



Takeovers Code (Infratil 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 (Infratil Limited) Exemption Notice 2010.

2 Application

This notice applies to acts or omissions occurring on or after 4 July 2010.

3 Expiry

This notice expires on the close of 31 August 2013.

4 Interpretation

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

Act means the Takeovers Act 1993

associated shareholders means—

- (a) Utilico Limited; and
- (b) H.R.L. Morrison & Co Group Limited; and
- (c) Hugh Richmond Lloyd Morrison and John Bentley Morrison, as trustees of the HRL Morrison Family Trust (being a trust created by deed of trust dated 27 April 1994); and
- (d) JML Trustee Company Limited, as trustee of the JML Trust (being a trust created by deed of trust dated 29 June 1994); and
- (e) Duncan Paul Saville

buyback means an acquisition by Infratil Limited of up to 50 000 000 voting securities

buyback transaction means a particular acquisition of voting securities by Infratil Limited as part of the buyback

Code means the Takeovers Code under the Act

meeting means the meeting of shareholders of Infratil Limited that is to be held on or about 11 August 2010 to consider whether or not to approve,—

- (a) for the purposes of rule 7(d) of the Code, the allotment of voting securities to the associated shareholders resulting from the exercise of warrants held by them; and
- (b) for the purposes of the exemption from rule 6(1) of the Code in clause 5, the buyback

notice of meeting means the notice of meeting to be sent to the shareholders of Infratil Limited in respect of the meeting

voting security means a voting security in Infratil Limited

warrants means the warrants issued by Infratil Limited under a prospectus registered on 8 June 2007 and quoted on the NZSX market of NZX Limited under ticker symbol IFTWC.

- (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 Infratil Limited.
- (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 6(1) of Code in respect of buyback transactions

Each associated shareholder is exempted from rule 6(1) of the Code in respect of any increase to that associated shareholder's voting control as a result of a buyback transaction.

6 Exemption from rule 7(d) of Code in respect of warrants

Each associated shareholder is exempted from rule 7(d) of the Code in respect of any increase in that associated shareholder's voting control as a result of the allotment of voting securities to that associated shareholder on the exercise of warrants held by that associated shareholder to the extent that rule 7(d) requires the notice of meeting to comply with rule 16(b) of the Code.

7 Exemption from rule 16(b) of Code in respect of notice of meeting

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

8 Conditions of exemption in clause 5

- (1) The exemption in clause 5 is subject to the conditions that—
 - (a) the buyback is approved by an ordinary resolution of the shareholders of Infratil Limited; and
 - (b) none of the associated shareholders, nor any person who is at the time an associate of any of the associated shareholders, votes in favour of the resolution; and

- (c) at the same time that the notice of meeting containing the proposed resolution is sent to the shareholders of Infratil Limited, Infratil Limited also sends to the Panel, in hard copy and (if possible) in electronic form, a copy of the notice and any document accompanying it that relates to the meeting; and
- (d) at the same time that a person (if any) publishes or sends to shareholders of Infratil Limited, in respect of the meeting, a statement or information that was not required to be published or sent by the rules of the Code, or by this notice, that person also sends to the Panel, in hard copy and (if possible) in electronic form, a copy of that statement or information; and
- (e) rules 18 and 19 of the Code are complied with in relation to the buyback (as if the references in those rules to an acquisition under rule 7(c) of the Code and to the notice of meeting referred to in rule 15 of the Code were references to the buyback and the notice of meeting respectively); and
- (f) the notice of meeting contains, or is accompanied by, the following particulars in relation to the buyback:
 - (i) the maximum number of voting securities that may be acquired by Infratil Limited; and
 - (ii) the percentage of all voting securities that the maximum number of voting securities represents; and
 - (iii) the potential maximum percentage of all voting securities that each associated shareholder would hold or control if the maximum number of voting securities were acquired by Infratil Limited; and
 - (iv) the potential maximum percentage of all voting securities that each associated shareholder and that associated shareholder's associates would hold or control if the maximum number of voting securities were acquired by Infratil Limited; and
 - (v) the potential maximum percentage of all voting securities that the associated shareholders, in aggregate, would hold or control if the maximum

- number of voting securities were acquired by Infratil Limited; and
- (vi) the potential maximum percentage of all voting securities that the associated shareholders and their associates, in aggregate, would hold or control if the maximum number of voting securities were acquired by Infratil Limited; and
 - (vii) the consideration payable by Infratil Limited in respect of a buyback transaction or the manner in which the consideration payable would be determined, and when the consideration would be payable; and
 - (viii) the reasons for the buyback; and
 - (ix) a statement to the effect that the increase in the associated shareholders' voting control resulting from the buyback transactions, if approved, would be permitted under an exemption from rule 6(1) of the Code; and
 - (x) a report (or summary of a report) from an independent adviser in relation to the buyback that complies with rule 18 of the Code (as if references in that rule to an acquisition under rule 7(c) of the Code and a notice of meeting referred to in rule 15 of the Code were references to the buyback and the notice, respectively); and
 - (xi) a statement by the directors of Infratil Limited in relation to the buyback that complies with rule 19 of the Code (as if the reference in that rule to an acquisition under rule 7(c) of the Code were a reference to the buyback).
- (2) The percentages required to be disclosed in subclause (1) must be calculated on the basis that—
- (a) there is no change to the total number of voting securities on issue between the date of the notice of meeting and the expiry of this notice other than as a result of the buyback; and
 - (b) no voting securities that are held or controlled by any of the associated shareholders are acquired as part of the buyback.

