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Technical amendments to the Takeovers Code

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THE TAKEOVERS CODE IS AMENDED BY THE TAKEOVERS CODE APPROVAL AMENDMENT REGULATIONS 2007 WHICH COME INTO FORCE ON 1 JULY 2007. THIS CODE WORD EXPLAINS THE TECHNICAL AMENDMENTS IN GENERAL TERMS AND MAY BE USED AS A BROAD GUIDE TO THE CHANGES. THE UNOFFICIAL VERSION OF THE TAKEOVERS CODE ON THE PANEL'S WEBSITE (WWW.TAKEOVERS.GOVT.NZ) HAS BEEN UPDATED TO INCORPORATE THE TECHNICAL AMENDMENTS.

The Technical Amendments

The *Takeovers Code Approval Amendment Regulations 2007* (the **amendment regulations**) apply to any takeover made under a takeover notice that is sent to the target company on or after 1 July 2007. They also apply to a shareholder meeting held under rule 7(c) or 7(d) if the notice of meeting was sent to shareholders on or after 1 July 2007.

Details of the Panel's recommendations for the amendments and discussions of their intended effects are in the discussion papers and recommendations to the Minister of Commerce published on the Panel's website www.takeovers.govt.nz. References to these documents are listed on p8.

CHANGES RELATING TO SHAREHOLDER MEETINGS FOR APPROVING ACQUISITIONS OR ALLOTMENTS

Notices of shareholder meetings – statement of voting securities of acquirers or allottees

Where the acquisition or allotment of parcels of shares in a Code company requires shareholder approval under rule 7(c) or 7(d) of the Code, the required content of the notice of meeting that must be sent to shareholders is set out in rules 15 and 16. These rules require disclosures relating to the percentage of voting securities that will be held or controlled by each acquirer or allottee after the acquisition or allotment.

Changes to rules 15 and 16 mean that the notice of meeting must now also disclose the aggregated control percentages of all the voting securities that will be held or controlled by an acquirer or allottee and by its associates.

Documents required to be sent to the Panel

As part of its routine compliance checking, the Panel asks for, and reviews, documents required for shareholder meetings held to approve acquisitions or allotments under the Code. However, the Code did not require that these documents be provided to the Panel.

New rule 19A requires all information for these shareholder meetings, including published information, (e.g. the notice of meeting or advertisements or letters to shareholders) to be sent to the Panel at the same time that it is sent to shareholders or published.

CHANGES RELATING TO TAKEOVERS

Form and content of the draft offer accompanying the takeover notice and of the formal takeover offer sent to shareholders

Determining all the classes of equity securities in a target company

A full offer under the Code requires the offeror to make an offer for all the securities in each class of equity securities (other than those the offeror already holds). A partial offer must be extended to all holders of voting securities of the target company (other than the offeror).

These rules have required (by implication) that an offeror has determined, at the time the takeover notice is sent to the target company:

- all the target company's classes of equity securities on issue, in the case of a full offer; or
- all the target company's classes of voting securities on issue, in the case of a partial offer.

Old rule 44 required the offer to be on the same terms and conditions as those in the draft offer accompanying the rule 41 takeover notice, except for conditions already satisfied or waived, or variations made with the target company directors' prior written approval.

In a hostile takeover the target company directors could refuse consent to a bidder to amend its offer document to correct the omission from the offer of a class of securities of which the offeror was unaware. This effectively required the bidder to recommence its offer.

The changes to the Code facilitate the takeover process by requiring the target company to give the offeror specified information about its securities. The prospective offeror can then amend the offer document by adding the omitted class(es) of securities to its offer, without the prior consent of the target company directors. These new provisions operate as follows:

- within two days of receiving a takeover notice the target company must give the prospective offeror a class notice which describes each class of the target company's equity securities (for a full offer) or voting securities (for a partial offer) whether or not that class is included in the proposed offer. The class notice must have sufficient information about each class of security for an offer to be made, and for an independent adviser to provide a report under rule 22 of the Code if the offer is for more than one class of securities;
- the final terms and conditions of a formal takeover offer can vary from those in the draft offer sent with the takeover notice, without the target company directors' prior consent, if the variation adds only classes of security that were not included in the draft offer but that were identified in the target company's class notice. The offeror must notify the target company of such a variation at least seven days before the date of the offer. If applicable, a rule 22 report (or an amended rule 22 report) will be required to accompany the seven-day variation notice to the target company.

