



Takeovers Code (Origin Energy New Zealand Limited) Exemption Notice 2004

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 (Origin Energy New Zealand Limited) Exemption Notice 2004.

2 Application

This notice applies to acts or omissions occurring on or after 27 August 2004.

3 Interpretation

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

Act means the Takeovers Act 1993

closing date means the Project Closing Date of the purchase agreement as defined in that agreement

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

Contact means Contact Energy Limited

EME means Edison Mission Energy, a company incorporated in Delaware

executive entitlements mean the rights (if any) to ordinary shares in Contact held by executives of Contact under the Long Term Incentive Plan established by Contact on 30 June 2004

Mission Contact Finance means Mission Contact Finance Limited, a wholly-owned subsidiary of Universal

offer means the full takeover offer to all Contact shareholders, except Universal, Pacific Holdings, and Contact, to be made by Origin Energy NZ under the Code for all the shares in Contact

Origin Energy means Origin Energy Limited, a company incorporated in New South Wales

Origin Energy NZ means Origin Energy New Zealand Limited, a subsidiary of Origin Energy

Pacific Holdings means Mission Energy Pacific Holdings, a wholly-owned subsidiary of Universal

Pacific Holdings Debt means the Pacific Holdings Debt as defined in the purchase agreement

Pacific Holdings Leverage Amount means the Pacific Holdings Leverage Amount as defined in the purchase agreement

Per-Contact Share Price means the Per-Contact Share Price as defined in the purchase agreement

Project Purchase Price means the Project Purchase Price as defined in the purchase agreement

purchase agreement means the purchase agreement between EME, Origin Energy NZ, and Origin Energy dated 20 July 2004 under which EME agreed to sell all of the shares in Universal to Origin Energy NZ

redeemable preference shares means the redeemable preference shares issued by Pacific Holdings to Mission Contact Finance as referred to in the purchase agreement

takeover notice means the takeover notice to be given by Origin Energy NZ, in accordance with rule 41 of the Code, to Contact of its intention to make the offer

treasury stock means the ordinary shares in Contact held by Contact as treasury stock (within the meaning of section 67A of the Companies Act 1993)

Universal means Mission Energy Universal Holdings, an indirect, wholly-owned subsidiary of EME.

- (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 Exemptions from rule 6(1) of Code

- (1) Origin Energy NZ is exempted from rule 6(1) of the Code in respect of any increase in its control of voting rights in Contact that results from its acquisition of all of the shares in Universal.
- (2) Origin Energy NZ is also exempted from rule 6(1) of the Code in respect of any increase in its control of voting rights in Mission Contact Finance that results from its acquisition of all of the shares in Universal.

5 Conditions of exemption in clause 4(1)

The exemption in clause 4(1) is subject to the conditions that—

- (a) Origin Energy NZ gives the takeover notice not later than the day on which Origin Energy NZ acquires control of voting rights in Contact under the purchase agreement; and
- (b) Origin Energy NZ sends the offer to all shareholders of Contact (except Universal, Pacific Holdings, and Contact) during the period beginning 14 days, and ending 30 days, after the date on which the takeover notice is sent to Contact; and
- (c) the offer has no conditions other than a 50% minimum acceptance condition that is in accordance with rule 23(1)(a) of the Code; and
- (d) the consideration for Contact shares under the offer is—
- (i) the Per-Contact Share Price; or
 - (ii) in the event that a dividend is paid to Contact shareholders after the date of the purchase agreement, the Per-Contact Share Price less the amount of the dividend; and
- (e) the takeover notice and the offer each contain the following:

- (i) a report by an independent adviser, approved by the Takeovers Panel for this purpose, certifying that in the adviser's opinion the Pacific Holdings Leverage Amount properly reflects, as at the date of the purchase agreement, the aggregate of the current value of—
 - (A) the aggregate principal amount of Pacific Holdings Debt; and
 - (B) the aggregate redemption amount payable on the redemption of the redeemable preference shares; and
- (ii) a statement by the directors of Origin Energy NZ and the directors of EME that—
 - (A) the consideration offered under the offer is equivalent to the consideration payable to EME in respect of Contact shares held by Universal and Pacific Holdings; and
 - (B) other than the consideration referred to in paragraph (d) above, EME is not receiving any control premium or other benefit for Contact shares held by Universal and Pacific Holdings and no such premium or benefit has been allocated to assets other than the shares in Contact or has been derived from other arrangements; and
- (f) payment to EME under the purchase agreement is not made earlier than the earliest date on which Contact shareholders accepting the offer could receive payment under the offer; and
- (g) within 10 days after the closing date, Origin Energy NZ provides to the Takeovers Panel and New Zealand Exchange Limited certification from the independent adviser referred to in paragraph (e)(i) that, in the adviser's opinion, the adjustments to the Project Purchase Price calculated by EME under Article 2.3 of the purchase agreement accurately reflect the value of the assets and liabilities of Universal and its wholly-owned subsidiaries (excluding any amount representing taxation liabilities (if any) less taxation assets (if any) for which Origin Energy NZ is indemnified by EME under the purchase agreement) as at the closing date.

6 Exemption from rule 8(2) of Code

Origin Energy NZ is exempted from rule 8(2) of the Code to the extent that rule 8(2) requires that the offer be made in respect of—

- (a) Contact shares held by Universal and Pacific Holdings;
- (b) treasury stock;
- (c) executive entitlements.

Dated at Wellington this 3rd day of September 2004.

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

[L.S.]

K. J. O'Connor,
Member.

Statement of reasons

This notice applies to acts or omissions occurring on or after 27 August 2004.

As part of a global sale of its international assets, Edison Mission Energy (**EME**) has entered into an agreement (the **purchase agreement**) to sell all the shares in its wholly-owned subsidiary Mission Energy Universal Holdings (**Universal**) to Origin Energy New Zealand Limited (**Origin Energy NZ**). Universal and its subsidiary Mission Energy Pacific Holdings (**Pacific Holdings**) together hold approximately 51.2% of the voting shares in Contact Energy Limited (**Contact**), and Universal also holds all of the shares in Mission Contact Finance Limited (**Mission Contact Finance**). Accordingly, upon settlement of the sale of Universal, Origin Energy NZ will become the controller of 51.2% of the voting rights in Contact and all of the shares in Mission Contact Finance. Both Contact and Mission Contact Finance are code companies.

The Takeovers Panel (the **Panel**) has granted exemptions to Origin Energy NZ in relation to—

- Origin Energy NZ becoming the controller of voting rights in Contact as a result of the purchase agreement; and

- Origin Energy NZ becoming the controller of voting rights in Mission Contact Finance; and
- a proposed full takeover offer by Origin Energy NZ for Contact.

Exemption in relation to Origin Energy NZ becoming controller of voting rights in Contact as result of purchase agreement

Although the Takeovers Code (the **Code**) provides a mechanism by which shareholders in a code company can approve an increase in voting rights resulting from an upstream acquisition, the Code does not provide a mechanism by which a takeover offer can be accepted by means of an upstream transaction.

The Takeovers Panel has granted an exemption from rule 6(1) of the Code to Origin Energy NZ in respect of any increase in its voting control in Contact as a result of its purchase of Universal.

The exemption is subject to a number of conditions, including that Origin Energy NZ make a takeover offer to remaining Contact shareholders and that the consideration under that takeover offer is the same as the Per-Contact Share Price received by EME for its interest in Contact under the purchase agreement.

The Panel considers that granting the exemption to Origin Energy NZ from rule 6(1), in respect of becoming the controller of voting rights in Contact as a result of the acquisition of Universal, is appropriate and consistent with the objectives of the Code because the conditions of the exemption ensure that shareholders are treated fairly on the basis that Contact shareholders would be offered the same consideration per share under Origin Energy NZ's takeover offer as the purchase price of EME's Contact shares under the purchase agreement.