9 Conditions of exemptions in clauses 6 and 7

- (1) The exemptions in clauses 6 and 7 are subject to the condition that the notice of meeting contains, or is accompanied by, the following particulars:
- (a) the maximum number of voting securities that could be allotted to each associated shareholder as a result of the exercise of all the warrants held by that person; and
 - (b) the maximum number of voting securities that could be allotted to each associated shareholder as a result of the exercise of all of the warrants held by that person, expressed as a percentage of the total voting securities on issue after that allotment; and
 - (c) the maximum percentage of the total voting securities on issue that could be held or controlled by each associated shareholder after the allotment of the voting securities resulting from the exercise of all of the warrants held by that person; and
 - (d) the maximum percentage of the total voting securities on issue that could be held or controlled by each associated shareholder and that associated shareholder's associates after the allotment of the voting securities resulting from the exercise of all of the warrants held by that associated shareholder; and
 - (e) the maximum number of voting securities that could be allotted to the associated shareholders, in aggregate, as a result of the exercise of all of the warrants held by them; and
 - (f) the maximum number of voting securities that could be allotted to the associated shareholders, in aggregate, as a result of the exercise of all of the warrants held by them, expressed as a percentage of the total voting securities on issue after those allotments; and
 - (g) the maximum percentage of the total voting securities on issue that could be held or controlled by the associated shareholders, in aggregate, after the allotments of the voting securities resulting from the exercise of all of the warrants held by them; and
 - (h) the maximum percentage of the total voting securities on issue that could be held or controlled by the asso-

ciated shareholders and their associates, in aggregate, after the allotments of the voting securities resulting from the exercise of all of the warrants held by them.

- (2) The percentages required to be disclosed in subclause (1) must be calculated on the basis that there is no change to the total number of voting securities on issue between the date of the notice of meeting and the expiry of this notice other than as a result of the exercise of the warrants held by the associated shareholders.

10 Further conditions that apply to exemptions in clauses 5 to 7

- (1) The exemptions in clauses 5 to 7 are subject to the conditions that—
- (a) the notice of meeting contains, or is accompanied by, the following particulars (calculated on the basis that all of the warrants held by the associated shareholders are exercised and Infratil Limited acquires the maximum number of voting securities under the buyback):
 - (i) the potential maximum percentage of all voting securities that each associated shareholder would hold or control; and
 - (ii) the potential maximum percentage of all voting securities that each associated shareholder and that associated shareholder's associates would hold or control; and
 - (iii) the potential maximum percentage of all voting securities that the associated shareholders, in aggregate, would hold or control; and
 - (iv) the potential maximum percentage of all voting securities that the associated shareholders and their associates, in aggregate, would hold or control; and
 - (b) the notice of meeting contains, or is accompanied by,—
 - (i) full particulars of the voting securities and the warrants; and
 - (ii) a summary of the terms and conditions of the exemptions granted under this notice; and

- (c) the notice of meeting displays, in a prominent position, a disclaimer stating that by exempting the associated shareholders from rules 6(1) and 7(d) of the Code, and Infratil Limited 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 it has a view on the merits of the proposed issue of voting securities to the associated shareholders on the exercise of the warrants or the proposed acquisition of voting securities by Infratil Limited under the buyback; and
- (d) the form of the notice of meeting is approved by the Takeovers Panel; and
- (e) every annual report issued by Infratil Limited during the period in which this notice is in force contains the following in a prominent position and in a form approved by the Takeovers Panel:
 - (i) a summary of the terms of the warrants;
 - (ii) a summary of the terms and conditions of the exemptions granted under this notice;
 - (iii) a statement, as at the end of the financial year to which the annual report relates, of the number of voting securities allotted to each associated shareholder as a result of the exercise of the warrants held by them (whether the voting securities were allotted during the financial year or an earlier financial year);
 - (iv) a statement, as at the end of the financial year to which the annual report relates, of the total percentage of voting rights on issue held or controlled by each associated shareholder and that associated shareholder's associates (calculated as though the other associated shareholders were not their associates);
 - (v) a statement, as at the end of the financial year to which the annual report relates, of the maximum percentage of total voting rights that could be

held or controlled by each associated shareholder and that associated shareholder's associates as a result of—

- (A) the allotment of voting securities to the associated shareholders on the exercise of all of the warrants held by them; and
 - (B) Infratil Limited acquiring the maximum number of voting securities under the buyback.
- (2) The percentages required to be disclosed in subclause (1)(a) must be calculated on the basis that there is no change to the total number of voting securities on issue between the date of the notice of meeting and the expiry of this notice other than as a result of the allotments of voting securities on the exercise of the warrants held by the associated shareholders and the buyback.

