



Takeovers Code (A2 Corporation 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 (A2 Corporation Limited) Exemption Notice 2010.
- 2 Application**
This notice applies to acts or omissions occurring on or after 1 July 2010.
- 3 Expiry**
This notice expires on the close of 30 September 2014.

4 Interpretation

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

A2C means A2 Corporation Limited

Act means the Takeovers Act 1993

Code means the Takeovers Code under the Act

FNP means Freedom Nutritional Products Limited, a company incorporated in Australia

initial placement means the allotment of 120 376 950 ordinary shares in A2C to FNP under the subscription agreement, being 25% of the total A2C voting securities (following the issue of those shares) at that date

notice of meeting means the notice to be sent to the shareholders of A2C in respect of the meeting to be held on or about 20 July 2010 to (amongst other things) approve, for the purposes of rule 7(d) of the Code, the allotment of voting securities to FNP on the exercise of the option and the top-up option

option means the option granted to FNP under the subscription agreement for FNP to acquire the number of shares calculated in the subscription agreement

option expiry date means the earlier of—

- (a) the date on which FNP disposes of some or all of its A2C shares; or
- (b) the last day of the 12-month period beginning from the date of the initial placement; or
- (c) the date on which FNP is allotted shares pursuant to its exercise of the option

subscription agreement means the sale and subscription implementation agreement between A2C and FNP dated 21 May 2010

top-up option means the top-up option granted to FNP under the subscription agreement

top-up option expiry date means the earlier of—

- (a) the date on which FNP disposes of some or all of its A2C shares; or
- (b) the date on which FNP is allotted all of the shares it may be allotted pursuant to its exercise of the top-up option; or
- (c) 24 August 2014

voting security means a voting security in A2C.

- (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 A2C.
- (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

FNP is exempted from rule 7(d) of the Code to the extent that rule 7(d) requires the notice of meeting to comply with rule 16(b) of the Code, in respect of any increase in FNP's voting control as a result of the allotment of voting securities to it on the exercise of the option or the top-up option.

6 Exemption from rule 16(b) of Code

A2C is exempted from rule 16(b) of the Code in respect of the notice of meeting, so far as it relates to the particulars of voting securities to be allotted to FNP on the exercise of the option or the top-up option.

7 Condition of exemptions relating to notice of meeting

- (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 FNP as a result of the exercise of the option or the top-up option:
 - (b) the number referred to in paragraph (a) expressed as a percentage of the total number of voting securities on issue after those allotments:
 - (c) the maximum percentage of voting securities on issue that could be held or controlled by FNP after those allotments:
 - (d) the maximum percentage of voting securities on issue that could be held or controlled by FNP and FNP's associates after those allotments.

- (2) The numbers and percentages referred to in subclause (1) must be calculated on the basis that there is no change to the total number of voting securities on issue as at the date of the notice of meeting other than as a result of the initial placement or the exercise of the option and top-up option.
- (3) The numbers and percentages referred to in subclause (1) must be disclosed separately in respect of—
 - (a) the option; and
 - (b) the top-up option; and
 - (c) the option and the top-up option in aggregate.

8 Further conditions of exemptions relating to notice of meeting

The exemptions in clauses 5 and 6 are subject to the following further conditions:

- (a) the notice of meeting must contain or be accompanied by—
 - (i) full particulars of the option and the top-up option; and
 - (ii) a summary of the terms and conditions of the exemptions contained in this notice:
- (b) the notice of meeting must display, in a prominent position, a disclaimer stating that, in exempting FNP from rule 7(d) of the Code and A2C from rule 16(b) of the Code, the Takeovers 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 issue of voting securities to FNP on the exercise of the option or the top-up option:
- (c) the form of the notice of meeting must be approved by the Takeovers Panel.

9 Condition of exemptions relating to A2C annual reports

The exemptions in clauses 5 and 6 are subject to the further condition that annual reports issued by A2C must contain or be accompanied by the following, in a prominent position and in a form approved by the Takeovers Panel:

