

Financial Markets Conduct Act (Takeovers Panel) Exemption Notice 2015

Pursuant to section 556 of the Financial Markets Conduct Act 2013, the Financial Markets Authority, being satisfied of the matters set out in section 557 of that Act, gives the following notice.

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Notice

1 Title

This notice is the Financial Markets Conduct Act (Takeovers Panel) Exemption Notice 2015.

2 Commencement

This notice comes into force on 16 July 2015.

3 Revocation

This notice is revoked on the close of 15 July 2020.

4 Interpretation

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

Act means the Financial Markets Conduct Act 2013

Code means the Takeovers Code under the Takeovers Act 1993

Code company means a Code company under rule 3A of the Code

enforceable undertakings means any undertaking or deed poll in favour of, and enforceable by, the Panel —

(a) for the purposes of exercising its enforcement powers under the Takeovers Act 1993; and/or

(b) for the purposes of its role in relation to section 236A of the Companies Act 1993

listed issuer means a listed issuer as defined in section 6 of the Act

Panel means the Takeovers Panel established under the Takeovers Act 1993

quoted means quoted as defined in section 6 of the Act

Regulations means the Financial Markets Conduct Regulations 2014

relevant interest means a relevant interest as defined in sections 235 to 238 of the Act

substantial holding means a substantial holding as defined in section 274 of the Act

voting product means a voting product as defined in section 6 of the Act.

- (2) Any term or expression that is defined in the Act or the Regulations and used, but not defined, in this notice has the same meaning as in the Act or the Regulations.

5 Exemption

The Panel is exempted from sections 276 to 279 of the Financial Markets Conduct Act 2013 to the extent that the Panel has a relevant interest in quoted voting products of a listed issuer, which relevant interest arises as the result of an enforceable undertaking and results in the Panel having a substantial holding in the listed issuer.

Dated at Wellington this 15th day of July 2015.



Garth Stanish
Director of Markets Oversight
Financial Markets Authority

Statement of reasons

This notice comes into force on 16 July 2015 and is revoked on 15 July 2020.

This notice exempts the Panel from sections 276 to 279 of the Act to the extent that the Panel has a relevant interest in quoted voting products of a listed issuer, which relevant interest arises as the result of an enforceable undertaking and results in the Panel having a substantial holding in the listed issuer.

The Financial Markets Authority (the **FMA**), after satisfying itself as to the matters set out in section 557 of the Act, considers it appropriate to grant the exemption because—

- the exemption addresses an unintended consequence whereby the Panel may have a substantial holding in a listed issuer by virtue of having the ability to enforce enforceable undertakings for the purposes of enforcing compliance with the Code, or in relation to schemes of arrangement under the Companies Act 1993, thereby giving the Panel a relevant interest in quoted voting products of the listed issuer that comprise 5% or more of that class of quoted voting products. The relevant interest would only arise as a result of the Panel performing its regulatory role in Code regulated transactions. It would not be related to normal trading in the market or any other activity the deterrence of which is the purpose of the substantial holding disclosure provisions as set out in section 273 of the Act:
- the exemption is necessary to prevent any confusion in the market as to the Panel's ownership or control of quoted voting products of a listed issuer. Disclosure of the Panel's relevant interest would not provide the market with any useful information for the purpose of making decisions relating to financial products. Any enforceable undertakings would normally be disclosed in the relevant transaction documents (i.e., in any notices of meeting or offer documents, as the case may be) and/or public announcements by the Panel, and in the event of an enforceable undertaking being enforced by the Panel, the market would also be informed:

- the exemption will promote the confident and informed participation of businesses, investors and consumers in the financial markets by reducing the potential for uncertainty and confusion as to the nature of the Panel's interest in respect of any substantial holdings in listed issuers. The exemption will also promote flexibility in the substantial holdings disclosure regime for an issue that appears to arise as an unintended consequence:
- the exemption avoids unnecessary compliance costs, because without an exemption the Panel would be required to make disclosures under sections 276 to 279 of the Act every time an enforceable undertaking in respect of the quoted voting products of a Code company results in the Panel having a substantial holding:
- the granting of the exemption is desirable in order to promote the purposes of the Act, specifically to promote the confident and informed participation of businesses, investors and consumers in the financial markets, and to avoid unnecessary compliance costs:
- the exemption is not broader than is reasonably necessary to address the matters that gave rise to it, as it applies only in limited and specific circumstances that may arise in the course of the Panel performing its regulatory role in Code regulated transactions.