



Takeovers Code (Cynotech Holdings 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 (Cynotech Holdings Limited) Exemption Notice 2005.

2 Application

This notice applies to acts or omissions occurring on or after 21 April 2005.

3 Interpretation

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

Act means the Takeovers Act 1993

CHL means Cynotech Holdings Limited

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

CSL means Cynotech Securities Limited

notice of meeting means the notice of the shareholders' meeting that has been sent to CHL shareholders

NSL means Newmarket Securities Limited

shareholders' meeting means the annual meeting of CHL shareholders (to be held on or about 12 May 2005) to consider whether or not to approve, for the purposes of rule 7(d) of the Code, the allotment of voting securities in CHL—

- (a) to each of CSL and NSL, on the conversion of 7 975 286 convertible notes into 7 975 286 fully paid ordinary shares in CHL; and
- (b) to the trustees of the Cleveland Trust,—
 - (i) on the conversion of 173 333 convertible notes into 866 666 fully paid ordinary shares in CHL; and
 - (ii) on the allotment of 866 666 shares at an issue price of 5 cents per share, in terms of the non-tradeable rights attached to the convertible notes; and
 - (iii) on the allotment of 78 789 shares at an issue price of 15 cents per share, in satisfaction of CHL's obligation to pay interest on the convertible notes

trustees of the Cleveland Trust means Richard Hugh Cleveland Guy and Lynda Katrina Moore (acting in their capacity as trustees of the Cleveland No 3 Trust).

- (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(d) of Code

CSL, NSL, and the trustees of the Cleveland Trust are exempted 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.

5 Exemption from rule 16(b) of Code

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

6 Conditions of exemptions in clauses 4 and 5

- (1) The exemptions in clauses 4 and 5 are subject to the condition that the notice of meeting contains particulars of—
 - (a) the voting securities in CHL that may be allotted to CSL, NSL, and the trustees of the Cleveland Trust,

including the maximum number of shares that could be allotted if—

- (i) CHL shareholders approved the resolution to allot shares to CSL and NSL but did not approve the resolution to allot shares to the trustees of the Cleveland Trust (**Assumption A**); and
 - (ii) CHL shareholders approved the resolution to allot shares to the trustees of the Cleveland Trust but did not approve the resolution to allot shares to CSL and NSL (**Assumption B**); and
 - (iii) CHL shareholders approved the resolutions to allot shares to CSL, NSL, and the trustees of the Cleveland Trust (**Assumption C**); and
- (b) the percentage of the aggregate of the following that each of the maximum numbers in Assumption A, Assumption B, and Assumption C represents:
- (i) all existing voting securities; and
 - (ii) all the voting securities that could be allotted; and
- (c) the percentage of all voting securities that could be held or controlled by each of CSL, NSL, and the trustees of the Cleveland Trust after the completion of the allotment of the maximum numbers of voting securities in each of Assumption A, Assumption B, and Assumption C; and
- (d) the total percentage of all voting securities in CHL that could be held or controlled by CSL, NSL, and the trustees of the Cleveland Trust, and by all the associates of CSL, NSL, and the trustees of the Cleveland Trust, after the completion of the allotment of the maximum numbers of voting securities in each of Assumption A, Assumption B, and Assumption C.
- (2) The matters referred to in subclause (1)(a) to (d) must be calculated on the basis that there are no changes to the share capital of CHL.
- (3) The exemptions in clauses 4 and 5 are subject to the conditions that—
- (a) the securities are allotted to CSL, NSL, and the trustees of the Cleveland Trust on or before 31 October 2009; and

- (b) a full copy of the independent adviser's report (and not a summary of that report) is provided to CHL shareholders along with the notice of meeting.

Dated at Auckland this 17th day of May 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 21 April 2005.

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

- Cynotech Securities Limited (**CSL**), Newmarket Securities Limited (**NSL**), and Richard Hugh Cleveland Guy and Lynda Katrina Moore (**trustees of the Cleveland Trust**) in respect of rule 7(d) of the Code; and
- Cynotech Holdings Limited (**CHL**) in respect of rule 16(b).

The exemptions relate to the increase in the voting control of CSL, NSL, and the trustees of the Cleveland Trust in CHL that would result from the allotment of shares to CSL, NSL, and the trustees (in some cases because of the conversion of certain convertible notes).

The Panel considered that it was appropriate to grant exemptions to CHL, CSL, NSL, and the trustees of the Cleveland Trust because—

- it is impossible for the notice of meeting to state the actual numbers of shares to be allotted and the relevant percentages required by rule 16(b) because these numbers and percentages are dependent upon unknown future events. Those events include—
 - whether there are any changes to the share capital of CHL; and
 - whether other resolutions are approved by shareholders (which would affect the resulting total number of shares CHL has on issue); and

- if CHL shareholders approve the maximum increase in the percentage of voting rights held or controlled by CSL, NSL, and the trustees of the Cleveland Trust, then, by implication, they can also be taken to approve lesser increases; and
- the issue of convertible notes is an accepted market practice and the Panel should facilitate this practice by the grant of appropriate exemptions.

The Panel considered that the exemptions were consistent with the objectives of the Code because the non-associated shareholders of CHL will have an opportunity to vote on the allotment of voting securities to CSL, NSL, and the trustees of the Cleveland Trust.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 19 May 2005.
This notice is administered by the Takeovers Panel.
