



Takeovers Code (Infratil 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 (Infratil Limited) Exemption Notice 2004.

2 Application

This notice applies to acts or omissions occurring on or after 8 March 2004.

3 Interpretation

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

Act means the Takeovers Act 1993

buyback means the repurchase by Infratil, during the period commencing on the date of the meeting and ending at the close of 31 August 2005, of up to 10 000 000 voting securities that it previously issued

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

Infratil means Infratil Limited

Infratil warrants means the warrants over voting securities issued by Infratil on or about 26 March 1999 and 7 May 1999

meeting means the meeting of Infratil's shareholders to be held on or about 24 March 2004 to consider, among other things, whether or not to approve,—

- (a) for the purposes of rule 7(c) of the Code, the acquisition of voting securities by Utilico on the exercise of the UBS options; and
- (b) for the purposes of rule 7(d) of the Code, the allotment of voting securities to Utilico and UBS on the exercise of the Infratil warrants; and
- (c) the buyback

notice of meeting means the notice of the meeting dated 1 March 2004 sent to Infratil's shareholders on or about 8 March 2004

UBS means UBS Securities Australia Limited, a company incorporated in Australia

UBS option agreements means the agreements dated 23 December 2002 and 26 February 2003 under which Utilico may acquire up to 15 000 000 voting securities from UBS

UBS options means the options over 15 000 000 voting securities issued under the UBS option agreements

Utilico means Utilico Investment Trust plc, a company incorporated in England and Wales

Utilico associates means—

- (a) HRL Morrison & Co Group Limited; and
- (b) UBS; and
- (c) the trustees of the HRL Morrison Family Trust created by deed of trust dated 27 April 1994; and
- (d) the trustees of the JML Trust created by deed of trust dated 29 June 1994; and
- (e) Duncan Paul Saville

voting securities means ordinary shares in Infratil.

- (2) In this notice, a reference to a person increasing voting control is a reference to the person becoming the holder or controller of an increased percentage of the voting rights in Infratil.

- (3) 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) and (d) of Code

Utilico and the Utilico associates are exempted from—

- (a) rule 7(c) of the Code in respect of any increase in their voting control that occurs within 6 months of the date of the meeting and results from the acquisition of voting securities by Utilico on the exercise of the UBS options to the extent that rule 7(c) requires the notice of meeting to be in accordance with rule 15(b)(ii) and (iii) of the Code; and
- (b) rule 7(d) of the Code in respect of any increase in their voting control resulting from the allotment of voting securities to Utilico and UBS on the exercise of the Infratil warrants to the extent that rule 7(d) requires the notice of meeting to be in accordance with rule 16(b)(ii) and (iii) of the Code.

5 Exemption from rules 15(b)(ii) and (iii) and 16(b)(ii) and (iii) of Code

Infratil is exempted from rules 15(b)(ii) and (iii) and 16(b)(ii) and (iii) of the Code in respect of the notice of meeting.

6 Conditions of exemptions in clauses 4 and 5

The exemptions in clauses 4 and 5 are subject to the conditions that—

- (a) the notice of meeting contained particulars of the voting securities that may be allotted to Utilico and UBS as a result of the exercise of the Infratil warrants, including—
 - (i) the number of voting securities that would be allotted to each of Utilico and UBS as a result of the exercise of all of the Infratil warrants held by them; and
 - (ii) the minimum total number of voting securities that could be on issue after completion of allotments resulting from the exercise of Infratil warrants and the buyback (calculated on the basis that Utilico and UBS have exercised all of the

- Infratil warrants held by them, that no other Infratil warrants are exercised, and that the maximum amount of voting securities are repurchased under the buyback); and
- (iii) a statement of the number of voting securities that would be allotted to each of Utilico and UBS as a result of the exercise of all of the Infratil warrants held by them expressed as a percentage of the minimum total number of voting securities referred to in subparagraph (ii); and
 - (iv) a statement of the maximum aggregate of all voting securities that Utilico and the Utilico associates could hold or control after completion of the allotments in accordance with the exercise of all of the Infratil warrants held by Utilico and UBS; and
 - (v) a statement of the aggregate referred to in subparagraph (iv) expressed as a percentage of the minimum total number of voting securities referred to in subparagraph (ii); and
- (b) the notice of meeting contained the following particulars of the voting securities that may be acquired by Utilico from UBS in accordance with the UBS option agreements:
- (i) the maximum number of voting securities that could be acquired by Utilico from UBS in accordance with the UBS option agreements; and
 - (ii) the maximum number of voting securities that Utilico could hold after the acquisition under the UBS option agreements (calculated on the basis that Utilico and UBS have exercised all of the Infratil warrants held by them); and
 - (iii) the minimum total number of voting securities that could be on issue after completion of allotments resulting from the exercise of Infratil warrants and the buyback (calculated on the basis that Utilico and UBS have exercised all of the Infratil warrants held by them, that no other Infratil warrants are exercised, and that the maximum amount of voting securities are repurchased under the buyback); and

