



Takeovers Code (NZ Windfarms Limited) Exemption Notice 2010

Pursuant to section 45 of the Takeovers Act 1993, the Takeovers Panel gives the following notice (to which is appended a statement of reasons of the Takeovers Panel).

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Notice

- 1 Title**
This notice is the Takeovers Code (NZ Windfarms Limited) Exemption Notice 2010.
- 2 Application**
This notice applies to acts or omissions occurring on or after 16 March 2010.
- 3 Expiry**
This notice expires on the close of 31 July 2010.

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

meeting means the meeting of shareholders of Windfarms that is to be held on or about 6 April 2010 to consider whether to approve, for the purposes of rule 7(d) of the Code, the allotment of voting securities to Vector under the rights issue and any underwriting arrangements with Vector

minimum amount means \$25,600,000

notice of meeting means the notice of meeting to be sent to shareholders of Windfarms in respect of the meeting

rights issue means the rights issue to be conducted by Windfarms under a combined prospectus and investment statement to be registered following the meeting

underwriting arrangements with Vector means arrangements under which Vector agrees to underwrite the rights issue

Vector means Vector Limited

voting security means a voting security in Windfarms

Windfarms means NZ Windfarms Limited

working day has the meaning given in section 2(1) of the Companies Act 1993.

(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 Windfarms.

(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

Vector is exempted from rule 7(d) of the Code in respect of any increase in its voting control as a result of the allotment of voting securities to it under the rights issue and any underwriting arrangements with Vector 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) of Code

Windfarms is exempted from rule 16(b) of the Code in respect of the notice of meeting.

7 Condition of exemptions in clauses 5 and 6

- (1) The exemptions in clauses 5 and 6 are subject to the condition that the notice of meeting must contain, or be accompanied by, the following particulars:
 - (a) the maximum number of voting securities that could be allotted to Vector under the rights issue;
 - (b) the maximum number of voting securities that could be allotted to Vector under the rights issue, expressed as a percentage of the total voting securities on issue after the allotment of voting securities under the rights issue;
 - (c) the maximum percentage of the total voting securities on issue that could be held or controlled by Vector after the allotment of voting securities under the rights issue;
 - (d) the maximum percentage of the total voting securities on issue that could be held or controlled by Vector and its associates after the allotment of voting securities under the rights issue.
- (2) The numbers and percentages referred to in subclause (1) must be calculated on the following basis:
 - (a) that Vector exercises its full entitlement under the rights issue; and
 - (b) that shareholders of Windfarms exercise sufficient entitlements under the rights issue so that, after taking into account the exercise of the entitlement referred to in paragraph (a), the rights issue raises the minimum amount exactly; and
 - (c) that no other entitlement under the rights issue is exercised; and
 - (d) that no arrangements are made under which any person (including Vector) agrees to underwrite the rights issue; and
 - (e) that no voting securities are allotted after 5 pm on the last working day before the date of the meeting other than voting securities allotted under the rights issue.

8 Additional condition of exemptions in clauses 5 and 6

- (1) The exemptions in clauses 5 and 6 are also subject to the condition that the notice of meeting must contain, or be accompanied by, the following particulars:
- (a) the maximum number of voting securities that could be allotted to Vector under the rights issue and any underwriting arrangements with Vector;
 - (b) the maximum number of voting securities that could be allotted to Vector under the rights issue and any underwriting arrangements with Vector, expressed as a percentage of the total voting securities on issue after the allotment of voting securities under the rights issue and any underwriting arrangements with Vector;
 - (c) the maximum percentage of the total voting securities on issue that could be held or controlled by Vector after the allotment of voting securities under the rights issue and any underwriting arrangements with Vector;
 - (d) the maximum percentage of the total voting securities on issue that could be held or controlled by Vector and its associates after the allotment of voting securities under the rights issue and any underwriting arrangements with Vector.
- (2) The numbers and percentages referred to in subclause (1) must be calculated on the following basis:
- (a) that Vector exercises its full entitlement under the rights issue; and
 - (b) that shareholders of Windfarms exercise sufficient entitlements under the rights issue so that, after taking into account the exercise of the entitlement referred to in paragraph (a), the rights issue raises the minimum amount exactly; and
 - (c) that no other entitlement under the rights issue is exercised; and
 - (d) that Vector subscribes for the maximum number of voting securities that it is permitted or required to subscribe for under any underwriting arrangements with Vector; and

- (e) that no arrangements are made under which any person other than Vector agrees to underwrite the rights issue; and
- (f) that no voting securities are allotted after 5 pm on the last working day before the date of the meeting other than voting securities allotted under the rights issue and any underwriting arrangements with Vector.