More than one class of securities - independent adviser's report on fairness between classes

Rule 22 requires an independent adviser's report on the fairness of the consideration being offered as between two or more classes of securities. The offeror must send this report to the target company with the takeover notice. The Code had also required that the rule 22 report be sent to target company shareholders with the offer document.

Under the changes, the rule 22 report must still be sent to the target company with the takeover notice, but it is no longer given to shareholders with the offer document. Rather, it must be sent to offerees with the target company statement and rule 21 report (on the merits of the offer).¹

In the draft offer sent with the takeover notice and in the formal offer document sent to shareholders, the offeror is required to:

- explain how the calculation of the terms and consideration as between classes of securities complies with the "fairness and reasonableness between classes" requirement of rule 8 or rule 9 (whichever applies); and
- confirm that a report under rule 22 of the Code will be sent with the target company statement.

Where the offeror varies the offer price after the offer has been made, a further rule 22 report for that variation must be sent to shareholders together with the variation notice sent under rule 28. However, if the offer document has already been sent to shareholders but the variation is made before the target company sends the target company statement, the offeror must send only the variation notice to shareholders (and to others referred to in rule 28) and must send the further rule 22 report to the target company and to the Panel. The target company then sends the further rule 22 report with the target company statement to the shareholders.

Registered prospectus must accompany takeover notice for scrip offers

Rule 41 sets out the requirements for sending a takeover notice. This rule had not prevented offerors, who intend to use scrip as consideration for their takeover offer, from sending the takeover notice to the target company and the Panel before registering a prospectus for the offer.

The changes ensure that when a scrip offer is made, the offer documents, including the registered prospectus and any other related documents (for every jurisdiction in which the securities are to be offered), are sent to the target company (and are therefore available to the rule 21 independent adviser) at the same time that the takeover notice is sent.

This change coincides with provisions of the Securities Act (Takeovers) Exemption Notice 2001 (as amended) under which, for an offeror or issuer to rely on the exemption, it must provide the target company with its New Zealand registered prospectus and investment statement at the same time as it sends the takeover notice.

Certificate in draft offer document accompanying takeover notice

Clause 19 of Schedule 1 of the Code prescribes the form of certificate for the offer document that must be signed by two directors and two senior executives of the offeror. The Code was unclear as to whether the certificate in the draft offer that accompanies a takeover notice must also be signed by those same persons. Market practice has varied.

A signed certificate is now required for the takeover notice and the accompanying draft offer document, in the same way as a signed certificate is required for the final offer document sent to shareholders. This is to ensure that the offeror's board and management take full responsibility for the information sent with the takeover notice, as well as for the offer document that is subsequently sent to shareholders.

The advice statement on the cover of the offer document

An advice statement on the front page of the offer document is required by clause 4 of Schedule 1 of the Code. This statement did not have to inform shareholders that they would receive, as well as the offer document, a statement from the target company in response to the offer and an independent adviser's report on the merits of the offer.

The advice statement must now be in 'plain English' and tell shareholders when they will receive the target company statement and the rule 21 report on the merits of the offer and, if applicable, a rule 22 report on the fairness and reasonableness of the offers as between classes of securities.

"Intention" of the offeror to acquire equity securities other than under the offer

Offerors are prevented, during an offer period, from acquiring securities other than under the offer, except in the limited circumstances detailed in rule 36.

Rule 36 and clause 13 of Schedule 1 required the offeror to include in its offer document a statement of its intention to acquire securities other than under the offer (e.g. on market) during the offer period.

