

## Takeovers Code (Fulton Hogan Limited) Exemption Notice 2015

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 (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 (Fulton Hogan Limited) Exemption Notice 2015.

### 2 Application

This notice applies to acts or omissions occurring on or after 1 September 2015.

### 3 Expiry

This notice expires on the close of 31 October 2018.

### 4 Interpretation

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

**2013 rights issue** means the issue of equity securities in accordance with the offer by Fulton Hogan to its shareholders and set out in a prospectus dated, and registered with the Registrar of Companies, on 17 October 2013

**Act** means the Takeovers Act 1993

**annual report** includes any concise annual report

**approved buyback** means a buyback that has been approved by ordinary resolution of the shareholders of Fulton Hogan

**approved employee share scheme allotment** means an allotment of voting securities under the employee share scheme that has been approved by ordinary resolution of the shareholders of Fulton Hogan

**approved maximum buyback number**, in relation to a buyback, means the maximum number of voting securities that Fulton Hogan could acquire under the buyback, and is the number required to be disclosed in relation to that buyback under clause 6(b)(ii)(A)

**approved share bonus scheme allotment** means an allotment of voting securities under the share bonus scheme that has been approved by ordinary resolution of the shareholders of Fulton Hogan

**approved voting rights attachment** means a voting rights attachment that has been approved by ordinary resolution of the shareholders of Fulton Hogan

**buyback** means an acquisition by Fulton Hogan, in accordance with its constitution, of its own voting securities under Fulton Hogan's buyback programme

**buyback period** means, in relation to a buyback, the period starting on the date of the meeting that approves the buyback, and ending upon the expiry of this notice

**calculation date** means, in relation to -

- (a) a buyback, the date referred to in clause 6(b)(vii) and identified in, or in information accompanying, the notice of meeting containing the proposed resolution to approve the buyback; and
- (b) an allotment of voting securities to a person in a Fulton/Hogan family shareholders' group under -
  - (i) the employee share scheme, or the share bonus scheme, the date referred to in clause 9(c)(viii) and identified in, or in the information accompanying, the notice of meeting containing the proposed resolution to approve the allotment; and
  - (ii) a voting rights attachment, the date referred to in clause 11(b)(iv) and identified in, or in the information accompanying, the notice of meeting containing the proposed resolution to approve the voting rights attachment

**Code** means the Takeovers Code under the Act

**constitution** means the constitution of Fulton Hogan, as that constitution may be amended or replaced from time to time

**employee share scheme** means the scheme operated and administered by Fulton Hogan under which selected employees or officers of Fulton Hogan, and of its subsidiary companies, may from time to time be provided with an opportunity to be allotted voting securities, as that scheme may be amended or replaced from time to time

**equity security** means an equity security in Fulton Hogan issued in accordance with the 2013 rights issue

**Fulton family** means all persons who are—

- (a) descendants, naturally or by virtue of any adoption order, of Julius Herbert Fulton and Dorothy May Fulton, or the spouse of any of those persons; or
- (b) beneficiaries in the estate of Morice Henderson Law

**Fulton family shareholders** means every person who—

- (a) is a member of the Fulton family; or
- (b) represents an interest of a member of the Fulton family, including—
  - (i) the trustees of a trust; and
  - (ii) any company; and
  - (iii) a personal representative

**Fulton Hogan** means Fulton Hogan Limited

**Fulton/Hogan family shareholders' group, family shareholders' group and group** means each of the following:

- (a) the Fulton family shareholders:
- (b) the Hogan family shareholders

**Hogan family** means all persons who are descendants, naturally or by virtue of any adoption order, of Robert Hogan and Margaret Catherine Hogan, or the spouse of any of those persons

**Hogan family shareholders** means every person who—

- (a) is a member of the Hogan family; or
- (b) represents an interest of a member of the Hogan family, including—
  - (i) the trustees of a trust; and
  - (ii) any company; and
  - (iii) a personal representative

**intra-family transfer** means the transfer of voting securities from a person in a Fulton/Hogan family shareholders' group to another person in that family shareholders' group, as permitted under the exception to the pre-emptive rights on transfer provisions in the constitution

**other-means increase** means an increase in voting control in Fulton Hogan that is effected by a means other than the buyback, an allotment of voting securities under the employee share scheme or share bonus scheme, or a voting rights attachment