Exemption in relation to Origin Energy NZ becoming controller of Mission Contact Finance

Mission Contact Finance is a code company because it is a party to a listing agreement with New Zealand Exchange Limited in respect of the issue of redeemable preference shares.

Origin Energy NZ is not able to seek shareholder approval in respect of the transfer of voting rights because the only shareholder of Mission Contact Finance, Universal, would be prevented from voting to approve such a transaction under rule 17 of the Code.

If a takeover offer was made, it would be made to Universal only. It would not be required to be extended to the holders of redeemable preference shares issued by Mission Contact Finance because these securities are not equity securities for the purposes of the Code.

The Panel considers that granting the exemption to Origin Energy NZ from rule 6(1) of the Code, in respect of becoming the holder or controller of voting rights in Mission Contact Finance as a result of the acquisition of Universal, is appropriate and consistent with the objectives of the Code because—

- Mission Contact Finance is a code company solely by reason of being the issuer of redeemable preference shares that are the subject of a listing agreement with New Zealand Exchange Limited; and
- all voting securities of Mission Contact Finance are held by Universal; and
- there are no shareholders of Mission Contact Finance requiring the protection of the Code in respect of any change of control of Universal; and
- Universal is not a code company; and
- the exemption maintains a proper relation between the costs of complying with the Code and the benefits resulting.

Exemption in relation to Origin Energy NZ's full takeover offer

The Panel has also granted an exemption to Origin Energy NZ from rule 8(2) of the Code in respect of its full takeover offer for Contact to allow it to exclude from the offer—

- shares held by Universal and Pacific Holdings; and
- shares held by Contact as treasury stock under section 67A of the Companies Act 1993; and
- options, rights, or interests issued under the Contact Energy Limited Long Term Incentive Plan (the **LTIP**).

Under rule 8(2) of the Code, if a full takeover offer is made it must be in respect of all of the securities in each class of equity securities, whether voting or non-voting, of the target company (other than those that are already held by the offeror).

However, not all offerees would be able to accept Origin Energy NZ's takeover offer because—

- an offer for treasury stock would not be capable of acceptance under the provisions of the Companies Act 1993; and
- an offer for interests under the LTIP would not be capable of acceptance because the rules of that plan prohibit the transfer of those interests.

In the absence of an exemption, Origin Energy NZ would be required, under clause 9(1) of Schedule 1 of the Code, to confirm that it has resources available to meet the consideration provided on full acceptance of the offer. However, shareholders would not have any interest in, nor receive any benefit from, confirmation that the offeror also has sufficient resources to fund acceptance from holders who are legally prevented from accepting the offer.

In addition, if the takeover offer were required to extend to shares held by Universal and Pacific and shares held by Contact as treasury stock, this may have consequences in terms of the consideration to be paid under the compulsory acquisition provisions of the Code. Under rules 56 and 57 of the Code, if a person becomes the dominant owner by reason of acceptance of an offer under the Code, the consideration payable in respect of compulsorily acquired shares depends on the number of acceptances in comparison to the number of securities in respect of which the offer was made.

The Panel considers that granting the exemption to Origin Energy NZ from rule 8(2) of the Code, to the extent that that rule would require the offer to be made in respect of shares held by Universal and Pacific Holdings, shares held as treasury stock, or interests under the LTIP, is appropriate and consistent with the objectives of the Code because—

- Origin Energy NZ will become the holder or controller of all of the voting rights in Universal and Pacific Holdings before or shortly after making the takeover offer; and
 - shareholders will not be disadvantaged if the offer does not extend to treasury stock or interests under the LTIP because an offer for such securities would not be capable of acceptance; and
 - the exemption maintains a proper relation between the cost of compliance with the Code and the benefits arising from it.
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**Takeovers Code (Origin Energy New
Zealand Limited) Exemption Notice 2004**

2004/311

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This notice is administered by the Takeovers Panel.