This statement of intention is no longer required. However, the rule 36 notification requirements have been expanded on any such acquisitions that are made. All rule 36 acquisitions now must be notified to the target company, the Panel, and to the Exchange if the target or offeror is listed. Where both parties are unlisted, rule 36 acquisitions

need to be notified only to the Panel and the target company. It is up to unlisted companies to decide how to keep their shareholders informed (this is not governed by the Code).

Disclosure in the takeover documents of share holding and share trading

Clauses 6 and 7 of Schedule 1 of the Code prescribe disclosures that must be made in an offer document about ownership of, and trading in, securities of the target company. Clauses 5 and 6 of Schedule 2 prescribe information to be disclosed in the target company statement about ownership of, and trading in, securities of the target company. Some of these disclosure requirements have been difficult to manage in practice because, for example, they have required disclosure of information about every single transaction by specified parties that has taken place over a six-month period.

The technical amendments result in:

- the daily aggregation of Schedule 1 clause 6 trading information, about trades in target company shares by the offeror and various related parties, to be disclosed in the offer document;
- clarification of the Schedule 1 clause 7 disclosure in the offer document regarding non-shareholding by related parties or directors of related parties of the offeror; and
- disclosure in the target company statement of details of share trading by substantial security holders of the target company,² with weekly aggregation of this trading information instead of these disclosures being on a per-transaction basis.

Material contracts

Clause 13 of Schedule 2 required the target company statement to disclose information about material contracts to which the offeror (or a related company of the offeror) was a party. This information related to interests in material contracts involving the directors or senior officers of the target company, or their associates, or any substantial security holder of the target company. The nature and extent of any interest had to be disclosed.

The requirement that contracts have to be "material", before being required to be disclosed, has been removed for contracts involving the directors and senior officers of the target and their associates. This means that particulars of all such contracts, whether the target's directors consider them to be material or not, must now be disclosed. The materiality limitation remains for the interests of the

target company's substantial security holders in contracts with the offeror or with a related company of the offeror.

The nature of the interest in any of these contracts must be disclosed as well as the extent and monetary value (if it can be quantified) of the interest. However, the extent of the interest and monetary value does not need to be disclosed for contracts entered into in the offeror's ordinary course of business and on usual terms and conditions.

Notifications and information to the Panel, the Exchange, parties to takeovers and others

Notification obligations of the target company and offeror

Rule 42 of the Code provides that when a takeover notice is received, a listed target company must immediately advise the Exchange, and an unlisted target must advise its shareholders, that a takeover notice has been received.

As well, offerors bidding for a listed target are now required to send the takeover notice (at the time it is sent to the target company), and all the information required to accompany a takeover notice, to the target's Exchange. Unlisted targets must now inform their shareholders about the identity of the offeror and the main terms and conditions of the prospective offer.

The offeror or the target must also send, free of charge, the takeover notice and information that is sent with the takeover notice, to any person who asks for such information, within one day of receiving a request. This is to ensure that market analysts and commentators have rapid and free access to the primary documents for a proposed takeover, and enable a well-informed market.

Documents required to be sent to the Panel

The Panel routinely reviews documents relating to takeovers. Most of these are required by rule 47 to be sent to the Panel at the same time that they are sent to their intended recipients. However, some information that is sent to shareholders about a takeover is not information required by the Code, for example, a letter from the offeror encouraging shareholders to accept the offer.

The amendments to the Code require all information about takeovers that is sent to shareholders or made public (including letters, advertisements and the like) to be sent to the Panel.

The anomaly in rule 47 of having to provide the target company's securities register to the Panel has been fixed by the technical amendments.³ However, the securities register must be sent to the Panel on request.

Notification about progress of takeover offer

The Code had not required offerors to periodically update the Panel and shareholders about the level of acceptances received during the takeover offer.

The changes to the Code require progress in a takeover to be notified each time the level of acceptances increases by 1% or more of the total issued securities in each class under offer. An offeror must notify the Panel and the target company, and the Exchange if the offeror or the target company is listed.