**Panel** means the Takeovers Panel

**share bonus scheme** means the scheme operated and administered by Fulton Hogan under which selected employees or officers of Fulton Hogan, and of its subsidiary companies, may from time to time be provided with an opportunity to be allotted voting securities in lieu of all or part of their annual cash performance bonus, as that scheme may be amended or replaced from time to time

**spouse**, in relation to a person, means each of the following:

- (a) the husband or wife of the person:
- (b) a person who lived together with the person as a couple for more than 3 years:
- (c) a person who was formerly in a relationship referred to in (a) or (b):
- (d) a person who was cohabiting with the person at the date of death of the person

**transfer**, in relation to an intra-family transfer, means the transfer of a voting security or the transfer of the control of a voting security

**voting rights attachment** and **attachment** means the attachment of voting rights to equity securities that any person in a Fulton/Hogan family shareholders' group holds or controls, including the removal of a suspension of voting rights attached to such equity securities

**voting security** means a voting security in Fulton Hogan.

- (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 Fulton Hogan.
- (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.

### *Buybacks*

#### **5 Exemption from rule 6(1) of Code in respect of buybacks increasing voting control of Fulton/Hogan family shareholders**

Each person in a Fulton/Hogan family shareholders' group is exempted from rule 6(1) of the Code in respect of any increase in that person's voting control that results from a buyback.

#### **6 Conditions of exemption in clause 5**

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

- (a) the buyback must be approved by an ordinary resolution of the shareholders of Fulton Hogan in respect of each family shareholders' group; and
- (b) the notice of meeting containing the proposed resolutions to approve the buyback in respect of each family shareholders' group must contain, or be accompanied by, the following:
  - (i) full particulars of the buyback:
  - (ii) the following particulars of the voting securities that may, if the resolution is carried, be acquired by Fulton Hogan under the buyback:
    - (A) the maximum number (the **approved maximum buyback number**) of its voting securities that Fulton Hogan could acquire under the buyback:
    - (B) the percentage of all voting securities on issue that the approved maximum buyback number represents:
  - (iii) the consideration for the buyback, or the manner in which the consideration would be determined, and when it would be payable:

- (iv) the reasons for the buyback:
- (v) a statement by the directors of Fulton Hogan, in relation to the buyback, that complies with rule 19 of the Code as if the reference in that rule to an acquisition under rule 7(c) of the Code were a reference to the buyback:
- (vi) the assumptions on which the particulars referred to in clause 6(b)(ii) are based, which must include the assumptions referred to in clause 6(c):
- (vii) the calculation date:
- (viii) a summary of the terms and conditions of the exemption in clause 5; and
- (c) the following assumptions must be applied for the purposes of providing the particulars of voting securities, as specified in clause 6(b)(ii):
  - (i) that the number of voting securities on issue is the number of voting securities on issue on the calculation date:
  - (ii) that there is no change in the total number of voting securities on issue between the calculation date and the end of the buyback period, other than as a result of the buyback:
  - (iii) that Fulton Hogan acquires the approved maximum buyback number of its voting securities:
  - (iv) any other assumptions that are reasonably necessary to ensure that shareholders in Fulton Hogan are provided with the material information required for them to be able to determine whether to approve the resolutions; and
- (d) the notice of meeting, or the accompanying information, displays, in a prominent position, a disclaimer stating that, by granting the exemptions contained in this notice, the Panel is –
  - (i) neither endorsing nor supporting the accuracy or reliability of the contents of the notice of meeting or the accompanying information; and
  - (ii) not implying it has a view on the merits of the proposed buyback; and
- (e) the form of the notice of meeting is approved by the Panel; and
- (f) at the same time that the notice of meeting is sent to shareholders of Fulton Hogan, Fulton Hogan must send to the Panel, in electronic form, a copy of the notice and any documents accompanying it that relate to the meeting; and
- (g) every annual report of Fulton Hogan issued during the buyback period must include the following matters, in a prominent position:
  - (i) a summary of the terms and conditions of the exemption in clause 5 and its effect:

- (ii) a summary of the terms of the buyback, as approved at the meeting at which shareholder approval of the buyback was given:
- (iii) a statement, as at the end of the financial year to which the report relates, of the number of voting securities acquired by Fulton Hogan under the buyback; and
- (h) following the issue of the first annual report during the buyback period and up to the issue of the first annual report after the end of the buyback period, Fulton Hogan must disclose on its Internet site the information required under clauses 6(g)(ii) and (iii) to be disclosed in an annual report.

