



Takeovers Code (Vector 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 (Vector Limited) Exemption Notice 2005.

2 Application

This notice applies to acts or omissions occurring on or after 27 June 2005.

3 Expiry

This notice expires on the close of 31 December 2005.

4 Interpretation

- (1) In this notice, unless the context otherwise requires,—
Act means the Takeovers Act 1993

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

exempt foreign shareholder means a foreign shareholder who is shown on NGC's share register on the record date as having an address in the United States of America, Canada, or the United Kingdom

foreign shareholder means a person who is shown as a holder of NGC shares on NGC's share register with an address outside New Zealand

NGC means NGC Holdings Limited

NGC share means an ordinary share in NGC

nominee means the person appointed to act as nominee in accordance with clause 6(a)

NZX Firm means a firm that is designated as an NZX Firm by New Zealand Exchange Limited

offer means a full offer under the Code made by Vector for all of the NGC shares that are not held by Vector

registrar means the registrar and paying agent appointed by Vector for the offer

relevant shareholders means foreign shareholders who accept the offer

Vector means Vector 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 20 of Code in respect of foreign shareholders

Vector is exempted from rule 20 of the Code to the extent that the offer relates to foreign shareholders.

6 Conditions of exemption in clause 5

The exemption in clause 5 is subject to the conditions that—

- (a) Vector must appoint a person to act as nominee for the offer who—
- (i) is either—

- (A) an NZX Firm; or
- (B) a wholly owned subsidiary of an NZX Firm which is guaranteed by any parent of the NZX Firm; and
- (ii) is not, to the best of Vector's knowledge, under investigation by the Securities Commission or New Zealand Exchange Limited; and
- (b) in a manner consistent with the terms of the offer, Vector must—
 - (i) allot to the nominee the shares in Vector that would otherwise be allotted to relevant shareholders under the offer; and
 - (ii) transfer either to the nominee or to the registrar the cash component of the consideration under the offer that the relevant shareholders are entitled to; and
- (c) Vector must use its best endeavours to ensure that the nominee, as soon as is reasonably practicable and in a manner consistent with the terms of the offer relating to the payment of consideration, sells on market the shares in Vector that are allotted to the nominee under paragraph (b)(i); and
- (d) Vector must use its best endeavours to ensure that either the nominee or the registrar, in a manner consistent with the terms of the offer relating to the payment of consideration, pays to each relevant shareholder—
 - (i) the cash component of the consideration under the offer (net of any applicable taxes) to which that relevant shareholder is entitled; plus
 - (ii) the proceeds from the sale of the shares as set out in paragraph (c) (net of any applicable brokerage costs and any applicable taxes) to which that relevant shareholder is entitled; and
- (e) Vector must use its best endeavours to ensure that the NZX Firm executes the transfers of the shares in Vector that are sold by the nominee in accordance with paragraph (c); and
- (f) Vector must indemnify each relevant shareholder against any costs or losses suffered as a result of any failure by the nominee or the registrar to perform their

respective obligations under this clause in a proper manner.

7 Exemption from rule 43(5) of Code in respect of exempt foreign shareholders

Vector is exempted from rule 43(5) of the Code to the extent that the rule requires Vector to send the offer to the exempt foreign shareholders.

8 Condition of exemption in clause 7

The exemption in clause 7 is subject to the condition that, if a target company statement has been given to Vector under rule 46(a)(i) of the Code, Vector must send a copy of the target company statement to all exempt foreign shareholders on the date that Vector sends the offer to the offerees other than the exempt foreign shareholders.

9 Exemption from rule 28(1)(a) of Code in respect of exempt foreign shareholders

- (1) Vector is exempted from rule 28(1)(a) of the Code to the extent that the rule requires Vector to send written notice of a variation of the offer to the exempt foreign shareholders.
- (2) The exemption in subclause (1) does not apply if Vector has made the offer without relying on the exemption in clause 7.

10 Exemption from rule 45(1) of Code in respect of exempt foreign shareholders

Vector is exempted from rule 45(1) of the Code in relation to the offer.

