



Takeovers Code (Wakefield Health 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 (Wakefield Health Limited) Exemption Notice 2005.

2 Application

This notice applies to acts or omissions occurring on or after 28 November 2005.

3 Expiry

This notice expires on the close of 31 March 2006.

4 Interpretation

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

Act means the Takeovers Act 1993

amalgamation means the proposed amalgamation of Wakefield and Royston under sections 219 to 221 of the Companies Act 1993

buy-back means any buy-back of voting securities by Wakefield resulting from the exercise by a Wakefield shareholder of a minority buy-out right

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

minority buy-out right means a Wakefield shareholder's minority buy-out right under section 110 of the Companies Act 1993 resulting from the amalgamation

notice of meeting means the notice of meeting that will be sent to Wakefield shareholders to consider, amongst other things, whether to approve for the purposes of rule 7(d) of the Code, the allotment of voting securities to Royston Trust under the amalgamation

Royston means Royston Hospital Limited

Royston Trust means the Royston Hospital Trust Board, a charitable trust board incorporated under the Charitable Trusts Act 1957

voting security means an ordinary share in Wakefield

Wakefield means Wakefield Heath Limited.

- (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.

5 Exemption from rule 7(d) of Code

Royston Trust is exempted from rule 7(d) of the Code in respect of any increase in its voting rights in Wakefield that results from the allotment of voting securities to it as part of the amalgamation or from any buy-back to the extent that the notice of meeting does not comply with rule 16(b) and (d) of the Code.

6 Exemption from rule 16(b) and (d) of Code

Wakefield is exempted from rule 16(b) and (d) of the Code in respect of the notice of meeting.

7 Conditions of exemptions

- (1) The exemptions in clauses 5 and 6 are subject to the condition that the notice of meeting contains—

- (a) the following particulars in respect of the voting securities being allotted, calculated on the basis that no minority buy-out rights are exercised or that, if minority buy-out rights are exercised, the voting securities are sold to a third party:
- (i) the number of voting securities that would be allotted to Royston Trust; and
 - (ii) the percentage of the aggregate of all existing voting securities and all voting securities being allotted that the number of voting securities that would be allotted to Royston Trust represents; and
 - (iii) the percentage of all voting securities that would be held or controlled by Royston Trust after completion of the allotment; and
 - (iv) the percentage of all voting securities that would be held or controlled by Royston Trust and its associates after completion of the allotment; and
 - (v) the issue price for the voting securities and when it would be payable; and
- (b) the following particulars in respect of the voting securities being allotted, calculated on the basis that 10% of Wakefield shareholders exercise their minority buy-out rights and the voting securities are bought back by Wakefield:
- (i) the number of voting securities that would be allotted to Royston Trust; and
 - (ii) the percentage of the aggregate of all existing voting securities and all voting securities being allotted that the number of voting securities that would be allotted to Royston Trust represents; and
 - (iii) the percentage of all voting securities that would be held or controlled by Royston Trust after completion of the allotment and the buy-back; and
 - (iv) the percentage of all voting securities that would be held or controlled by Royston Trust and its associates after completion of the allotment and the buy-back; and
 - (v) the issue price for the voting securities and when it would be payable; and

- (c) the following particulars in respect of the voting securities being allotted, calculated on the basis that 25% of Wakefield shareholders exercise their minority buy-out rights and the voting securities are bought back by Wakefield:
- (i) the number of voting securities that would be allotted to Royston Trust; and
 - (ii) the percentage of the aggregate of all existing voting securities and all voting securities being allotted that the number of voting securities that would be allotted to Royston Trust represents; and
 - (iii) the percentage of all voting securities that would be held or controlled by Royston Trust after completion of the allotment and the buy-back; and
 - (iv) the percentage of all voting securities that would be held or controlled by Royston Trust and its associates after completion of the allotment and the buy-back; and
 - (v) the issue price for the voting securities and when it would be payable; and
- (d) statements to the effect that, if Wakefield shareholders exercise minority buy-out rights and Wakefield itself buys back the voting securities in question,—
- (i) each Royston shareholder, including Royston Trust, would receive fewer voting securities but the aggregate value attributed to those shares in total by the directors of Wakefield and Royston for the purpose of the amalgamation would remain the same; and
 - (ii) those voting securities would constitute a higher percentage of the total voting securities post-amalgamation than they otherwise would have; and
 - (iii) the adjustment to the number of voting securities each Royston shareholder receives would be made on the basis that the voting securities are bought back at the same price as the value given to them by the directors of Wakefield and Royston for the purpose of the amalgamation, which