**7 Further conditions of exemption in clause 5 in relation to each Fulton/Hogan family shareholders' group**

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

- (a) no person in a Fulton/Hogan family shareholders' group, nor any associate of a person in a Fulton/Hogan family shareholders' group, may vote in favour of a resolution concerning a buyback that relates to an increase in the voting control of the persons in either family shareholders' group; and
- (b) the notice of meeting containing the proposed resolution to approve the buyback must contain, or be accompanied by, the following:
  - (i) a description of the persons in that family shareholders' group whose increase in voting control would result, or could result, from the buyback:
  - (ii) the maximum percentage (the **approved maximum percentage**) of all voting securities on issue that the persons in that family shareholders' group could hold or control, in aggregate, if Fulton Hogan acquired the approved maximum buyback number of voting securities:
  - (iii) the maximum percentage (the **approved maximum percentage with associates**) of all voting securities on issue that the persons in that family shareholders' group, and the associates of those persons, could hold or control, in aggregate, if Fulton Hogan acquired the approved maximum buyback number of voting securities:
  - (iv) a statement to the effect that the increase in the voting control of the persons in that family shareholders' group that could result from the buyback, if approved, would be permitted as an exception to rule 6(1) of the Code under clause 5 of the Takeovers Code (Fulton Hogan Limited) Exemption Notice 2015:
  - (v) a report from an independent adviser, in relation to the increase in the voting control of the persons in that family shareholders' group that could result from the buyback, that complies with rule 18 of the Code as if references in that rule to -

- (A) an acquisition under rule 7(c) of the Code were references to the buyback from the persons in that group; and
  - (B) a notice of meeting were references to the notice of meeting referred to in this clause 7(b):
- (vi) the assumptions on which the particulars referred to in clauses 7(b)(ii) and (iii) are based, including –
  - (A) that none of the persons in that family shareholders’ group participate in the buyback; and
  - (B) the assumptions referred to in clause 6(c); and
- (c) if Fulton Hogan, or a person in that family shareholders’ group, publishes, or sends to shareholders of Fulton Hogan, a statement or information that relates to the meeting but that was not required by the Code, or by this exemption notice, to be published or sent, that person must, at the same time, send to the Panel, in electronic form, a copy of that statement or information; and
- (d) every annual report of Fulton Hogan issued during the buyback period must include the following matters, in a prominent position:
  - (i) a statement, as at the end of the financial year to which the report relates, of -
    - (A) the number of voting securities on issue that are held or controlled, in aggregate, by the persons in that family shareholders’ group, and the percentage of all voting securities on issue that that number represents:
    - (B) the percentage of all voting securities on issue that are held or controlled, in aggregate, by the persons in that family shareholders’ group and the associates of those persons:
    - (C) the maximum percentage of all voting securities on issue that the persons in that family shareholders’ group could hold or control, in aggregate, if Fulton Hogan acquires the approved maximum buyback number of voting securities:
    - (D) the maximum percentage of all voting securities on issue that the persons in that family shareholders’ group, and the associates of those persons, could hold or control, in aggregate, if Fulton Hogan acquires the approved maximum buyback number of voting securities:
  - (ii) a statement of the assumptions on which the particulars referred to in clause 7(d)(i) are based; and
- (e) following the issue of the first annual report during the buyback period and up to the issue of the first annual report after the end of the buyback period, Fulton



Hogan must disclose on its Internet site the information required under clause 7(d) to be disclosed in an annual report; and