- (iv) a statement of the maximum number of voting securities that Utilico would hold after the acquisition under the UBS option agreements (calculated on the basis that Utilico and UBS have exercised all of the Infratil warrants held by them) expressed as a percentage of the minimum total number of voting securities referred to in subparagraph (iii); and
- (v) a statement of the maximum aggregate of all voting securities that Utilico and the Utilico associates could hold or control after the acquisition under the UBS option agreements (calculated on the basis that Utilico and UBS have exercised all of the Infratil warrants held by them); and
- (vi) a statement of the maximum aggregate of all voting securities that Utilico and the Utilico associates could hold or control after the acquisition under the UBS option agreements expressed as a percentage of the minimum total number of voting securities referred to in subparagraph (iii).

7 Exemption from rule 6(1) of Code

Utilico and the Utilico associates are exempted from rule 6(1) of the Code in respect of any increase in their voting control in Infratil resulting from the buyback.

8 Conditions of exemption in clause 7

The exemption in clause 7 is subject to the conditions that—

- (a) the buyback is approved by an ordinary resolution of the shareholders of Infratil; and
- (b) none of the following votes in favour of that resolution:
 - (i) Utilico;
 - (ii) any of the Utilico associates;
 - (iii) any person who is, at the time that the resolution is voted on, an associate of Utilico or of any of the Utilico associates; and
- (c) the notice of meeting containing the proposed resolution contained, or was accompanied by,—
 - (i) a statement of the maximum number of voting securities that may be acquired under the buyback; and

- (ii) a statement of the minimum total number of voting securities that will be on issue at the time of the buyback (calculated on the basis that Utilico and UBS have exercised all of the Infratil warrants held by them and no other Infratil warrants are exercised); and
- (iii) a statement of the maximum number of voting securities that may be acquired under the buyback expressed as a percentage of the minimum total number of voting securities that will be on issue at the time of the buyback (as referred to in subparagraph (ii)); and
- (iv) a statement of the potential maximum aggregate control percentage of Utilico and the Utilico associates if the maximum number of voting securities were acquired under the buyback expressed as a percentage of the minimum total number of voting securities that will be on issue after completion of the buyback (calculated on the basis that Utilico and UBS have exercised all of the Infratil warrants held by them, that no other Infratil warrants are exercised, and that the maximum amount of voting securities are repurchased under the buyback); and
- (v) a statement of the consideration for the buyback or the manner in which the consideration will be determined; and
- (vi) a statement as to when the consideration for the buyback would be payable; and
- (vii) a statement of the reasons for the buyback; and
- (viii) a statement to the effect that the increase in the voting control of Utilico and the Utilico associates that would result only from the buyback, if approved, would be permitted as an exception to rule 6 of the Code; and
- (ix) a report (or a summary of a report) from an independent adviser in relation to the buyback that complies with rule 18 of the Code (as if the references in that rule to acquisition under rule 7(c) of the Code and notice of meeting referred to in rule

- 15 of the Code were references to the buyback and the notice of meeting, respectively); and
- (x) a statement by the directors of Infratil in relation to the buyback that complies with rule 19 of the Code (as if the reference in that rule to an acquisition under rule 7(c) of the Code was a reference to the buyback); and
- (d) rules 18 and 19 of the Code are complied with in relation to the buyback (as if the references in those rules to acquisition under rule 7(c) of the Code and notice of meeting referred to in rule 15 of the Code were references to the buyback and the notice of meeting, respectively).

Dated at Auckland this 15th day of March 2004.

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

[L.S.]

J. C. King,
Chairperson.

Statement of reasons of Takeovers Panel

This notice applies to acts or omissions occurring on or after 8 March 2004.

The Takeovers Panel has granted exemptions to—

- (a) Infratil Limited (**Infratil**)—
- from rule 15(b)(ii) and (iii) of the Takeovers Code in respect of the notice of meeting describing an increase in voting control arising from the acquisition of Infratil shares by Utilico Investment Trust plc (**Utilico**) from UBS Securities Australia Limited (**UBS Securities**) in accordance with certain option agreements (the **UBS option agreements**); and
 - from rule 16(b)(ii) and (iii) of the Code in respect of the notice of meeting describing an increase in voting control arising from the allotment of Infratil shares to

