and the maximum percentages that could be attained are disclosed to shareholders. The person relying on the exemption must assess what the potential maxima are. Often the "potential" maxima may not be the "likely" maxima. For example, for a shareholder underwriter of a rights issue, the maximum number of voting rights that could be allotted to it would be based on the possibility (unlikely though it may be) that no shareholder other than the exempted person subscribed for rights under the rights issue.

110. If a shareholder has approved a maximum number/percentage, they are considered to have implicitly approved any lesser number/percentage. The Panel does not believe this issue is of any great concern, and it can be quite easily managed by the exempted person. Rule 16(b) exemptions do not prevent further information being included in the notice of meeting about 'likely' maxima, provided that the information is not misleading (under rule 64 of the Code).
111. It is up to the person relying on the exemption to assess what the potential maxima could be. If the stated maxima are exceeded, the exemption will not apply and the person relying on the exemption will have breached the Code. If it appears that the permitted maxima will be exceeded, the exempted person will need to seek further shareholder approval, with disclosure of higher maxima (and a new independent adviser's report) and they may need a new exemption from rule 16(b).

Issue 4: Changes in control of exempted corporates

112. Another issue for allotments that occur over a long period of time is in relation to changes in control of corporate entities that are relying on the exemption. The standard conditions include a prohibition on changes of effective control of a corporate exempted person for the duration specified under the exemption.
113. A corporate person (and those who control it) which has the benefit of a rule 16(b) exemption may itself be a large company, even a Code company, in respect of which share trading occurs. The ownership of that corporate person may change to some extent during the period of the exempted transaction.
114. If there was to be a change of control of a corporate shareholder which (together with associates) controlled more than 20% of a Code company, regardless of whether the corporate shareholder itself could continue to rely upon the rule 16(b) exemption, the new person proposing to acquire the shares in the corporate shareholder would have to comply with the Code or obtain an exemption from the Panel before acquiring his, her or its position in the corporate shareholder.
115. Accordingly, the Code already regulates changes of control upstream of a Code company, so the change of control itself is not really a problem.
116. It has been argued that the standard condition that there be no change in control of corporate entities relying on a rule 16(b) exemption is unnecessary.
117. However, the problem with exempted corporate shareholders is that, although shareholder approval would need to be obtained for an effective change in the control of the corporate shareholder, the Code would not require the notice of meeting to disclose information about the potential future increases in control of the Code company by the corporate shareholder (or its controllers) under an ongoing allotment. Accordingly, in this situation shareholders make their decision on whether to give their approval on a less than fully informed basis.

118. For the same reasons that it might be appropriate to amend the no other means increase condition, it may be appropriate to amend the no change in control of corporate entities condition, so that the acquirer in the corporate entity may rely on the rule 16(b) exemption provided that full disclosure was made to shareholders in the disclosures that are required under the Code in respect of its acquisition.

Proposed draft class exemption

119. The Panel proposes that any class exemption from rule 16(b) of the Code should be drafted on terms and conditions that are the same, or similar to, the standard conditions for rule 16(b) specific exemptions that have been granted to date, but modified so that:

- (a) an exempted person can undertake an ‘other means increase’;
- (b) an exempted person can increase above the permitted maximum as a result of an ‘other means increase’; and
- (c) an exempted corporate can undertake a change in their own control;

provided that the ‘other means increase’, or the change of control of the exempted corporate, complied with the Code and full disclosure was made to the Code company’s shareholders in the notice of meeting about the transactions that are the subject of the rule 16(b) exemption, including any necessary adjustments to the permitted maximum.

120. The Panel has made an initial attempt at what a class exemption from rule 16(b) of the Code might look like, taking all of these issues into account. Where possible, it has been drafted to be consistent with the proposed amended class exemption for buybacks, as set out in the Class Exemption for Buybacks Discussion Paper published on 4 May 2009.
121. The Panel would be grateful for feedback on the draft class exemption.