- (f) during the buyback period and up to the issue of the first annual report after the end of the buyback period, Fulton Hogan must -
  - (i) announce on its Internet site any aggregate increase of 1% or more in the voting securities held or controlled, in aggregate, by the persons in that family shareholders' group since the date of the last disclosure under this subparagraph or, where no prior disclosure has been made, since the date of the first aggregate increase of 1% or more in the voting securities held or controlled, in aggregate, by the persons in that group; and
  - (ii) maintain every such announcement on its Internet site in a prominent position; and
- (g) an announcement referred to in clause 7(f)(i) must be made as soon as Fulton Hogan is aware, or ought to be aware, that the relevant increase has occurred; and
- (h) during the buyback period, the persons in that family shareholders' group must not increase the aggregate voting control of the group, or the voting control of any person in the group, by way of an other-means increase unless the other-means increase is -
  - (i) by an acquisition of voting securities approved in accordance with rule 7(c) of the Code; or
  - (ii) by an allotment of voting securities approved in accordance with rule 7(d) of the Code; or
  - (iii) permitted by another exemption granted by the Panel; and
- (i) if the approval of the shareholders of Fulton Hogan is required to an other-means increase under clause 7(h)(i) or (ii), the notice of meeting containing the resolution to approve the other-means increase must contain or be accompanied by the following:
  - (i) a summary of the terms of the buyback, as approved at the meeting at which shareholder approval of the buyback was given:
  - (ii) a statement, as at the date of the notice of meeting, of the following particulars:
    - (A) the number of voting securities acquired by Fulton Hogan under the buyback:
    - (B) the number and percentages referred to in clause 7(d)(i):
    - (C) the maximum percentage of all voting securities on issue that the persons in that family shareholders' group could hold or control, in

aggregate, after the other-means increase and the completion of the acquisition by Fulton Hogan under the buyback of the approved maximum buyback number of voting securities:

- (D) the maximum percentage of all voting securities on issue that the persons in that family shareholders' group, and the associates of those persons, could hold or control, in aggregate, after the other-means increase and the completion of the acquisition by Fulton Hogan under the buyback of the approved maximum buyback number of voting securities:
- (iii) a statement of the assumptions on which the particulars referred to in clause 7(i)(ii) are based; and
- (j) if an other-means increase is approved in accordance with clause 7(h)(i) or (ii):
  - (i) the reference in clause 7(b)(ii) to the approved maximum percentage for that family shareholders' group must be taken to be a reference to the approved maximum percentage adjusted to take account of the other-means increase; and
  - (ii) the reference in clause 7(b)(iii) to the approved maximum percentage with associates for that family shareholders' group must be taken to be a reference to the approved maximum percentage with associates adjusted to take account of the other-means increase.

### *Employee share scheme and share bonus scheme allotments*

#### **8 Exemption from rule 6(1) of Code in respect of allotments to Fulton/Hogan family shareholders under employee share scheme or share bonus scheme**

Each person in a Fulton/Hogan family shareholders' group is exempted from rule 6(1) of the Code in respect of any increase in that person's voting control that results from that person being allotted voting securities under –

- (a) the employee share scheme; or
- (b) the share bonus scheme.

#### **9 Conditions of exemption in clause 8 in relation to each Fulton/Hogan family shareholders' group**

The exemption in clause 8 is subject to the conditions that—

- (a) the allotment under the employee share scheme or share bonus scheme that relates to an increase in the voting control of the persons in either family shareholders' group (the **allotment**) must be approved by an ordinary resolution of the shareholders of Fulton Hogan in respect of each family shareholders' group; and

- (b) no person in a Fulton/Hogan family shareholders' group, nor any associate of a person in a Fulton/Hogan family shareholders' group, may vote in favour of a resolution concerning the allotment; and
- (c) the notice of meeting containing the proposed resolutions to approve the allotment must contain, or be accompanied by, the following:
  - (i) the consideration per voting security for the allotment, or the manner in which the consideration would be determined, and when it would be payable:
  - (ii) the reasons for the allotment:
  - (iii) a description of the persons in that family shareholders' group whose increase in voting control would result, or could result, from the allotment:
  - (iv) the following particulars of the voting securities that may, if the resolution is carried, be allotted under the allotment:
    - (A) the maximum number of voting securities that could be allotted:
    - (B) the maximum number of voting securities that could be allotted, expressed as a percentage of all voting securities on issue after the allotment:
    - (C) the maximum percentage (the **approved maximum allotment percentage**) of all voting securities on issue that the persons in that family shareholders' group could hold or control, in aggregate, if the maximum number of voting securities were allotted under the allotment:
    - (D) the maximum percentage (the **approved maximum allotment percentage with associates**) of all voting securities on issue that the persons in that family shareholders' group, and the associates of those persons, could hold or control, in aggregate, if the maximum number of voting securities were allotted under the allotment:
  - (v) a statement to the effect that the increase in the voting control of the persons in that family shareholders' group that could result from the allotment, if approved, would be permitted as an exception to rule 6(1) of the Code under clause 8 of the Takeovers Code (Fulton Hogan Limited) Exemption Notice 2015:
  - (vi) a report from an independent adviser, in relation to the increase in the voting control of the persons in that family shareholders' group that could result from the allotment, that complies with rule 18 of the Code as if references in that rule to -
    - (A) an allotment under rule 7(d) of the Code were references to the allotment; and