11 Conditions of exemption in clause 10

- (1) The exemption in clause 10 is subject to the conditions that, immediately after Vector sends the offer document to all offerees other than exempt foreign shareholders, Vector must—
 - (a) send to NGC—
 - (i) a notice in writing stating that the offer document has been sent to all offerees other than the exempt foreign shareholders; and
 - (ii) a copy of the offer document; and

- (b) send to the registered exchange on whose market the NGC shares are quoted a copy of—
 - (i) the notice referred to in paragraph (a)(i); and
 - (ii) the offer document; and
 - (c) deliver to the Registrar of Companies for registration a copy of—
 - (i) the notice referred to in paragraph (a)(i); and
 - (ii) the offer document.
- (2) The notice referred to in subclause (1) must be treated as the despatch notice for the purposes of rule 46 of the Code.

Dated at Auckland this 8th 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 27 June 2005 and expires on the close of 31 December 2005.

The notice exempts Vector Limited (**Vector**) from rules 20, 43(5), 28(1)(a), and 45(1) of the Code.

The exemptions apply to a takeover offer by Vector for the shares in NGC Holdings Limited (**NGC**). The consideration under the offer will have a cash and a scrip offer component. The offer will be made to all NGC shareholders, including a small number of shareholders who are spread across a significant number of jurisdictions outside of New Zealand.

The exemption from rule 20 applies in respect of offers to foreign shareholders, being shareholders who have an address recorded in NGC's share register outside of New Zealand. Rule 20 of the Code requires an offer to be made on the same terms and to provide the same consideration for all securities of the same class.

The exemption provides that any shares in Vector that would otherwise be transferred to foreign shareholders that accept the offer will

instead be transferred to a person appointed by Vector to act as a nominee. That nominee is required, as soon as is reasonably practicable, to sell, or procure the sale of, the shares on market. The nominee, or Vector's share registrar, then must pay the net proceeds arising from the sale together with the cash component, to the foreign shareholders who accept the offer.

Conditions are imposed to ensure that the nominee is of good standing and that shareholders are protected against the nominee's, or Vector's share registrar's, failure to perform their respective duties in a proper manner.

The Panel considers that it is appropriate to grant the exemption from rule 20 for the following reasons:

- it is not practicable for Vector to make an offer to all of the NGC shareholders on the same terms, as required by rule 20 of the Code, because of the costs of complying with the securities laws that apply in the various jurisdictions other than New Zealand; and
- the conditions of the exemption require that foreign shareholders are in effect offered equivalent cash consideration and, accordingly, they are not disadvantaged by not being able to accept the Vector shares under the offer; and
- New Zealand shareholders are not disadvantaged because they have the same opportunity to realise the consideration they receive.

The exemption from rule 43(5) of the Code allows Vector not to send the offer document to the United States, Canadian, and United Kingdom shareholders. However, those shareholders will be sent a copy of the target company statement and accordingly will be aware of the offer and will be able to take steps to participate in the offer.

The exemptions from rules 28(1)(a) and 45(1) of the Code are necessary as a consequence of the exemption from rule 43(5) of the Code. Rule 28(1)(a) requires notification of variations of an offer to be sent to all offerees. The exemption allows Vector not to send a variation of the offer to the United States, Canadian, and United Kingdom shareholders. Rule 45(1) of the Code requires confirmation that the offer has been sent to all offerees to be sent to the target company, the registered exchange, and the Registrar of Companies. The exemption instead requires Vector to send confirmation that the offer has been sent to all offerees other than United States, Canadian, and United Kingdom shareholders.

The Takeovers Panel considers that it is appropriate to grant the exemptions from rules 43(5), 28(1)(a), and 45(1) of the Code for the following reasons:

- the number of shareholders with registered addresses in the United States, Canada, and the United Kingdom, and the extent of their shareholding in NGC, is minimal; and
- the cost of complying with United States, Canadian, and United Kingdom law would be out of proportion to the number of shareholders affected and the extent of their shareholding; and
- shareholders with registered addresses in the United States, Canada, and the United Kingdom will be aware of the offer and will be able to take steps to participate in the offer.

The Takeovers Panel considers that the exemptions are consistent with the objectives of the Code because—

- they are consistent with the principle of providing equal consideration to all shareholders in the target company, while recognising the unreasonable costs of having to comply with the securities law that applies in various jurisdictions, in circumstances in which share scrip is offered as consideration and shareholders outside of New Zealand are minimal;
- it is important for competition for the control of code companies that offerors are not precluded from offering securities as consideration in takeover transactions;
- it is important for competition for the control of code companies that offerors are not required to incur significant costs of complying with the laws of an overseas jurisdiction in circumstances where that requirement is caused by a minimal number of shareholders, holding a minimal number of shares, in that jurisdiction.

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.