APPENDIX A

Rule 16(b) Exemptions:

- Takeovers Code (Life Pharmacy Limited) Exemption Notice 2009
- Takeovers Code (Pike River Coal Limited) Exemption Notice 2009
- Takeovers Code (Eastern Hi Fi Group Limited) Exemption Notice 2009
- Takeovers Code (Cynotech Holdings Limited) Exemption Notice 2009
- Takeovers Code (BLIS Technologies Limited) Exemption Notice 2009
- Takeovers Code (RLV No. 3 Limited) Exemption Notice 2008
- Takeovers Code (Phitek Systems Limited) Exemption Notice 2008
- Takeovers Code (Infratil Limited) Exemption Notice 2008
- Takeovers Code (Silver Fern Farms Limited) Exemption Notice 2008
- Takeovers Code (A2 Corporation Limited) Exemption Notice 2008
- Takeovers Code (Synlait Limited) Exemption Notice 2008
- Takeovers Code (ICP Biotechnology Limited) Exemption Notice 2007
- Takeovers Code (Sealegs Corporation Limited) Exemption Notice 2007
- Takeovers Code (Te Kairanga Wines Limited) Exemption Notice 2007
- Takeovers Code (Viking Capital Limited) Exemption Notice 2007
- Takeovers Code (Life Pharmacy Limited) Exemption Notice 2007
- Takeovers Code (Wellington Drive Technologies Limited) Exemption Notice 2006
- Takeovers Code (Training Solutions Plus Limited) Exemption Notice 2006
- Takeovers Code (A2 Corporation Limited) Exemption Notice 2005
- Takeovers Code (Cynotech Holdings Limited) Exemption Notice 2005
- Takeovers Code (Botry-Zen Limited) Exemption Notice 2005
- Takeovers Code (RetailX Limited) Exemption Notice 2005
- Takeovers Code (Wakefield Health Limited) Exemption Notice 2005
- Takeovers Code (Beauty Direct and Online Limited) Exemption Notice 2005
- Takeovers Code (Te Kairanga Wines Limited) Exemption Notice 2004
- Takeovers Code (Infratil Limited) Exemption Notice 2004
- Takeovers Code (VTL Group Limited) Exemption Notice 2004
- Takeovers Code (IT Capital Limited) Exemption Notice 2003
- Takeovers Code (IT Capital Limited) Exemption Notice 2002
- Takeovers Code (Richina Pacific Limited) Exemption Notice 2002
- Takeovers Code (AFFCO Holdings Limited) Exemption Notice 2002
- Takeovers Code (ElderCare New Zealand Limited) Exemption Notice 2002
- Takeovers Code (Force Corporation Limited) Exemption Notice 2001
- Takeovers Code (Infinity Group Limited) Exemption Notice 2001
- Takeovers Code (E-cademy Holdings Limited) Exemption Notice 2001

Rule 15(b) Exemptions:

- Takeovers Code (Dairy Trust Limited) Exemption Notice 2008
- Takeovers Code (Designer Textiles (NZ) Limited) Exemption Notice 2002

APPENDIX B

Draft Class Exemption from Rule 16(b) of the Code

1. Title

This notice is the Takeovers Code (Rule 16(b)) Exemption Notice 2009

2. Application

This notice applies to acts or omissions occurring on or after [].

3. Expiry

This notice expires on the close of [].

4. Interpretation

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

Act means the Takeovers Act 1993

allottee means a person to whom voting securities in a Code company are to be allotted and that is exempted by clause 5.

allotting Code company means a Code company in which voting securities are to be allotted and that is exempted by clause 6.

allotment –

- (a) means the allotment of voting securities that is referred to in the notice of meeting; and
- (b) includes, if the specified transaction involves more than 1 allotment to the allottee, all of those allotments

Code means the Takeovers Code under the Act.

notice of meeting means the notice of meeting to be sent to shareholders of the allotting company in respect of the meeting to be held to consider whether to pass a resolution to approve, under rule 7(d) of the Code, the allotment of voting securities to a person under a specified transaction.

other means increase means an increase in the person's voting control that occurs otherwise than as a result of the specified transaction.

specified transaction means a transaction –

- (a) that is 1 or more of a rights issue, underwriting arrangement, or the exercise of options; and
- (b) in respect of which the particulars of the number and percentages of voting securities to be allotted to the allottee cannot be ascertained at the date of the notice of meeting due to factors outside the control of the allottee.

term in relation to a specified transaction, means the period beginning with the date of the notice of meeting and ending with the date of the last allotment.

voting security means a voting security in an allotting Code company.

