



Takeovers Code (A2 Corporation Limited) Exemption Notice 2005

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 2005.

2 Application

This notice applies to acts or omissions occurring on or after 15 June 2005.

3 Interpretation

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

A2 Corporation means A2 Corporation Limited

Act means the Takeovers Act 1993

agreement means the underwriting agreement between A2 Corporation and Mountain Road dated 27 June 2005

Code means the Takeovers Code approved by the Takeovers Code Approval Order 2000 (SR 2000/210)

issue means the proposed issue by A2 Corporation of up to 100 725 000 voting securities to be offered to its ordinary shareholders under pro rata renounceable rights to subscribe for 2 voting securities for every 1 existing voting security

Machin means Machin Investments Limited

meeting means the meeting of A2 Corporation's shareholders that is to be held on or about 29 June 2005 to consider whether or not to approve,—

- (a) for the purposes of rule 7(c) of the Code, the acquisition of voting securities in A2 Corporation by Mountain Road from Machin; and
- (b) for the purposes of rule 7(d) of the Code, the allotment of voting securities in A2 Corporation to Mountain Road under the agreement

Mountain Road means Mountain Road Investments Limited

notice of meeting means the notice of the meeting that is to be sent to A2 Corporation's shareholders

voting security means an ordinary share in A2 Corporation.

- (2) 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.

4 Exemption from rule 7(c) of Code

Mountain Road is exempted from rule 7(c) of the Code in respect of any increase in its voting rights in A2 Corporation resulting from Mountain Road's acquisition of voting securities from Machin to the extent that the notice of meeting does not comply with rule 15(b)(iii) of the Code.

5 Exemption from rule 15(b)(iii) of Code

A2 Corporation is exempted from rule 15(b)(iii) of the Code in respect of the notice of meeting.

6 Exemption from rule 7(d) of Code

Mountain Road is exempted from rule 7(d) of the Code in respect of any increase in its voting rights in A2 Corporation resulting from the allotment of voting securities to Mountain Road under the issue and the agreement to the extent that the

notice of meeting does not comply with rule 16(b) of the Code.

7 Exemption from rule 16(b) of Code

A2 Corporation is exempted from rule 16(b) of the Code in respect of the notice of meeting.

8 Condition of exemptions in clauses 4 and 5

The exemptions in clauses 4 and 5 are subject to the condition that the notice of meeting contains particulars of the voting securities that may be acquired by Mountain Road under the issue and the agreement, including—

- (a) the maximum percentage of the total voting securities that could be held or controlled by Mountain Road after the completion of its acquisition from Machin of voting securities of A2 Corporation:
- (b) the maximum percentage of the total voting securities that could be held or controlled by Mountain Road and its associates after the completion of its acquisition from Machin of voting securities of A2 Corporation.

9 Condition of exemptions in clauses 6 and 7

The exemptions in clauses 6 and 7 are subject to the condition that the notice of meeting contains particulars of the voting securities that may be acquired by Mountain Road under the issue and the agreement, including—

- (a) the number of voting securities that would be allotted under the issue to Mountain Road as an underwriter of A2 Corporation:
- (b) the maximum number of voting securities that would be allotted to Mountain Road under the agreement if Mountain Road had to meet its full underwriting commitment:
- (c) the total number of voting securities that could be allotted to Mountain Road under paragraphs (a) and (b) (**the maximum Mountain Road allotment**):
- (d) the estimated total number of voting securities on issue after completion of allotments under the issue and the agreement, using the assumptions made for rounding of rights entitlements under the issue (**the total voting securities on issue**):

- (e) a statement of the maximum Mountain Road allotment expressed as a percentage of the total voting securities on issue;
- (f) the maximum percentage of the total voting securities on issue that Mountain Road could hold or control after completion of allotments under the issue and the agreement;
- (g) the maximum aggregate percentage of the total voting securities on issue that Mountain Road and its associates could hold or control after completion of allotments under the issue and the agreement;
- (h) full particulars of the issue.