Timing issues

Record dates

Rule 43 of the Code required that the record date (for determining who are the offerees for the purposes of the offer) must be not more than 10 days before the date of the offer. Offerors must send their offer document to offerees by no later than three days after the date of their offer. Effectively, this rule set an offer timeline which could not be altered, even if the circumstances of the offeror or the target company changed after the record date was set.

The technical amendments allow for changing the record date after it has been set. If the offer cannot be made within 13 days of the original record date, but can still be made in the 14 to 30 day-period in which an offer must be made after sending a takeover notice, the offeror can now notify a new record date and proceed with its offer. This reduces the likelihood of having to issue a new takeover notice and restart the offer process.

Date by which an offer is to become unconditional

Rule 25 provides that an offer that is subject to conditions must specify a date (the *specified date*) by which it is to become unconditional, and limits that date by relating it to the length of the offer period.

If this rule is interpreted literally, the specified date could not be changed after it was specified in the offer document. However, the Code allows for the offer period to be extended, so if the specified date is referenced to the offer period the specified date will change if the offer period is changed.

The technical amendments explicitly allow the specified date to be changed (as a permitted variation under rule 27) if the offer period is extended. The new specified date must be stated and included in the variation notice sent under rule 28. However, the specified date is still subject to the time limits set out in rule 25.

Offers unconditional as to level of acceptances

Under rule 24, Code offers must be open for acceptance for between 30 and 90 days. A full offer could be extended by a further 60 days if it was unconditional as to level of acceptances.

Rule 29 prevents any variation to an offer unless it is made at least 14 days before the end of the offer period. However, the 14-day requirement does not apply if the offer is unconditional as to the level of acceptances and the variation is to extend the offer period beyond the 90-day maximum period.

The effect has been that offers unconditional as to level of acceptances could be extended without the 14-day period (required by rule 29) but only if the extension took the offer period into the 60-day additional offer period available to these offerors. The Panel resolved this anomaly in 2002 with a class exemption,⁴ but it is now dealt with in the Code itself.

Offers which are unconditional as to level of acceptances at the outset had been able to be extended beyond the 90-day maximum period, for an additional 60 days. However, the maximum 90-day offer period is a basic principle of the Code. The exception to this is where an offer is made conditional on receiving a certain level of acceptances, and those conditions are satisfied or waived. In this case it is appropriate to provide a 60-day “mopping up” period during which offerees will know that the offer has been successful and any shares they tender into the offer will be accepted.

As a result of the technical amendments the Code now provides that:

- offers which are or have become unconditional as to level of acceptances can be extended at any time during the offer period (but still must remain open for at least 14 days after the date of the variation);
- offers which are unconditional as to the level of acceptances at the outset can be extended, but not beyond the maximum 90-day offer period; and
- if an offer is conditional as to the level of acceptances, and the conditions are satisfied or waived within the 90-day offer period, the offer can be extended by up to 60 days from the day that the conditions were satisfied or waived (even if this extends the offer beyond 90 days).

Variations to offers – consideration alternatives

Rule 27 of the Code sets out the three permissible variations that an offeror may make to the consideration offered in a takeover offer. They are:

- to *increase* an existing component or components of the consideration (whether the increase be of a cash, scrip or other component of the original consideration);
- to *add a cash component* (i.e. to the original non-cash consideration); and
- to *add a cash alternative* as consideration, with the target company directors’ prior consent (i.e. to add a cash-only alternative to the original non-cash or non-cash + cash combination or combinations that had been offered).

There had been an inconsistency in the Code between the treatment of a variation to the consideration that *added* a cash alternative and a variation that *increased* a scrip, cash or other component (or a combination). The Panel addressed this in 2002 in a Practice Note.⁵ It is now dealt with in the Code.

Under the technical amendments, offerees who have accepted a non-cash offer are allowed to take a cash alternative that is added to the offer (as was always the case), and offerees who have accepted one alternative consideration option are allowed to switch to an alternative that has been increased. Previously this was potentially not allowed, although the Panel’s Practice Note warned against having offer terms that precluded such a switch. The amendments to the Code clearly enable those who accept one form of consideration to switch to a new or an increased alternative form of consideration.

