



Takeovers Code (A2 Corporation Limited) Exemption Amendment 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).

Contents

		Page
1	Title	1
2	Commencement	1
3	Principal notice amended	1
4	Application of exemptions	2
5	New clause 11 added	2
	11 Additional disclosure requirements for shareholder approval of buyback	2

Notice

- 1 Title**
This notice is the Takeovers Code (A2 Corporation Limited) Exemption Amendment Notice 2010.
- 2 Commencement**
This notice comes into force on the day after the date of its notification in the *Gazette*.
- 3 Principal notice amended**
This notice amends the Takeovers Code (A2 Corporation Limited) Exemption Notice 2010.

4 Application of exemptions

- (1) Clause 10(a)(iii) is amended by omitting “clause 10 of”.
- (2) Clause 10 is amended by revoking paragraph (c) and substituting the following paragraph:
 - “(c) the total percentage of voting securities held or controlled by FNP exceeds—
 - “(i) the maximum percentage referred to in clause 7(1)(c) and disclosed in the notice of meeting; or
 - “(ii) if clause 11 applies, the maximum percentage referred to in clause 11(2)(b)(v):”.

5 New clause 11 added

The following clause is added:

“11 Additional disclosure requirements for shareholder approval of buyback

- “(1) This clause applies if A2C acquires its own voting securities in reliance on the exemption in clause 4 of the Takeovers Code (Class Exemptions) Notice (No 2) 2001.
- “(2) If this clause applies, the notice of meeting referred to in clause 4(2)(c) of the Takeovers Code (Class Exemptions) Notice (No 2) 2001 must contain or be accompanied by (in addition to the things referred to in that clause) the following:
 - “(a) if the notice of meeting is given before the option expiry date, a summary of the terms of the option:
 - “(b) if the notice of meeting is given before the top-up option expiry date, a summary of the terms of the top-up option:
 - “(c) a statement of the following particulars, as at the date of the notice of meeting relating to the acquisition by A2C of its own voting securities:
 - “(i) the number of voting securities held or controlled by FNP:
 - “(ii) the percentage of voting securities held or controlled by FNP:
 - “(iii) the number of voting securities allotted to FNP under the option and under the top-up option:
 - “(iv) the maximum percentage of voting securities that could be held or controlled by FNP following the exercise of both the option and the top-up option:

- “(v) the maximum percentage of voting securities that could be held or controlled by FNP following the exercise of both the option and the top-up option and also the acquisition by A2C of its own voting securities:
- “(vi) the numbers and percentages referred to in subparagraphs (i), (ii), (iv), and (v) as if references to FNP were references to FNP and its associates in aggregate:
- “(d) a statement of the assumptions on which the particulars referred to in paragraph (c) are based.”

Dated at Auckland this 14th 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, which comes into force on the day after its notification in the *Gazette*, amends the Takeovers Code (A2 Corporation Limited) Exemption Notice 2010 (the **principal notice**).

In the principal notice, the Takeovers Panel (the **Panel**) granted—

- an exemption from rule 7(d) of the Code for Freedom Nutritional Products Limited (**FNP**) to the extent that that rule would require the notice of meeting approving the allotment

of shares to FNP to disclose the exact numbers specified by rule 16(b) of the Code; and

- an exemption to A2 Corporation Limited (**A2C**) in respect of the notice of meeting.

The principal notice contains conditions that prohibit FNP from increasing its voting control except under the transactions for which the exemptions were granted, which are the exercise of the option and the exercise of a top-up option. An exception to this prohibition is for increases under clause 10 of the Takeovers Code (Class Exemptions) Notice (No 2) 2001. This allows FNP to increase its voting control under a capital raising right granted to FNP as part of the transaction. This amendment notice expands that exception so that FNP can increase its voting control in reliance on any clause of the Takeovers Code (Class Exemptions) Notice (No 2) 2001. However, the amendment provides that if shareholder approval is sought for a buyback under clause 4 of the Takeovers Code (Class Exemptions) Notice (No 2) 2001, additional disclosures must be provided to shareholders. The disclosures inform them of the aggregate effect of the shareholder approval for the buyback and of the shareholder approval obtained in accordance with the exemptions in the principal notice and the Code.

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

- all non-associated shareholders will have an opportunity to vote on the potential allotment of voting securities to FNP under the transaction for which the exemptions in the principal notice were granted, and on any increase in FNP's voting control as a result of an acquisition by A2C of its own voting rights; and
- if the non-associated shareholders approve the potential maximum allotment of voting securities to FNP under either of these situations, then, by implication, the shareholders also approve the allotment of a lesser number of voting securities to the option holders; and
- the conditions of the exemption ensure that the aggregate effect of the shareholder approval for any acquisition by A2C of its own voting securities, and of the shareholder approval