- Utilico and UBS Securities as a result of the exercise of certain warrants over Infratil shares (**Infratil warrants**); and
- (b) Utilico, UBS Securities, HRL Morrison & Co Group Limited, the trustees of the HRL Morrison Family Trust, the trustees of the JML Trust, and Duncan Saville (**Utilico and its associates**)—
- from rule 7(c) of the Code to the extent that rule 7(c) requires a notice of meeting to be in accordance with rule 15(b)(ii) and (iii) of the Code in respect of any increase in their percentage of voting rights in Infratil, which occurs within 6 months of the date of the meeting, that arises from the acquisition of Infratil shares by Utilico from UBS Securities in accordance with the UBS option agreements; and
 - from rule 7(d) of the Code to the extent that rule 7(d) requires a notice of meeting to be in accordance with rule 16(b)(ii) and (iii) of the Code in respect of any increase in their percentage of voting rights in Infratil arising from the allotment of Infratil shares to Utilico and UBS Securities as a result of the exercise of Infratil warrants; and
- (c) Utilico and its associates from rule 6(1) of the Code in respect of any increase in voting control arising from an acquisition by Infratil of a maximum of 10 000 000 of its own shares during a period commencing on the date of the shareholders' meeting and ending on 31 August 2005 (the **buyback**).

The exemptions in paragraphs (a) and (b) relate to an increase in the number of voting securities to be held or controlled by Utilico and its associates on the exercise by Utilico and UBS Securities of Infratil warrants and the subsequent acquisition of Infratil shares by Utilico from UBS Securities pursuant to the UBS option agreements.

During March and May 1999, Infratil issued a number of warrants over Infratil shares. The last date on which these warrants can be exercised is 19 March 2004. Utilico holds 15 790 417 Infratil warrants and UBS Securities holds 15 000 000 Infratil warrants. Utilico and UBS Securities are associates for the purposes of the Code. Utilico and UBS Securities intend to exercise the Infratil warrants held by them. This exercise would result in Utilico holding 29 813 754 Infratil shares and UBS holding 15 000 000 Infratil

shares. Other parties associated with Utilico (HRL Morrison & Co Group Limited, the trustees of the HRL Morrison Family Trust, the trustees of the JML Trust and Duncan Saville) hold 20 459 559 shares in Infratil. The allotment of shares after the exercise of Infratil warrants would result in Utilico and its associates holding 65 273 313 shares in Infratil. This amount is likely to constitute more than 20% of the voting rights in Infratil.

Some time after the exercise of the Infratil warrants, Utilico intends to purchase 15 000 000 Infratil shares from UBS Securities. This acquisition will be pursuant to the UBS option agreements. This acquisition is likely to result in Utilico becoming the holder of more than 20% of the voting rights in Infratil.

At a special meeting of shareholders to be held on or about 24 March 2004, Infratil proposes to ask shareholders to approve the allotment of shares to Utilico and UBS Securities pursuant to the exercise of the Infratil warrants and the acquisition of Infratil shares by Utilico under the UBS option agreements. However, Infratil is unable to comply with rules 15(b)(ii) and (iii) and 16(b)(ii) and (iii) of the Code because Infratil is unable to specify—

- the exact percentage of all voting securities that the number being acquired represents; and
- the exact percentage of the aggregate of all existing securities and all voting securities being allotted that the number being allotted represents; and
- the exact percentage of all voting securities that will be held or controlled by Utilico and its associates after completion of the allotment and at the time that Utilico exercises the UBS options.

These details would only be known after the final conversion date of the warrants and all allotments have been made, which is intended to be 26 March 2004.

The exemption in paragraph (c) relates to an increase in the voting control of Utilico and its associates that arises as a consequence of a proposed repurchase by Infratil of its own shares.

After the exercise of the Infratil warrants and options under the UBS option agreements as detailed above, a share buyback in which any of Utilico and its associates do not participate on a pro rata basis could result in an increase in their control percentage in Infratil. That

increase would result in Utilico and its associates further increasing their combined shareholding in Infratil.

Utilico and its associates cannot utilise the exemption contained in clause 4 of the Takeovers Code (Class Exemptions) Notice (No 2) 2001 as Infratil was not, at the date of the notice of meeting, able to specify the percentage that the maximum number of voting securities that may be acquired under the buyback will represent. The total number of securities on issue will be dependent upon the number of Infratil warrants which are exercised prior to the buyback.

The Takeovers Panel considered that it is appropriate to grant the exemptions to Infratil, Utilico, and its associates because—

- the issue of share warrants and the repurchase of its own shares by a company are accepted means of adjusting equity capital in New Zealand and the Panel should facilitate these arrangements by exemption; and
- if the shareholders in Infratil approve the maximum possible increase in the percentage of voting rights held by Utilico and its associates as a result of an allotment by Infratil, the acquisition of securities by Utilico, and the proposed buyback, then by implication they can be taken to have also approved any lesser percentage of control that may be obtained by Utilico and its associates following the proposed transactions.

The Panel considered that the exemptions are consistent with the objectives of the Takeovers Code because the non-associated shareholders of Utilico and UBS Securities will have an opportunity to vote on the potential allotments of voting securities to Utilico and UBS, the acquisition of Infratil shares from UBS Securities by Utilico, and the proposed buyback.

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

Date of notification in *Gazette*: 25 March 2004.

This notice is administered by the Takeovers Panel.