- (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 the voting rights in an allotting Code company.
- (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 7(d) of Code for allottee.

- (1) Every person is exempted from rule 7(d) of the Code in respect of any increase in the person's voting control as a result of an allotment, to the extent that rule 7(d) requires the notice of meeting to comply with rule 16(b) of the Code.

6. Exemption from rule 16(b)

- (1) Every Code company is exempted from rule 16(b) of the Code in respect of the notice of meeting.

7. Conditions of Exemptions

- (1) The exemptions in clauses 5 and 6 are subject to the conditions that—
 - (a) the notice of meeting contains, or is accompanied by, the following particulars—
 - (i) the maximum number of voting securities that could be allotted to each allottee under the specified transaction; and
 - (ii) the maximum number of voting securities that could be allotted to each allottee under the specified transaction, expressed as a percentage of the total voting securities on issue after that allotment; and
 - (iii) the maximum percentage of the total voting securities on issue that could be held or controlled by each allottee after completion of the allotment; and
 - (iv) the maximum of the percentages of the total voting securities on issue that could be held or controlled, in aggregate, by each allottee and by the allottees associates after completion of the allotment;
 - (v) full particulars of the specified transaction;
 - (vi) a summary of the terms and conditions of the exemptions granted by this notice;
 - (b) the notice of meeting displays, in a prominent position, a disclaimer stating that, by exempting the allottee from rule 7(d) and the allotting Code company from rule 16(b) of the Code, the Panel is:
 - (i) neither endorsing nor supporting the accuracy or reliability of the contents of the notice of meeting;
 - (ii) not implying it has a view on the merits of the allotment; and
 - (c) the form of the notice of meeting containing the proposed resolution must be

approved by the Panel; and

- (2) the number and percentages required to be disclosed in the notice of meeting under this clause must be calculated:
 - (a) on the basis of the number of shares of the allotting Code company on issue 7 days before the date of the notice of meeting; and
 - (b) on the assumption that, other than as a result of the allotment, there is no change to the total number of voting securities on issue between the date that was 7 days before the date of the notice of meeting and the completion of the allotment; and
 - (c) in the case of the maximum required to be disclosed under subclause (1)(a)(iv), if there is more than one allottee, and some or all of the allottees are associates of each other (“exempted associates”), for each allottee both on the basis that:
 - (i) the exempted associates are associates; and
 - (ii) the exempted associates are not associates.

8. Conditions of exemption if specified transaction is undertaken over more than 12 months

- (1) This clause applies if the term of the specified transaction is more than 12 months.
- (2) The exemptions in clauses 5 and 6 are subject to the condition that every annual report of the allotting Code company during the term of the specified transaction includes, in a prominent position and in a form approved by the Panel,-
 - (a) a summary of the terms of the allotment under the specified transaction; and
 - (b) a summary of the terms and conditions of this exemption; and
 - (c) a statement, as at the date of the annual report, of the following particulars:
 - (i) the number of voting securities allotted to each allottee under the specified transaction;
 - (ii) the total percentage of the total voting securities on issue that are held or controlled by each allottee;
 - (iii) the total percentage of the total voting securities on issue that are held or controlled, in aggregate, by each allottee and the allottee's associates;
 - (iv) the maximum percentage of the total voting securities on issue that could be held or controlled by each allottee if the maximum number of voting securities were allotted under the specified transaction;
 - (v) the maximum percentage of the total voting securities on issue that could be held or controlled, in aggregate, by each allottee and the allottee's associates if the maximum number of voting securities were allotted under the specified transaction.
- (3) The exemptions in clauses 5 and 6 are subject to the condition that, if the allotting Code

company has an internet site, it must, throughout the term of the specified transaction,-

