

## Media Release

### For immediate release

28 March 2020

### Summary of exemptions from the Takeovers Code to address COVID-19 impact

On 26 March 2020, the Takeovers Panel announced that it had approved the granting of a suite of temporary class exemptions from the Takeovers Code that are aimed at assisting Code companies in raising capital. These exemptions will apply to capital raisings conducted on or before 31 October 2020, unless extended further.

The exemptions, while approved, will come into force only once an exemption notice has been finalised in accordance with the Takeovers Act 1993. The timing of the exemptions is not currently clear, although the Panel is working to grant the exemptions as soon as possible.

Ordinarily, the Panel would wait for the terms of the exemption notice to be final before commenting on them. However, the Panel is conscious that there are a number of transactions which are currently being considered. As a result, the Panel wishes to keep market informed as to the nature of the exemption relief which has been approved so that it can be factored into the planning of transaction structures.

Accordingly, the Panel has published the following summary of the exemptions to assist in the planning of capital raisings.

### Key terms of exemptions

We set out below a summary of the terms on which the Panel has granted the exemptions. Please note that this is a summary only and is subject to the final drafting of the exemption notice itself.

#	Topic	Summary of the position approved by the Panel
1	<b>Type of transactions</b>	The exemptions apply only to certain allotments of voting securities including certain pro rata and non pro rata allotments (see below for further details).  There are no exemptions for acquisitions of voting securities.
2	<b>Timing of transactions in reliance on exemptions</b>	Any increase in voting control in reliance on the exemptions must take place before 31 October 2020.  However, the Panel will revisit the appropriateness of the 31 October 2020 date closer to the time and may, depending on the circumstances at that time, extend the relief or provide alternate relief beyond that point.
3	<b>Reduction of control requirement – does not apply to the first</b>	The reduction of control (or “sell down”) requirement which applies under the <a href="#">Takeovers Code (Class Exemptions) Notice (No 2) 2001</a> will not apply to the first 10% of increased control.

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	<b>additional 10%</b>	<p>The 10% figure is an aggregate amount which applies across all of the exemptions which have been approved, other than the exemption for professional underwriters.</p> <p>Similarly, any increase in voting control up to 10% will be exercisable immediately upon allotment. No shareholder approval will be required to exercise the additional 10% voting control or avoid an obligation to reduce the control percentage.</p> <p>If a person increases their control percentage by more than 10%:</p> <ul style="list-style-type: none"> <li>• the excess control percentage must be reduced within 24 months; and</li> <li>• the corresponding voting rights may not be exercised.</li> </ul> <p>The 10% control percentage which may be retained is in addition to what may be acquired under the Code. For example, a shareholder with a control percentage of 15% will be able to increase to (and retain) a control percentage of 30% (5% before encountering any Code issues and a further 10% under the exemptions).</p>
4	<b>Exemption for increases of up to 10%</b>	<p>Under this exemption, any person will be able to increase their voting control of a Code company by up to 10%.</p> <p>Placements and other non-pro-rata offers will be able to be made under this exemption.</p> <p>Assuming the shareholder who increases their control percentage under this exemption does not rely on any of the other exemptions to be granted, the shareholder will not be subject to a reduction of control requirement or voting restrictions.</p>
5	<b>Exemption for pro-rata offers</b>	<p>The exemption will replicate the exemptions in the <a href="#">Takeovers Code (Class Exemptions) Notice (No 2) 2001</a> in relation to shareholders who increase their control percentage in relation to pro-rata offers with several key changes:</p> <ul style="list-style-type: none"> <li>• the relaxation of the usual obligation to reduce and not exercise voting rights attached to an increase in control percentage – see 3 above;</li> <li>• the period within which the shareholder must reduce their voting control (over the aggregate 10% cap) will be extended from 12 months to 24 months; and</li> <li>• the exemptions will permit non-renounceable rights offer structures (such as an ANREO).</li> </ul>
6	<b>Exemption for shareholder underwriters</b>	<p>The exemption will replicate the current <a href="#">Takeovers Code (Professional Underwriters) Exemption Notice 2004</a>, but will:</p> <ul style="list-style-type: none"> <li>• allow shareholders to act as underwriters;</li> <li>• allow shareholders to retain (and exercise voting rights in respect of) at least some of voting control that they acquire through an underwrite – see 3 above; and</li> <li>• voting control over the 10% aggregate cap must be reduced within 24 months.</li> </ul>

#	Topic	Summary of the position approved by the Panel
7	<b>Exemption for professional underwriters</b>	<p>Professional underwriters will be able to rely on this exemption if they and their associates hold or control 20% or less of the voting rights in the Code company (as opposed to the usual 5%).</p> <p>Professional underwriters will be allowed 24 months to reduce their control percentage (as opposed to the usual 6 months).</p>

The Panel will advise market practitioners on when the exemption is likely to come into effect. Code companies and their legal advisers are encouraged to contact the [Panel executive](#) with any questions.

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### Notes to editors

The Takeovers Panel is an independent Crown entity established under the Takeovers Act 1993. The Panel's mandate is to strengthen investor confidence in New Zealand's capital markets by enforcing the Takeovers Code. The Code ensures that all shareholders have a fair opportunity to participate in control-change transactions (such as mergers, acquisitions, takeovers and allotments) in Code companies.

For further information on the Panel, please visit [www.takeovers.govt.nz](http://www.takeovers.govt.nz)

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