11 Restrictions on other acquisitions, on increases in control greater than disclosed maximum, and on changes in control

- (1) The exemptions in clauses 5 and 6 do not apply—
- (a) to an associated shareholder if there is an increase in the associated shareholder's voting control, except as a result of an allotment of voting securities on the exercise of warrants or a buyback transaction, before the expiry of this notice; or
 - (b) to an increase in an associated shareholder's voting control if, immediately after completion of the allotment of voting securities resulting from the exercise of a warrant or immediately after the increase in voting control as a result of a buyback transaction, the total percentage of voting securities held or controlled by that associated shareholder is greater than the maximum percentage of voting securities that could be held or controlled by that person as disclosed in the notice of meeting in accordance with clause 10(1)(a)(i).
- (2) The exemptions in clauses 5 and 6 in relation to Utilico Limited are subject to the condition that there is no change in control of Utilico Limited until the expiry of this notice.

- (3) The exemptions in clauses 5 and 6 in relation to H.R.L. Morrison & Co Group Limited are subject to the condition that there is no change in control of H.R.L. Morrison & Co Group Limited until the expiry of this notice.
- (4) The exemptions in clauses 5 and 6 in relation to JML Trustee Company Limited are subject to the condition that there is no change in control of JML Trustee Company Limited until the expiry of this notice.

Dated at Auckland this 13th day of July 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 4 July 2010 and expires on 31 August 2013.

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

- Utilico Limited, H.R.L. Morrison & Co Group Limited, Hugh Richmond Lloyd Morrison and John Bentley Morrison as trustees of the HRL Morrison Family Trust, JML Trustee Company Limited as trustee of the JML Trust, and Duncan Saville (the **associated shareholders**) from rule 6(1) of the Takeovers Code (the **Code**) in respect of any increase to their voting control resulting from an acquisition by Infratil Limited (**Infratil**) of its own voting securities (**buyback**):

- the associated shareholders from rule 7(d) of the Code to the extent that rule 7(d) requires the notice of meeting to be in accordance with rule 16(b) of the Code in respect of any increase in the percentage of voting rights held in Infratil as a result of the exercise of certain Infratil warrants (**warrants**) held by them:
- Infratil from rule 16(b) of the Code in respect of the notice of meeting.

The associated shareholders currently exercise, in aggregate, voting control of approximately 29.7% of Infratil. The associated shareholders may be associates for the purposes of the Code. Any increase to an associated shareholder's voting control may therefore trigger rule 6(1) of the Code and need to be effected using one of the exceptions contained in rule 7 of the Code, or with the benefit of an exemption granted by the Panel, or both.

The associated shareholders hold approximately 14 million warrants. Any exercise of warrants by an associated shareholder will result in an allotment increasing that associated shareholder's voting control. Infratil and the associated shareholders intend to seek shareholder approval under rule 7(d) of the Code at Infratil's 2010 annual general meeting for allotments resulting from the exercise of their warrants. Rule 7(d) of the Code requires that the notice of meeting makes the disclosures specified by rule 16(b) of the Code. However, the rule 16(b) disclosures cannot be made because of uncertainties about the number of warrants that will ultimately be exercised by the associated shareholders and the total number of voting securities on issue immediately following the exercise of those warrants.

Infratil has been conducting a buyback programme for many years. Any buyback by Infratil from a shareholder will result in an increase to the voting control of every other shareholder. The associated shareholders intend to seek the approval of non-associated shareholders of Infratil for buybacks that increase the associated shareholders' voting control. Shareholder approval cannot be sought under clause 4 of the Takeovers Code (Class Exemptions) Notice (No 2) 2001 because the terms of that notice do not allow account to be taken of the potential increases to voting control resulting from the exercise of the warrants held by the associated shareholders.

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 the warrants are ultimately exercised by the associated shareholders and whether there is a change to the number of voting securities on issue in Infratil before the expiry date of the warrants:
- all non-associated shareholders will have an opportunity to vote on the potential allotment of voting securities to the associated shareholders as a result of the exercise of their warrants and the buybacks by Infratil:
- if the non-associated shareholders approve the potential maximum voting control achievable by the associated shareholders as a result of buybacks and the exercise of warrants held by the associated shareholders, then, by implication, approval has also been granted for any lesser level of voting control:
- the issue of the warrants was pursuant to a registered prospectus and is an acknowledged method of providing incentives to shareholders to participate and contribute to a company's growth as well as providing a company with a means of raising equity capital in New Zealand, and the Panel should facilitate these arrangements by granting appropriate exemptions where necessary:
- the exemption from rule 6(1) of the Code closely mirrors the shareholder approval mechanism, which is an exception to the fundamental rule, set out in rules 7(c) and 15 of the Code.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 15 July 2010.
This notice is administered by the Takeovers Panel.