- (B) a notice of meeting were references to the notice of meeting referred to in this clause 9(c):
  - (vii) a statement by the directors of Fulton Hogan, in relation to the allotment, that complies with rule 19 of the Code as if the reference in that rule to an allotment under rule 7(d) of the Code were a reference to the allotment:
  - (viii) the calculation date:
  - (ix) the assumptions on which the particulars referred to in clause 9(c)(iv) are based, including that there is no change in the total number of voting securities on issue between the calculation date and the expiry of this exemption notice, other than as a result of the allotment:
  - (x) a summary of the terms and conditions of the exemption in clause 8; and
- (d) the notice of meeting, or the accompanying information, displays, in a prominent position, a disclaimer stating that, by granting the exemptions contained in this notice, the Panel is -
  - (i) neither endorsing nor supporting the accuracy or reliability of the contents of the notice of meeting or the accompanying information; and
  - (ii) not implying it has a view on the merits of the proposed allotment; and
- (e) the form of the notice of meeting is approved by the Panel; and
- (f) at the same time that the notice of meeting is sent to shareholders of Fulton Hogan, Fulton Hogan also sends to the Panel, in electronic form, a copy of the notice and any documents accompanying it that relate to the meeting; and
- (g) if Fulton Hogan, or a person in that family shareholders' group, publishes, or sends to shareholders of Fulton Hogan, a statement or information that relates to the meeting but is not required by the Code, or by this exemption notice, to be published or sent, that person must, at the same time, send to the Panel, in electronic form, a copy of that statement or information; and
- (h) every annual report of Fulton Hogan issued from the year after the resolutions are passed until the expiry of this notice must include the following matters, in a prominent position:
  - (i) a summary of the terms and conditions of the exemption in clause 8 and its effect:
  - (ii) a general description of the allotment:
  - (iii) a statement, as at the end of the financial year to which the report relates, of –

- (A) the number of voting securities already allotted under the allotment, in aggregate, to the persons in that family shareholders' group:
  - (B) the number of voting securities on issue that are held or controlled, in aggregate, by the persons in that family shareholders' group, and the percentage of all voting securities on issue that that number represents:
  - (C) the aggregate of the percentages of all voting securities on issue that are held or controlled by the persons in that family shareholders' group and the associates of those persons:
  - (D) the maximum percentage of all voting securities on issue that could be held or controlled, in aggregate, by persons in that family shareholders' group if the maximum number of voting securities were allotted under the allotment:
  - (E) the maximum aggregate of the percentages of all voting securities on issue that could be held or controlled by persons in that family shareholders' group and the associates of those persons if the maximum number of voting securities were allotted under the allotment:
  - (F) the assumptions on which these particulars are calculated; and
- (i) following the issue of the first annual report after the date of the meeting that approves the allotment and up to the issue of the first annual report after the expiry of this exemption notice, Fulton Hogan must disclose on its Internet site the information required under clauses 9(h)(ii) and (iii) to be disclosed in an annual report; and
  - (j) from the date of the meeting that approves the allotment and up to the issue of the first annual report after the expiry of this exemption notice, Fulton Hogan must –
    - (i) announce on its Internet site any aggregate increase of 1% or more in the voting securities held or controlled, in aggregate, by the persons in that family shareholders' group since the date of the last disclosure under this subparagraph or, where no prior disclosure has been made, since the date of the first aggregate increase of 1% or more in the voting securities held or controlled, in aggregate, by the persons in that group; and
    - (ii) maintain every such announcement on its Internet site in a prominent position; and
  - (k) an announcement referred to in clause 9(j)(i) must be made as soon as Fulton Hogan is aware, or ought to be aware, that the relevant increase has occurred; and