9 Further conditions of exemptions in clauses 5 and 6

The exemptions in clauses 5 and 6 are subject to the further conditions that—

- (a) the notice of meeting must contain, or be accompanied by,—
 - (i) full particulars of the rights issue; and
 - (ii) full particulars of the fees and benefits available to Vector under any underwriting arrangements with Vector; and
 - (iii) a summary of the terms and conditions of the exemptions granted by this notice; and
- (b) the notice of meeting must contain, or be accompanied by, a statement to the effect that—
 - (i) arrangements may be made under which Vector and other persons agree to underwrite the rights issue at a price per voting security that is equal to the price per voting security under the rights issue; and
 - (ii) if arrangements are made under which AMP Capital Investors (New Zealand) Limited, Tyndall Investment Management New Zealand Limited, or Vector agrees to underwrite the rights issue, the number of voting securities for which that person is permitted or required to subscribe under those arrangements will not exceed the number of voting securities that is equal to that person's full entitlement under the rights issue; and
- (c) the notice of meeting must display, in a prominent position, a disclaimer stating that, by exempting Vector from rule 7(d) of the Code, and Windfarms 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; and
- (ii) not implying that it has a view on the merits of the proposed rights issue or any underwriting arrangements; and
- (d) the form of the notice of meeting must be approved by the Panel.

10 Restrictions on increases in control greater than disclosed maximum, etc

The exemption in clause 5 does not apply—

- (a) if, immediately after the allotment of voting securities under the rights issue and any underwriting arrangements with Vector, the total percentage of voting securities held or controlled by Vector is greater than the maximum percentage of voting securities that could be held or controlled by Vector as disclosed in the notice of meeting in accordance with clause 8(1)(c); or
- (b) if there is an increase in Vector's voting control, except as a result of an allotment of voting securities under the rights issue or any arrangements under which Vector or any other person agrees to underwrite the rights issue, between the date of the notice of meeting and the completion of the allotment of voting securities under both the rights issue and those underwriting arrangements; or
- (c) if there is a change in the number of voting securities on issue, except as a result of an allotment of voting securities under the rights issue or any arrangements under which Vector or any other person agrees to underwrite the rights issue, between the date of the notice of meeting and the completion of the allotment of voting securities under both the rights issue and those arrangements.

Dated at Auckland this 23rd day of March 2010.

The Common Seal of the Takeovers Panel was affixed in the presence of:

[Seal]

D O Jones,
Chairperson.

Statement of reasons

This notice applies to acts or omissions occurring on or after 16 March 2010 and expires on 31 July 2010.

The Takeovers Panel (the **Panel**) has granted exemptions for—

- Vector Limited (**Vector**) from rule 7(d) of the Takeovers Code (the **Code**) to the extent that rule 7(d) requires the notice of meeting of NZ Windfarms Limited (**Windfarms**), held for the purpose of considering whether to approve allotments of voting securities in Windfarms to Vector, to be in accordance with rule 16(b) of the Code. The exemption from rule 7(d) is in respect of any increase of voting rights held by Vector as a result of the allotment of voting securities to Vector through a rights issue and, possibly, underwriting arrangements (as described below); and
- Windfarms from rule 16(b) of the Code in respect of the notice of meeting.

Windfarms proposes to undertake a pro rata renounceable rights issue. While Windfarms may enter into underwriting arrangements with Vector and others in respect of the rights issue, it is more likely that there will be no underwriter for the rights issue.

Vector holds 19.99% of the voting rights in Windfarms. The allotment of voting securities to Vector under the rights issue, if Vector participates, and any underwriting arrangements with Vector, if such arrangements are entered into, may result in Vector increasing its voting control above the 20% threshold in the fundamental rule of the Code. Accordingly, shareholder approval for the allotment is to be

sought under rule 7(d) of the Code. However, the information required to be disclosed in the notice of meeting by rule 16(b) of the Code will not be known at the time that the notice of meeting is prepared, due to uncertainties in the extent to which shareholders will participate in the rights issue.

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

- it is impossible for the actual number of voting securities to be allotted and the relevant percentages required by rule 16(b) of the Code to be stated in the notice of meeting, as these numbers and percentages are dependent on the extent to which shareholders of Windfarms participate in the rights issue and the extent to which Vector and others are required to underwrite the rights issue:
- all non-associated shareholders will have an opportunity to vote on the potential allotment of voting securities to Vector:
- if the non-associated shareholders approve the potential maximum allotment of voting securities to Vector, then, by implication, the shareholders also approve any lesser percentage of voting rights that may be allotted to Vector:
- the ability for shareholders to subscribe for securities and thus provide adequate funding to ensure a company's growth is an acknowledged method of raising capital in New Zealand, and the Panel should facilitate these arrangements by granting appropriate exemptions where necessary.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 1 April 2010.
This notice is administered by the Takeovers Panel.