- (a) disclose on its Internet site the information required to be disclosed in an annual report under subclause (2); and
- (b) announce on its Internet site any aggregate increase of 1% or more in the voting rights held or controlled by the allottee since the date of last disclosure under this subclause, or, where no prior disclosure has been made, since the date of the first aggregate increase of 1% or more in the voting rights held or controlled by the allottee; and
- (c) the announcement referred to in paragraph (b) must be made as soon as the allotting Code company is aware, or ought to be aware, that the relevant increase has occurred.

9. Condition of exemptions relating to no change of control of allottee

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

notice of meeting means a notice of meeting to be sent to shareholders in respect of the meeting to be held to consider whether to pass a resolution under rule 7(c) or rule 7(d) of the Code to approve a change of control of the allottee that would result in an effective change of control of the allotting Code company.

- (2) The exemptions in clauses 5 and 6 are subject to the condition that, during the term of the specified transaction, there is no change of control of the allottee (if the allottee is a body corporate) that results in an effective change of control of the allotting Code company, unless the approval requirements of subclause (3) and the notice of meeting requirements of subclause (4) are complied with in relation to the effective change of control:
- (3) For the purposes of subclause (2) the approval requirements are that the effective change of control of the allotting Code company was approved in accordance with rule 7(c) or 7(d) of the Code (as the case may be).
- (4) For the purposes of subclause (2) the notice of meeting in respect of the approval to be sought under subclause (3) must be contained or accompanied by the information required to be disclosed under clause 8(2), stated in respect of, and as at the date of, the notice of meeting.

10. Conditions of exemptions relating to other increases in voting control by allottee

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

notice of meeting means a notice of meeting to be sent to shareholders in respect of the meeting to be held to consider whether to pass a resolution under rule 7(c) or rule 7(d) of the Code for an allottee's increase in voting control as a result of an other means increase.

aggregated increases means the aggregate of the increases in voting control resulting from –

- (a) the allotment under the specified transaction; and

- (b) the other means increase.
- (2) The exemptions in clauses 5 and 6 are subject to the condition that, during the term of the specified transaction, the allottee does not increase its voting control by any means other than under the specified transaction, unless the approval requirements of subclause (3) and the notice of meeting requirements of subclause (4) are complied with.
- (3) For the purposes of subclause (2), the approval requirements are that:
- (a) if the other means increase is by an acquisition by the allottee of voting securities then that acquisition must be approved in accordance with rule 7(c) of the Code or permitted by another exemption granted by the Panel; and
 - (b) if the other means increase is by an allotment to the allottee of voting securities then that allotment must be approved in accordance with rule 7(d) of the Code or permitted by another exemption granted by the Panel.
 - (c) if the other means increase would result in the maximum percentage of voting securities that could be held or controlled by the allottee as disclosed in the notice of meeting (in respect of the allotments under the specified transaction) to be exceeded, then the other means increase and the aggregated increase must be approved by an ordinary resolution of the shareholders of the allotting Code company.
- (4) For the purposes of subclause (2) the notice of meeting required by rule 15 or rule 16 of the Code (as the case may be) must contain or be accompanied by:
- (a) a summary of the terms of the allotments under the specified transaction already approved by shareholders; and
 - (b) a statement of the following particulars, calculated as at the date that was 7 days before the date of the notice of meeting containing the proposed resolution for approval of the other means increase and any aggregated increase –
 - (i) the number of voting securities of the allotting Code company that the person holds or controls and the percentage of all voting securities of the allotting Code company that that number represents; and
 - (ii) the numbers and percentages required by clause 7(1)(a)(i) to (iv), calculated both on the basis that-
 - A the person's voting control will increase as a result of the other means increase and will increase as a result of the specified transaction (i.e. the aggregated increase); and
 - B the allottee's voting control will increase only as a result of the specified transaction.