

Takeovers Code (Synlait Farms Limited) Exemption Notice 2014

Pursuant to section 45 of the Takeovers Act 1993, the Takeovers Panel gives the following notice (to which is appended the statement of reasons of the Takeovers Panel).

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Notice

1 Title

This notice is the Takeovers Code (Synlait Farms Limited) Exemption Notice 2014.

2 Application

This notice applies to acts or omissions occurring on or after 26 February 2014.

3 Revocation

This notice is revoked on the close of 30 March 2014.

4 Interpretation

(1) In this notice, unless the context requires,-

Act means the Takeovers Act 1993

Code means the Takeovers Code under the Act

Chinese regulatory condition means the condition at clause 4.4 of the Offer Document

offer means the offer dated 1 November 2013 by SFL Holdings for all of the shares in Synlait Farms

Offer Document means the offer document for the offer

SFL Holdings means SFL Holdings Limited

Synlait Farms means Synlait Farms 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 25(3A) and 25(4) of Code

SFL Holdings is exempted from rule 25(3A) and 25(4) of the Code in respect of the offer to the extent that the latest specified date by which the offer is to become unconditional for the purposes of rule 25(2) of the Code is no later than 30 March 2014 or the date on which the Chinese regulatory condition is satisfied, whichever is earlier.

6 Conditions of exemption

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

- (a) SFL Holdings sends, prior to 28 February 2014, a written notice to Synlait Farms and every offeree that explains the effect of the exemption in clause 5; and
- (b) the written notice is in a form approved by the Takeovers Panel.

Dated at Auckland this 26th day of February 2014

[Seal]

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

[Signed under Seal]

D O Jones,
Chairperson.

Statement of Reasons

This notice applies to acts or omissions occurring on or after 26 February 2014 and expires at the close of 30 March 2014.

Synlait Farms Limited (**Synlait Farms**) is a Code company within the meaning of the Takeovers Code (the **Code**) by virtue of having 50 or more shareholders and 50 or more share parcels.

SFL Holdings Limited (**SFL Holdings**) made an offer dated 1 November 2013 for all the shares in Synlait Farms (the **Offer**). The Offer was despatched to Synlait Farms shareholders on 1 November 2013.

The Offer was conditional on (among other things) SFL Holdings and Shanghai Pengxin Group Co Limited (**Pengxin**) obtaining approvals from relevant Chinese regulatory authorities to complete the Offer (the **Chinese Regulatory Condition**).

The Offer closed on 29 January 2014, with the condition date under the Offer being 28 February 2014. In late February 2014, SFL Holdings advised the Panel that it was unlikely that the Chinese Regulatory Condition would be satisfied by 28 February 2014.

The Takeovers Panel (the **Panel**) has granted an exemption for SFL Holdings from rule 25(3A) and 25(4) of the Code to extend the latest specified date by which the Offer is to become unconditional to 30 March 2014 or the date on which the Chinese Regulatory Condition is satisfied, whichever is earlier (the **extension**).

The Panel considered that the granting of the exemption was appropriate because:

- the Offer received an acceptance level of 99.58% by the time it closed, with a more than 90% acceptance level within the first 30 days of the Offer;
- the Panel was advised by SFL Holdings that the extension would be sufficient for SFL Holdings to satisfy the Chinese Regulatory Condition;
- the granting of the exemption was supported by the independent directors of the target company;
- the price offered under the Offer was above the valuation range given in the independent adviser's report;
- the Offer was not hostile and there were no competing offers;
- the Offer included a price escalation clause under which accepting shareholders will receive an additional \$0.001957 per share per day from 1 January 2014 until and including the day on which the Offer becomes unconditional;
- because of the price escalation clause, there is unlikely to be any prejudice to Synlait Farms' shareholders as a result of an extension of up to 30 days to the specified date by which the Offer is to become unconditional; and
- provided the Offer becomes unconditional, it is subject to the Code's compulsory acquisition rules.

The Panel considered the granting of the exemption was consistent with the objectives of the Code because:

- the Code recognises that obtaining regulatory approvals can take longer than the takeover offer period and allows for this in rule 25(3A);
- although the Code stipulates a maximum offer period of 90 days, it also provides flexibility to offerors whose full offers are subject to a minimum acceptance condition to utilise up to an additional 60 days for the offer period, through rule 24B, if that condition has been satisfied or waived before the end of the offer period;
- the additional time period in rule 24B, which applies from the day on which the minimum acceptance condition is satisfied or waived, would have been available to the offeror but for the satisfaction of the Offer's 90% acceptance condition early in the offer period; and
- the benefit to Synlait Farms' shareholders in granting an exemption which keeps the takeover viable in the circumstances of the Offer, outweighs the benefit of strict compliance with the Code.

Date of Notification in the *Gazette*: []
