



Takeovers Code (Diageo plc) 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 (Diageo plc) Exemption Notice 2005.

2 Application

This notice applies to acts or omissions occurring on or after 26 July 2005.

3 Expiry

This notice expires on the close of 26 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)

Diageo means Diageo plc, a company incorporated in England

Montana means Montana Group (NZ) Limited

option agreement means the option agreement entered into between Diageo and Pernod Ricard on 6 June 2005

Pernod Ricard means Pernod Ricard S.A., a company incorporated in France.

- (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 a code company.
- (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.

5 Exemption

Diageo and every wholly owned subsidiary of Diageo are exempted from rule 6(1) of the Code in respect of any increase in their voting control in Montana as a result of the option agreement.

Dated at Auckland this 5th day of August 2005.

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

[L.S.]

J. C. King,
Chairperson.

Statement of reasons

This notice applies to acts or omissions occurring on or after 26 July 2005 and expires on the close of 26 December 2005.

The Takeovers Panel has granted an exemption from rule 6(1) of the Takeovers Code (the **Code**) to Diageo plc (**Diageo**) and every wholly owned subsidiary of Diageo in respect of any increase in the percentage of the voting rights in Montana Group (NZ) Limited (**Montana**) that they hold or control as a result of an agreement entered into between Diageo and Pernod Ricard S.A. (**Pernod Ricard**) on 6 June 2005. That agreement between Diageo and Pernod Ricard (the **option agreement**) relates to all of the shares of

Montana that Pernod Ricard would hold or control after Pernod Ricard has acquired the entire issued and to-be-issued share capital of Allied Domecq (**Allied Domecq**) by way of a scheme of arrangement under section 425 of the United Kingdom Companies Act 1985.

Under the option agreement, Diageo may elect to exercise an option to acquire all of the shares of Montana within a certain period after the date of Pernod Ricard becoming the holder or controller of all the voting rights in Montana (the **option period**). During the option period, Pernod Ricard is required under the option agreement to ensure that Montana does not pass certain types of resolutions.

On 26 July 2005, the scheme of arrangement between Pernod Ricard and Allied Domecq became effective. As a result, Pernod Ricard has become the holder or controller of all the voting rights in Montana. Diageo will become the holder or controller of all the voting rights in Montana if it elects to exercise its option to acquire all of the shares in Montana.

The Takeovers Panel considers the granting of the exemption is appropriate because—

- Montana is a code company by virtue of its listing agreement with New Zealand Exchange Limited (although the only securities that are quoted are its capital notes);
- all voting securities in Montana are controlled by Pernod Ricard;
- the Code mechanisms for effecting a change in control of Montana are, in this case, either impractical or unworkable.

The Takeovers Panel considers that the granting of the exemption is consistent with the objectives of the Code because it maintains a proper relation between the costs of compliance with the Code and the benefits arising from it.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 11 August 2005.
This notice is administered by the Takeovers Panel.