- (a) in every annual report issued before the later of the option expiry date and the top-up option expiry date,—
 - (i) a summary of the terms and conditions of the exemptions contained in this notice; and
 - (ii) a statement, as at the end of the financial year to which the annual report relates, of the total percentage of voting securities on issue held or controlled by FNP and FNP's associates; and
 - (iii) a statement, as at the end of the financial year to which the annual report relates, of the maximum percentage of voting securities on issue that could be held or controlled by FNP and FNP's associates following the exercise of both the option and the top-up option:
- (b) in every annual report issued before the option expiry date,—
 - (i) a summary of the terms of the option; and
 - (ii) a statement, as at the end of the financial year to which the annual report relates, of—
 - (A) the number of voting securities that have been allotted to FNP under the option; and
 - (B) the maximum percentage of voting securities on issue that could be held or controlled by FNP and FNP's associates on the exercise of the option:
- (c) in every annual report issued before the top-up option expiry date,—
 - (i) a summary of the terms of the top-up option; and
 - (ii) a statement, as at the end of the financial year to which the annual report relates, of—
 - (A) the number of voting securities that have been allotted to FNP under the top-up option; and
 - (B) the maximum percentage of voting securities on issue that could be held or controlled by FNP and FNP's associates on the exercise of the top-up option.

10 Application of exemptions

The exemptions in clauses 5 and 6 cease to apply if—

- (a) there is an increase in FNP's voting control, unless the increase in voting control—
 - (i) results from the initial placement; or
 - (ii) results from the exercise of the option or the top-up option; or
 - (iii) occurs in accordance with clause 10 of the Takeovers Code (Class Exemptions) Notice (No 2) 2001; or
- (b) there is a change in the effective control of FNP; or
- (c) the total percentage of voting securities in A2C held or controlled by FNP exceeds the maximum percentage referred to in clause 7(1)(c) and disclosed in the notice of meeting.

Dated at Wellington this 1st day of July 2010.

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

[Seal]

K J O'Connor,
Member.

Statement of reasons

This notice applies to acts or omissions occurring on or after 1 July 2010 and expires on 30 September 2014.

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

- an exemption from rule 7(d) of the Code for Freedom Nutritional Products Limited (**FNP**) to the extent that that rule requires the notice of meeting approving the allotment of shares to FNP to disclose the exact numbers of voting securities to be allotted, as required by rule 16(b) of the Code; and
- an exemption from rule 16(b) of the Code to A2 Corporation Limited (**A2C**) in respect of the notice of meeting.

A2C is a listed Code company with shares quoted on the NZAX. A2C owns, through a wholly owned subsidiary, 50% of A2 Dairy Products Australia Pty Limited (**A2 Australia**). The other 50% is owned by FNP, also through a wholly owned subsidiary. A2C and FNP have entered into an agreement under which A2C will acquire FNP's 50% interest in A2 Australia in consideration for A2C allotting FNP 120 376 950 A2C shares (the **initial placement**). Following the initial placement FNP will hold 25% of A2C.

The initial placement will result in FNP increasing its voting control in A2C above 20%, causing FNP to trigger rule 6(1) of the Code. Accordingly, shareholder approval under rule 7(d) of the Code is to be sought for the initial placement. No exemption is required for the initial placement because the exact numbers and percentages required to be disclosed in the notice of meeting under rule 16(b) will be known at the time the notice of meeting is prepared.

As part of the wider transaction, A2C will also grant FNP—

- an option (the **option**) to subscribe for such number of shares as will increase its voting control in A2C to 27.5%. That option will be exercisable for 12 months following the initial placement:
- an option (the **top-up option**) to subscribe for shares to maintain its approximate voting control level should any of the 20 million partly paid shares held by the A2C's executives become fully paid up. Those partly paid shares carry voting rights in proportion to the amount they are paid up. If they are fully paid up, FNP's voting control in A2C will be diluted. To counter that dilution, the top-up option allows FNP to sub-

scribe, for nil consideration, for such number of shares as represents 25% of the number of the executives' partly paid shares that become fully paid up.

If FNP exercises the option or the top-up option, the resulting allotment will increase FNP's voting control above 20%, triggering rule 6(1) of the Code. Accordingly, shareholder approval under rule 7(d) of the Code is to be sought for such potential future allotments. However, the exact numbers and percentages required under rule 16(b) of the Code to be disclosed in the notice of meeting will not be known at the time the notice of meeting is prepared. The Panel has granted exemptions allowing potential maxima to be disclosed in place of those exact numbers and percentages.

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

- the details required by rule 16(b) cannot be specified in the notice of meeting because it is uncertain how many voting securities will be issued to FNP; and
- all non-associated shareholders will have an opportunity to vote on the potential allotment of voting securities to FNP; and
- if the non-associated shareholders approve the potential maximum allotment of voting securities to the FNP, then, by implication, the shareholders also approve the allotment of a lesser number of voting securities to the option holders.

Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 8 July 2010.

This notice is administered by the Takeovers Panel.