- may be different from the actual price at which they are bought back; and
- (iv) a statement to the effect that if 256 290 or more voting securities are bought back as a result of the exercise of minority buy-out rights, Royston Trust would become the holder of 20% or more of the total voting securities; and
 - (v) a statement to the effect that the directors of Wakefield may terminate the amalgamation if Wakefield shareholders holding more than 10% of the total voting securities exercise these minority buy-out rights and that the amalgamation will not go ahead if minority buy-out rights are exercised in respect of more than 25% of the total voting securities; and
- (e) a summary of the terms and conditions of this exemption.
- (2) The exemptions are subject to the further condition that the form of the notice of meeting is approved by the Takeovers Panel before its distribution.

Dated at Auckland this 28th day of November 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 and omissions occurring on or after 28 November 2005 and expires on 31 March 2006.

The Takeovers Panel has granted the following exemptions, subject to conditions, in respect of a proposed allotment of shares in Wakefield Health Limited (**Wakefield**) under the proposed amalgamation of Wakefield and Royston Hospital Limited (**Royston**) under sections 219 to 221 of the Companies Act 1993:

- an exemption to the Royston Hospital Trust Board (**Royston Trust**) from rule 7(d) of the Takeovers Code (the **Code**) in respect of the requirements of a notice of meeting under rule 16(b) and (d) of the Code; and
- an exemption to Wakefield from rule 16(b) and (d) of the Code.

Under the proposed amalgamation, Wakefield will continue as the amalgamated company. All Royston shareholders will receive Wakefield shares for each Royston share that they hold. The number and percentage of shares Royston shareholders will receive as part of the amalgamation will be adjusted if Wakefield shareholders exercise minority buy-out rights under section 110 of the Companies Act 1993 and Wakefield buys back the relevant Wakefield shares.

Royston Trust currently holds 2 920 000 shares in Royston. If no Wakefield shareholders exercise minority buy-out rights, Royston Trust would be entitled to receive 2 783 052 Wakefield shares, constituting 19.55% of all Wakefield shares, as part of the amalgamation. If, however, Wakefield shareholders exercise minority buy-out rights, and Wakefield buys back more than 256 290 Wakefield shares, Royston Trust will become the holder of 20% or more of Wakefield's shares.

Wakefield intends to seek shareholder approval under rule 7(d) of the Code. However, as the number and percentage of Wakefield shares Royston Trust may receive and the issue price of the shares will depend on whether Wakefield shareholders exercise minority buy-out rights and Wakefield buys back the relevant Wakefield shares, Wakefield will not be able to comply with rules 16(b) and 16(d) of the Code.

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

- under the amalgamation it will not be possible for the actual number of shares that are to be allotted to Royston Trust and the relevant information required by rule 16(b) and (d) to be stated in the notice of meetings as this will depend on the number of Wakefield shares that are bought back by Wakefield as the result of the exercise of minority buy-out rights; and
- if Wakefield shareholders approve the maximum possible allotment and percentage of voting rights that could be held or

controlled by Royston Trust, then, by implication, the shareholders also approve any lesser number of shares or percentage of voting rights that may be held or controlled by Royston Trust as a result of the amalgamation; and

- an amalgamation is a legitimate means of restructuring a company, so the Panel should facilitate these arrangements by granting exemptions where necessary.

The Panel considers that the exemptions are consistent with the objectives of the Code because the non-associated shareholders of Wakefield will have the opportunity to vote on the allotment of voting securities to Royston Trust.

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

Date of notification in *Gazette*: 1 December 2005.

This notice is administered by the Takeovers Panel.