A number of new rights and obligations for offerors and for offerees are included in the Code regarding offers and acceptances of alternative consideration options. Offerors, in particular, need to carefully consider the revamped rules 28, 31 and 32. Offerors must alert offerees to their rights and obligations in this area when giving the notice of variation.

Compulsory acquisition ⁶

Compulsory acquisition process

The compulsory acquisition process had required an offeror, who becomes a dominant owner through acceptances of an offer, to issue an acquisition notice under rule 54 no later than 30 days after becoming a dominant owner, even if the offer was still open. This could lead to problems where an offer still had some time to run, especially if the compulsory acquisition consideration would differ from the offer consideration.

The Code sets out (rules 56 and 57) the process for determining the consideration that must be paid under compulsory acquisition, and the role of independent advisers (rule 57)⁷. Previously, acceptances (of the takeover offer) for voting securities controlled by the offeror or held or controlled by associates of the offeror, were included in the rule 56 calculation of the percentage of acceptances received. In addition, copies of rule 57 independent advisers' certificates were not required to be sent to the Panel or to the Exchange.

The technical amendments:

- provide that, where a dominant owner achieves that position by acceptances of an offer, its acquisition notice must be sent no later than 30 days after the end of the offer period (instead of 30 days after becoming a dominant owner);
- exclude voting rights controlled by the offeror or held or controlled by associates of the offeror from the calculation of the percentage of voting rights obtained through acceptances of an offer, to determine the compulsory acquisition consideration under rule 56(2). The calculation needs acceptances by over 50% of the offerees not associated with the offeror; and
- provide for independent advisers' certificates under rule 57(1) or expert determinations under rule 57(3) to be more widely available.⁸

*Consideration alternatives – election by outstanding security holders*⁹

The Code requires, if a person becomes a dominant owner through acceptances of an offer, and if acceptances were received for more than 50% of the class of securities under offer, that the consideration to compulsorily acquire the outstanding securities must be the same as the consideration that was provided under the offer for securities in the same class.

As well, the Code had required that if the offer provided alternative consideration options, the consideration payable under compulsory acquisition had to be the same as the consideration under the offer if an accepting offeree did not choose an alternative (i.e. the default consideration). If no such provision was included in the offer, the consideration had to be the option with the greatest cash component.

Under those rules, an offeror could include an unattractive or unfair default consideration in its offer, which could in effect force shareholders to accept a takeover offer rather than be compelled to take the unattractive default consideration under compulsory acquisition.¹⁰

The Code now addresses the potential for such coercion by enabling outstanding security holders to nominate a consideration alternative. Accordingly, where:

- dominant ownership is attained through acceptances of an offer; and
- the acceptances comprise more than 50% of the class of securities under offer; and
- the takeover offer included alternative consideration options;

then

- the outstanding security holder, when returning the instrument of transfer under rule 59, can choose to be paid any one of the consideration alternatives that were available under the offer and the dominant owner must pay that consideration;

but

- if the outstanding security holder does not nominate a consideration alternative when returning the instrument of transfer, then the usual default consideration rules apply (i.e. if a default consideration was specified in the takeover offer then that default consideration must be paid by the dominant owner; if no default consideration was specified the dominant owner must pay the consideration with the greatest cash component).

Consideration where 50% or less acceptances of takeover offer

When a person becomes a dominant owner through acceptances of an offer, rule 56 determines the price to be paid for compulsorily acquiring outstanding securities if acceptances were received for more than 50% of the securities under the offer. In this situation, the compulsory acquisition price is the consideration that was payable under the offer, whether this involved cash, scrip, or some other form of consideration.

Rule 57 determines the consideration that is to be paid under compulsory acquisition if rule 56 does not apply (i.e. because acceptances under a takeover offer were for 50% or less of the securities under offer or because a person became a dominant owner without making a takeover offer). In these circumstances, rule 57(1) has required an independent adviser to certify as fair and reasonable a cash sum to be paid by the dominant owner for compulsorily acquiring the outstanding securities.