10 Other conditions of exemptions in clauses 4 to 7

The exemptions in clauses 4 to 7 are subject to the further conditions that—

- (a) there is no change in the effective control of Mountain Road between the date of the meeting and the date on which any allotment of voting securities is made under the issue; and
- (b) Mountain Road does not become the holder or controller of any voting rights in A2 Corporation other than by way of the allotment of voting securities under the issue or under the agreement and the acquisition of voting securities from Machin, as approved by shareholders in the meeting; and
- (c) the notice of meeting contains a summary of the terms and conditions of the exemptions granted in this notice.

Dated at Auckland this 4th day of July 2005.

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

[L.S.]

D. O. Jones,
Deputy Chairperson.

Statement of reasons

This notice applies to acts or omissions occurring on or after 15 June 2005.

The Takeovers Panel has granted exemptions to—

- Mountain Road Investments Limited (**Mountain Road**) from rules 7(c) and 7(d) of the Takeovers Code (the **Code**) in respect of the requirements for the notice of meeting under rule 16(b) of the Code; and
- A2 Corporation (**A2 Corporation**) from rules 15(b)(iii) and 16(b) of the Code.

A2 Corporation proposes to make a renounceable pro rata 2 for 1 rights issue of approximately 100 725 000 ordinary shares to its existing shareholders. It is proposed that the issue of shares will be underwritten by Mountain Road, which currently holds approximately 16.1% of the voting rights in A2 Corporation, by means of an investment in Machin Investments Limited (**Machin**). Machin is a 40% shareholder in A2 Corporation. It is likely that Mountain Road's interest in the voting rights in A2 Corporation will increase through underwriting the issue. If Mountain Road was required to take up the maximum number of shares that it could be required to subscribe for under the underwriting agreement, its direct interest in the voting rights in A2 Corporation would increase to 66.67%.

The investors in Machin propose to distribute Machin's shares in A2 Corporation as soon as possible after completion of the rights issue. As a result, in addition to any A2 Corporation shares acquired by Mountain Road under the underwriting agreement, Mountain Road will replace its indirect interest in A2 Corporation shares held by Machin with a direct interest in A2 Corporation shares. This is expected to equate to a further 3.9% of the shares in A2 Corporation after completion of the rights issue.

A2 Corporation intends to obtain shareholder approval, in accordance with the Code, for the potential allotment of shares to Mountain Road under the underwriting agreement and the acquisition of shares by Mountain Road from Machin. However, A2 Corporation cannot comply with rules 15(b)(iii) and 16(b) of the Code before completion of the issue because it cannot state in the notice of meeting—

- the exact number of shares that would be allotted to Mountain Road; and

- the exact percentage of voting rights in A2 Corporation that Mountain Road would control after allotment; and
- the exact percentage of voting rights in A2 Corporation that Mountain Road would control after the acquisition.

These details would be known only after the issue had been completed and all allotments made.

The Takeovers Panel considers that it is appropriate to grant the exemptions because—

- it is impossible for the actual numbers of shares to be allotted and the relevant percentages required by rules 16(b)(i), (ii), and (iii) to be stated in the notice of meeting, as these numbers and percentages are dependent upon the level of participation by A2 Corporation's shareholders in the company's pro rata rights issue; and
- it is impossible for the actual percentages required by rules 15(b)(iii) to be stated in the notice of meeting, as these percentages are dependent upon the level of participation by A2 Corporation's shareholders in the company's pro rata rights issue; and
- if A2 Corporation's shareholders approve the allotment of shares to Mountain Road under the underwriting agreement, which potentially requires Mountain Road to subscribe for all the shares to be issued, and the transfer of shares under the distribution from Machin, and the maximum possible increase in Mountain Road's percentage of voting control, then by implication the shareholders also approve any lesser percentage of control acquired by Mountain Road following the allotment of the shares and the transfer of shares under the distribution from Machin; and
- pro rata rights issues and shareholder underwriting agreements are accepted means of raising equity capital in New Zealand so the Takeovers Panel should facilitate these arrangements by granting appropriate exemptions where necessary.

The Takeovers Panel considers that the exemptions in this notice are consistent with the objectives of the Code because the non-associated shareholders of A2 Corporation will have an opportunity to vote on the allotment of voting securities to Mountain Road and the acquisition of voting securities by Mountain Road.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 14 July 2005.
This notice is administered by the Takeovers Panel.
