



Takeovers Code (Normandy NFM Limited) Exemption Notice 2002

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 (Normandy NFM Limited) Exemption Notice 2002.

2 Application

This notice applies to acts or omissions occurring on or after 29 January 2002.

3 Expiry

This notice expires on the close of 30 June 2002.

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)

Normandy means Normandy NFM Limited

offer means the offer dated 3 December 2001 made by Normandy for all of the equity securities in Otter

Otter means Otter Gold Mines 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 29(1) of Code

Normandy is exempted from rule 29(1) of the Code in connection with every variation notice concerning the offer sent on or after 29 January 2002 to the extent that the notice extends the duration of the offer period.

6 Condition

The exemption is subject to the condition that the offer period ends on or before 2 April 2002.

Dated at Auckland this 19th day of February 2002.

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 that occur on or after 29 January 2002, and expires at the close of 30 June 2002.

The Takeovers Panel has exempted Normandy NFM Limited (**Normandy**) from compliance with rule 29(1) of the Takeovers Code (the **Code**). Rule 29(1) specifies that an offer may not be varied, and a variation notice may not be sent, later than 14 days before the end of the offer period.

Normandy made an offer dated 3 December 2001 for all of the shares in Otter Gold Mines Limited (**Otter**). The offer document specified an initial offer period ending on 29 January 2002. The offer

was conditional on acceptances being received in respect of 50.1% of the shares in Otter.

On 28 December 2001, Normandy gave notice that its offer had become unconditional as to the level of acceptances.

On 29 January 2002, Normandy gave notice that the term of its offer had been extended to 15 February 2002.

The Takeovers Panel considers that Normandy's notice of the extension of the offer period did not comply with the Code. This is because it did not give the 14 days' notice of variation that is required by rule 29(1) of the Code in circumstances in which the offer period for an offer that is unconditional as to the level of acceptances is extended but is not extended beyond the 90-day period specified in rule 24(2) of the Code.

The effect of the exemption is to validate the extension of the offer period notified on 29 January 2002 and to permit further extensions of the offer period to be made, without a period of notice, but subject to the requirements of rule 29(2) of the Code. The condition for the exemption specifies that the offer period must end on or before 2 April 2002.

The Takeovers Panel considers that it is appropriate to grant the exemption for the following reasons:

- the notice of the extension of Normandy's offer was given after Normandy took legal advice concerning an aspect of the Code that has not previously been tested;
- the offer was unconditional as to the level of acceptances when the extension was given. For this reason, there was no material benefit to shareholders in having 14 days' notice of the extension of the offer period. In these circumstances, it is fair that the failure by Normandy to give 14 days' notice of the extension should not have the potential to invalidate acceptances received after 29 January 2002 or to preclude further extensions of the offer period (for a limited time).

The Takeovers Panel considers that the exemption is consistent with the objectives of the Code because—

- the exemption is consistent with the principle of maintaining a proper balance between the costs of compliance with the Code and the benefits resulting from it. Without an exemption, Normandy would have to make another takeover offer

for shares in Otter if it wished to increase its shareholding by more than 5% per year; and

- the exemption treats fairly all holders of Otter securities that had not accepted the Normandy offer before 29 January 2002; and
- the exemption allows holders of Otter securities to decide for themselves the merits of the offer without being prejudiced by Normandy's non-compliance with the Code's offer extension rules; and
- rules 24(3) and 29(3) of the Code contemplate time extensions being able to be given with no period of notice in certain circumstances for offers that are conditional on the level of acceptances. The granting of this exemption is consistent with that general policy.

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

Date of notification in *Gazette*: 21 February 2002.

This notice is administered by the Takeovers Panel.