Rule 57(1) no longer requires an independent adviser to certify the fairness and reasonableness of the compulsory acquisition consideration where a person becomes a dominant owner through a takeover offer that was for cash

or had a cash alternative. However, outstanding security holders have the right to object to the price under the objection procedure in rule 57. The requirement for the independent adviser's certificate has been removed. This is because outstanding security holders will have recently received an independent adviser's report, under rule 21, on the merits of the offer, including the value of the target company and of the shares under the offer.

This change only affects compulsory acquisition following a takeover offer. It does not affect compulsory acquisition where a person becomes a dominant owner through other Code mechanisms e.g. "creeping" to the 90% threshold or through an allotment or an acquisition. In these circumstances an independent adviser approved under rule 57(1) would be required to certify as fair and reasonable the cash sum that must be paid for the outstanding securities.

In summary, the changes mean that an independent adviser's report is required under rule 57 only where:

- no takeover offer was made; or
- a takeover offer was made and:
 - the takeover offer was not for cash or did not include a cash alternative; and
 - acceptances were received for 50% or less of the equity securities under the takeover offer.

CLARIFICATION OF SOME RULES AND SOME MISCELLANEOUS TECHNICAL ADJUSTMENTS

Partial offers

Rules 9 and 10 contain the Code's general provisions about partial offers. Partial offers may be for a specified percentage of the voting securities of the target company not already held or controlled by the offeror that, together with the voting securities already held or controlled by the offeror, confer either:

- above 50%; or
- with the approval of the target company's shareholders, 50% or less.

These rules were not intended to allow a single offer to contain alternative proposals, e.g. an offer that would result in the offeror holding or controlling more than 50%, or, failing that, an offer for a lesser percentage, with the second alternative acting as a fallback if the more-than-50% level is not achieved.

The amendments clarify that for a partial offer an offeror must opt for only one specified percentage of voting securities – either:

- a specified percentage that would result in the offeror holding or controlling more than 50%, under rule 10(1)(a), or
- a specified percentage that would result in their holding or controlling 50% or less, with shareholder approval, under rule 10(1)(b).

Miscellaneous changes

- The definite article preceding the word "person" in rule 7(c) and (d) has been changed to the indefinite article to clarify that upstream parties are (and always have been) covered by these exceptions to the fundamental rule;
- The wording of rule 7(e) has been changed, but only to make its meaning more obvious; there is no change to the intention of the 'creep' provisions in rule 7(e);
- Subtle changes have been made to the wording of rule 44(1)(b) and some disclosure clauses in Schedule 1 of the Code to help offerors get the dates right for the disclosures required in the draft offer document sent with a takeover notice and in the formal offer that is sent to shareholders;
- The takeover documents which must be sent to the Panel (under rule 47) now include the notification given by the offeror to the target company, under rule 48. This must show any differences between the draft offer document that was sent to the target company with the takeover notice, and the final offer document to be sent to shareholders (this is usually notified by sending a marked-up version);
- The references in Schedule 1 and Schedule 2 of the Code to persons holding or controlling "more than 5%" of the equity securities in the target company have been changed to refer to holders or controllers of "5% or more". This aligns these Code disclosure thresholds with the substantial security holder thresholds in the Securities Markets Act 1988.

TRANSITIONAL ARRANGEMENTS

The amendment regulations include transitional arrangements. The technical amendments to the Code will not apply in respect of any of the following:

- a) a takeover if a takeover notice was sent to the target company before the commencement date of the amendment regulations;
- b) a compulsory acquisition that results from a takeover to which paragraph a) applies; or

- c) a shareholder meeting held for the purposes of rule 7(c) or 7(d) if the notice of meeting was sent to shareholders before the commencement date of the amendment regulations.

WE ARE HERE TO HELP

There are many small changes to the Code, and some that are more significant, as a result of the amendment regulations. Market participants and their advisers should look closely at the amended rules. Many of the amendments simply allow for the smoother practical operation of the Code's requirements, but some rights and obligations have been changed.

