



Takeovers Code (ElderCare New Zealand 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 (ElderCare New Zealand Limited) Exemption Notice 2002.

2 Application

This notice applies to acts or omissions occurring on or after 15 October 2001.

3 Expiry

This notice expires on the close of 31 December 2003.

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)

Cullen means Cullen Investments Limited

ElderCare means ElderCare New Zealand Limited

notes means the convertible notes issued by ElderCare to Cullen on 2 November 2001

notice of meeting means the notice of the meeting of ElderCare's shareholders held on 31 October 2001 to consider whether or not to approve, for the purposes of rule 7(d) of the Code, the allotment of voting securities to Cullen on the conversion of the notes.

- (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

Cullen is exempted from rule 7(d) of the Code in connection with any increase in its percentage of the voting rights in ElderCare arising from the allotment of voting securities on the conversion of the notes to the extent that rule 7(d) required the notice of meeting to be in accordance with rule 16(b) and (d) of the Code.

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

ElderCare is exempted from rule 16(b) and (d) of the Code in connection with the notice of meeting.

7 Conditions

The exemptions in clauses 5 and 6 are subject to the condition that there is no change in the effective control of Cullen between 15 October 2001 and the date of the allotment of any voting securities arising from conversion of the notes.

Dated at Wellington this 25th day of June 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 occurring on or after 15 October 2001, and expires on the close of 31 December 2003.

The Takeovers Panel has granted exemptions to—

- Cullen Investments Limited (**Cullen**) in connection with rule 7(d) of the Takeovers Code (the **Code**); and
- ElderCare New Zealand Limited (**ElderCare**) in connection with rule 16(b) and (d) of the Code.

The exemptions relate to a recapitalisation plan for ElderCare that was considered by a meeting of shareholders of ElderCare held on 31 October 2001. The plan included an issue of \$5 million of convertible notes (the **notes**) to Cullen to enable ElderCare to repay a convertible note issued to the ANZ Banking Group (New Zealand) Limited, to repay a debt owed by ElderCare Management Limited to Elders Finance Limited, and to further repay ElderCare debt. ElderCare was unable to specify—

- the number of voting securities that will ultimately be allotted to Cullen; and
- the maximum number of voting securities that Cullen may hold or control after completion of the allotment; and
- the issue price of the voting securities when they are ultimately allotted to Cullen; and
- the intended date of conversion of the notes.

Consequently,—

- ElderCare was unable to comply with rule 16(b) and (d) of the Code; and
- Cullen is unable to comply with rule 7(d) of the Code in connection with any increase in voting securities it may acquire through the ultimate conversion of the notes (if that occurs).

The exemptions are limited to any voting rights that Cullen acquires by virtue of conversion of the notes into voting securities in ElderCare. The exemptions do not extend to voting rights in ElderCare that Cullen may acquire in any other way, for example, by the purchase of voting securities in the market or by private treaty.

It is a condition of the exemptions that there is no change in the effective control of Cullen between 15 October 2001 (the date of the

notice of the meeting of the shareholders of ElderCare) and the date of the allotment of any voting securities arising from conversion of the notes.

The Panel's reasons for approving the granting of the exemptions are that—

- it is appropriate to grant the exemptions because—
 - the issuing of convertible securities is an accepted means of raising equity capital in New Zealand and the Panel should facilitate these arrangements by exemption; and
 - the exemptions are limited to those securities acquired by Cullen as a result of conversion of the notes, the allotment of which was approved by the non-associated shareholders of ElderCare at the meeting of ElderCare held on 31 October 2001; and
 - although the information was incomplete in some respects, the shareholders in ElderCare were nonetheless given sufficient information to enable them to understand the potential impact of the issue of the notes on the voting control of the company; and
- the Panel considers that the exemption is consistent with the objectives of the Code because—
 - ElderCare shareholders not associated with Cullen had the opportunity to vote on the issue of notes and future allotment of voting securities; and
 - before the issue of notes Cullen controlled over 50% of the voting rights of ElderCare and accordingly already had control of the company; and
 - while ElderCare did not comply strictly with all the requirements of the Code, it did, in substance, provide shareholders with the information required by the Code.

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

Date of notification in *Gazette*: 27 June 2002.

This notice is administered by the Takeovers Panel.
