



Takeovers Code (Rural Portfolio Investments 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 (Rural Portfolio Investments Limited) Exemption Notice 2004.

2 Commencement

This notice comes into force on 16 April 2004.

3 Expiry

This notice expires on the close of 31 December 2004.

4 Interpretation

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

Act means the Takeovers Act 1993

cash consideration means the cash consideration specified under the partial takeover offer

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

consideration securities means the redeemable preference shares issued by RPI Securities that are offered as consideration under the partial takeover offer

foreign exempt shareholder means a shareholder in Wrightson whose address in Wrightson's share register is not in New Zealand

offer of redeemable preference shares means the offer under an initial public offering of 85 million redeemable preference shares offered—

- (a) as consideration securities; and
- (b) to the public

partial takeover offer means the partial scrip and cash takeover offer by RPI for Wrightson

redeemable preference shares means the redeemable preference shares issued by RPI Securities under the offer of redeemable preference shares

RPI means Rural Portfolio Investments Limited

RPI Securities means Rural Portfolio Investments Securities Limited, a wholly-owned subsidiary of RPI

security has the same meaning as in the Securities Act 1978

small security holder means a person who would receive an unmarketable parcel of consideration securities if the person—

- (a) was offered consideration securities under the partial takeover offer; and
- (b) accepted the offer of those consideration securities

underwritten means underwritten pursuant to an underwriting agreement, subject to standard commercial conditions, up to \$85 million

unmarketable parcel means a number of consideration securities that is less than the minimum holding of consideration securities specified by New Zealand Exchange Limited if the redeemable preference shares were listed on the New Zealand Debt Exchange

Wrightson means Wrightson 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 Code.

5 Exemption from rule 20 of Code in respect of foreign exempt shareholders

RPI is exempted from rule 20 of the Code to the extent that the consideration offered to a foreign exempt shareholder under the partial takeover offer is cash only.

6 Conditions of exemption in clause 5

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

- (a) the foreign exempt shareholders are offered the cash consideration only; and
- (b) the offer of redeemable preference shares is fully underwritten.

7 Exemption from rule 20 of Code in respect of small security holders

RPI is exempted from rule 20 of the Code to the extent that the consideration offered to a small security holder under the partial takeover offer is cash only.

8 Conditions of exemption in clause 7

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

- (a) the small security holders are offered the cash consideration only; and
- (b) the offer of redeemable preference shares is fully underwritten.

9 Exemption from rules 41(1)(b) and 44(1)(d)(i) of Code

RPI is exempted from rules 41(1)(b) and 44(1)(d)(i) of the Code to the extent that those rules require compliance with clause 7(1) of Schedule 1 of the Code.

10 Condition of exemption in clause 9

The exemption in clause 9 is subject to the condition that if any of the persons referred to in clause 6(1)(a) to (d) of Schedule 1 of the Code have, during the 6-month period

before the date of the partial takeover offer, acquired or disposed of any equity securities of Wrightson, the takeover notice and the offer document must each specify—

- (a) the total number and designation of those equity securities acquired or disposed of by each of those persons in respect of each day on which that person acquired or disposed of those securities; and
- (b) the weighted average consideration per security paid or recovered by each of those persons in respect of each day on which that person acquired or disposed of those securities.

Dated at Auckland this 27th day of April 2004.

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

[L.S.]

D. O. Jones,
Deputy Chairperson.

Statement of reasons

The Takeovers Panel has exempted Rural Portfolio Investments Limited (**RPI**) from compliance with rule 20 of the Takeovers Code (the **Code**) in 2 situations, and from rules 41(1)(b) and 44(1)(d)(i).

The exemptions relate to a partial takeover offer by RPI for the ordinary shares in Wrightson Limited (**Wrightson**). As consideration for the Wrightson shares, RPI proposes to offer the following alternatives:

- a cash payment; or
- redeemable preference shares (the **redeemable preference shares**) issued by Rural Portfolio Investments Securities Limited (**RPI Securities**), a wholly-owned subsidiary of RPI; or
- a combination of cash and redeemable preference shares in the proportion determined by the offeree.

The first exemption applies in respect of offers to shareholders whose addresses on the Wrightson share register are outside of New Zealand. Rule 20 of the Code requires an offer to be made on the same terms and provide the same consideration for all securities of the same class.

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

- it is not practicable for RPI to make an offer to all shareholders on the Wrightson share register on the same terms, as required by rule 20 of the Code, because of the impracticality of complying with the securities laws that apply in various jurisdictions other than New Zealand; and
- the conditions of the exemption require that the foreign exempt shareholders are not disadvantaged by not being able to accept the redeemable preference shares alternative.

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

- the exemption is consistent with the principle of providing equal consideration to all security holders in the target company, while recognising the impracticality of having to comply with the securities laws that apply in various jurisdictions other than New Zealand in circumstances in which unlisted securities are offered as consideration; and
- it is important for competition for the control of Code companies that offerors are not precluded from offering securities as consideration in takeover transactions.

The second exemption allows the consideration offered to small shareholders to be limited to cash only. In the absence of a specific exemption from rule 20, RPI would be required to allow acceptors who are small shareholders in Wrightson to elect to receive redeemable preference shares as consideration. If RPI allowed an acceptor to be issued with a parcel that would be an unmarketable parcel once the redeemable preference shares are quoted on the New Zealand Debt Exchange, RPI Securities may breach the NZX Listing Rules.

The Takeovers Panel considers that it is appropriate to grant the exemption from rule 20 in respect of the partial takeover offer to small shareholders, in the interests of market efficiency.

The Takeovers Panel considers that the exemption from rule 20 in respect of small shareholders is consistent with the objectives of the Code because it retains the principle of providing equal consideration to all security holders in the target company, while at the same time promoting efficiency in the market and reducing costs for offerors and target company shareholders.

The third exemption allows the disclosure of acquisition and disposal transactions to be made on an aggregated daily basis. During the 6 months preceding the proposed date of the partial offer, RPI acquired or disposed of a large volume of shares in Wrightson. In the absence of an exemption from clause 7(1) of Schedule 1 of the Code, the offer document would be required to contain details of all the transactions.

The Takeovers Panel considers that it is appropriate to grant the exemption from rules 41(1)(b) and 44(1)(d)(i) to the extent that those rules require compliance with clause 7(1) of Schedule 1 of the Code because, in circumstances where a large number of transactions have occurred in the same day, the information required by clause 7(1) can be more effectively shown in a daily aggregation of transactions.

The Takeovers Panel considers that the exemption is consistent with the objectives of the Code because it facilitates the provision of information to target company shareholders in a more useful form while at the same time reducing costs for offerors.

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

Date of notification in *Gazette*: 29 April 2004.

This notice is administered by the Takeovers Panel.