The Panel executive is happy to discuss the changes to the Code with advisers to potential acquirers and Code companies. Potential problems can be averted by doing this. These discussions are without prejudice to the Panel's position if a question of compliance with the Code later arises.

REFERENCES TO EARLIER DOCUMENTS

Proposed Amendments to the Takeovers Code – A Discussion Paper issued by the Takeovers Panel (7 April 2003): this was the Panel's original discussion paper that was published and sent out for market consultation. It covers the bulk of the technical amendments that were recommended by the Panel.

Technical Amendments to the Takeovers Code (15 December 2003): this contained the Panel's formal recommendations to the Minister of Commerce, following the market consultation that had been undertaken in April 2003.

Proposed Amendments to the Compulsory Acquisition Provisions of the Takeovers Code (15 December 2004): this was the Panel's discussion paper that was sent out for formal market consultation on two areas of the Code's compulsory acquisition process that were not covered by the original set of proposed technical amendments.

Technical Amendments to the Takeovers Code – recommendations to the Minister of Commerce from the Takeovers Panel (April 2005): this contained the Panel's formal recommendations to the Minister on the two areas of the compulsory acquisition process that had undergone consultation in December 2004.

End Notes

- 1 If the offeror sends the target company statement to offerees under rule 44(1)(d)(iv), then the rule 22 report must be included with the offer document, the target company statement and the rule 21 report.
- 2 The Code does not itself utilise a defined term 'substantial security holder' (which is defined in section 2(1) of the Securities Markets Act 1988 with reference to relevant interests in voting securities). The term is used loosely in this issue of *Code Word* to mean a person who holds or controls 5% or more of a class of equity securities in the target company.
- 3 This anomaly was resolved before the Code came into effect through clause 26 of the *Takeovers Code (Class Exemptions) Notice (No 2) 2001*, but is now dealt with in the Code, so clause 26 has become redundant and is being revoked.
- 4 *The Takeovers Code (Offers Unconditional as to Level of Acceptance) Exemption Notice 2002* exempts every offeror, with a full offer that is unconditional as to level of acceptances, from rule 29(1) of the Code if they wish to just extend the offer period, with no other variation being made to the offer. This exemption is being revoked.
- 5 *Practice Note – Variations of Code Offers (20 December 2002)*. This is published on the Panel's website under *Publications*, then click on Practice Notes & Guides. The Practice Note warns that the terms of an offer should allow for acceptors to be able to switch from one consideration alternative to another if the latter has been increased. Otherwise offerors risk breaching rule 20 of the Code.
- 6 Compulsory acquisition occurs under the Code when a target company shareholder becomes a dominant owner. The Code defines **dominant owner** as "... a person who, after this code comes into force, becomes the holder or controller, or 2 or more persons acting jointly or in concert who, after this code comes into force, become the holders or controllers, of 90% or more of the voting rights in the code company (whether by reason of acceptances of an offer or otherwise)".
- 7 Rule 56 sets a threshold for determining whether the compulsory acquisition consideration will be the same as the consideration offered under the offer (if the compulsory acquisition results from a takeover offer). If rule 56 does not apply, the compulsory acquisition consideration will be determined by rule 57.
- 8 The technical amendments have made a number of changes in the area of compulsory acquisition under Part 7 of the Code. In the interests of brevity, this issue of *Code Word* discusses each of these changes only once, and does not explicitly refer to a change that has already been discussed even though it may have implications for another area of compulsory acquisition that is discussed. The reader should bear this in mind (especially regarding the exclusion of voting rights associated with the offeror from the calculation under rule 56) when considering the impact of the changes to Part 7 of the Code.
- 9 The Code defines **outstanding security holders** as "... the holders of the outstanding securities". **Outstanding securities** are defined as "... all the equity securities in the code company that the dominant owner does not already hold or control".
- 10 The right of outstanding security holders to object to the compulsory acquisition consideration arises only under rule 57. If the compulsory acquisition consideration is determined under rule 56 (i.e. there were more than 50% acceptances of the offer) there is no right of objection available.

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