

Takeovers Code (Tauranga Energy Consumer Trust) Exemption Notice 2016

Pursuant to section 45 of the Takeovers Act 1993, the Takeovers Panel, being satisfied of the matters set out in section 45(6) of that Act, gives the following notice.

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Notice

1 Title

This notice is the Takeovers Code (Tauranga Energy Consumer Trust) Exemption Notice 2016.

2 Application

This notice applies to acts or omissions occurring on or after 22 July 2016.

3 Expiry

This notice expires on the close of 21 July 2021.

4 Interpretation

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

Act means the Takeovers Act 1993

Australasian Renewables means Australasian Renewables Limited (company number 1212113)

Bay Energy means Bay Energy Limited (company number 565426)

Code means the Takeovers Code under the Act

demerger means the scheme of arrangement relating to Trustpower, including the in specie distribution, in relation to which an application will be made to

the High Court of New Zealand under sections 236(1) and 237(1) of the Companies Act 1993

in specie distribution means the in specie distribution of the shares in each of Bay Energy and Australasian Renewables held by Trustpower to the shareholders of Trustpower, as part of the demerger

TECT means the Tauranga Energy Consumer Trust established by deed of trust dated 21 December 1993

TECT Holdings means TECT Holdings Limited

trust deed means the deed of trust establishing TECT, as it is in force on 22 July 2016

Trustpower means Trustpower Limited.

- (2) In this notice, a reference to a person increasing voting control of a company or companies is a reference to the person becoming the holder or controller of an increased percentage of the voting rights in that company or those companies.
- (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 Code.

5 Exemption from rule 6(1) of Code

Every person who becomes a trustee of TECT in accordance with the trust deed is exempted from rule 6(1) of the Code in respect of any increase in that person's voting control in any or all of the following companies resulting from becoming a trustee of TECT:

- (a) Trustpower;
- (b) Bay Energy;
- (c) Australasian Renewables.

6 Condition of exemption

The exemption in clause 5, to the extent that it relates to Bay Energy and Australasian Renewables, is subject to the condition that the High Court of New Zealand makes orders under sections 236(1) and 237(1) of the Companies Act 1993 making the demerger binding.

Dated at Auckland this 18th day of July 2016.

[signed]

D O Jones,
Chairperson

Statement of Reasons

This notice applies to acts or omissions occurring on or after 22 July 2016 and expires on 21 July 2021.

The Takeovers Panel (the **Panel**) has granted exemptions from rule 6(1) of the Takeovers Code (the **Code**) to every person who becomes a trustee of the Tauranga Energy Consumer Trust (**TECT**) and who, as a result, becomes the holder or controller of an increased percentage of voting rights in –

- Trustpower Limited (**Trustpower**); or
- after the demerger of Trustpower in accordance with orders under Part 15 of the Companies Act 1993, Bay Energy Limited (**Bay Energy**) or Australasian Renewables Limited (**Australasian Renewables**).

To the extent this notice relates to Trustpower, it replaces the Takeovers Code (Tauranga Energy Consumer Trust) Exemption Notice 2008, which expired on 28 February 2013.

The Panel considers that it is appropriate and consistent with the objectives of the Code to grant the exemption because –

- every trustee of TECT who exercises control over voting rights in Trustpower, Bay Energy, or Australasian Renewables does so in his or her capacity as a trustee and is subject to the duties and obligations arising under the TECT trust deed and at law; and
- the cost of obtaining the approval of shareholders of Trustpower, Bay Energy, or Australasian Renewables to the appointment of a trustee of TECT is not warranted when the appointment would not, in substance, represent any change in control of TECT Holdings Limited's shares in Trustpower, Bay Energy, or Australasian Renewables; and
- the Code is not intended to inhibit changes of trustees of consumer energy trusts; and
- shareholders of Trustpower, Bay Energy, or Australasian Renewables are not disadvantaged by not having the opportunity to vote on the appointment of a new trustee at a meeting of shareholders, as the appointment has no real effect on those shareholders.