- (l) from the date of the meeting that approves the allotment until the expiry of this exemption notice, the persons in that family shareholders' group must not increase the aggregate voting control of the group, or the voting control of any person in the group, by way of an other-means increase unless the other-means increase is –
  - (i) by an acquisition of voting securities approved in accordance with rule 7(c) of the Code; or
  - (ii) by an allotment of voting securities approved in accordance with rule 7(d) of the Code; or
  - (iii) permitted by another exemption granted by the Panel; and
- (m) if the approval of the shareholders of Fulton Hogan is required to an other-means increase under clause 9(l)(i) or (ii), the notice of meeting containing the resolution to approve the other-means increase must contain or be accompanied by the following:
  - (i) a general description of the allotment, as approved at the meeting at which shareholders' approval of the allotment was given:
  - (ii) a statement, as at the date of the notice of meeting, of the following particulars:
    - (A) the number and percentages referred to in clause 9(h):
    - (B) the maximum percentage of all voting securities on issue that the persons in that family shareholders' group could hold or control, in aggregate, after the other-means increase and the allotment:
    - (C) the maximum percentage of all voting securities on issue that the persons in that family shareholders' group, and the associates of those persons, could hold or control, in aggregate, after the other-means increase and the allotment:
  - (iii) a statement of the assumptions on which the particulars referred to in clause 9(m)(ii) are based; and
- (n) if an other-means increase is approved in accordance with clause 9(l)(i) or (ii):
  - (i) the reference in clause 9(c)(iv)(C) to the approved maximum allotment percentage for that family shareholders' group must be taken to be a reference to the approved maximum allotment percentage adjusted to take account of the other-means increase; and
  - (ii) the reference in clause 9(c)(iv)(D) to the approved maximum allotment percentage with associates for that family shareholders' group must be taken to be a reference to the approved maximum allotment percentage with associates adjusted to take account of the other-means increase.

## *Voting rights attachment*

### **10 Exemption from rule 6(1) of Code for Fulton/Hogan family shareholders in respect of voting rights attachment**

Each person in a Fulton/Hogan family shareholders' group is exempted from rule 6(1) of the Code in respect of any increase in that person's voting control that results from a voting rights attachment.

### **11 Conditions of exemption in clause 10**

The exemption in clause 10 is subject to the conditions that—

- (a) the voting rights attachment must be approved by ordinary resolution of the shareholders of Fulton Hogan in respect of each family shareholders' group; and
- (b) the notice of meeting containing the proposed resolutions to approve the voting rights attachment in respect of each family shareholders' group must contain, or be accompanied by, the following:
  - (i) particulars of the 2013 rights issue:
  - (ii) the reasons for approving the voting rights attachment:
  - (iii) a statement by the directors of Fulton Hogan, in relation to the voting rights attachment, that complies with rule 19 of the Code as if the reference in that rule to an allotment under rule 7(d) of the Code were a reference to that attachment:
  - (iv) the calculation date:
  - (v) a summary of the terms and conditions of the exemption in clause 10; and
- (c) the notice of meeting, or the accompanying information, displays, in a prominent position, a disclaimer stating that, by granting the exemptions contained in this notice, the Panel is –
  - (i) neither endorsing nor supporting the accuracy or reliability of the contents of the notice of meeting or the accompanying information; and
  - (ii) not implying it has a view on the merits of the proposed voting rights attachment; and
- (d) the form of the notice of meeting is approved by the Panel; and
- (e) at the same time that the notice of meeting is sent to shareholders of Fulton Hogan, Fulton Hogan must send to the Panel, in electronic form, a copy of the notice and any documents accompanying it that relate to the meeting.

**12 Further conditions of exemption in clause 10 in relation to each Fulton/Hogan family shareholders' group**

The exemption in clause 10 is subject to the further conditions that—

- (a) no person in a Fulton/Hogan family shareholders' group, nor any associate of a person in a Fulton/Hogan family shareholders' group, may vote in favour of a resolution concerning a voting rights attachment that relates to an increase in the voting control of the persons in either family shareholders' group; and
- (b) the notice of meeting containing the proposed resolution to approve the voting rights attachment must contain, or be accompanied by, the following:
  - (i) the names of the persons in that family shareholders' group who hold or control equity securities to which voting rights could attach under the voting rights attachment:
  - (ii) particulars of the equity securities issued to the persons in that family shareholders' group to which voting rights could attach under the voting rights attachment, including -
    - (A) the maximum number of equity securities to which voting rights could attach (the **approved maximum equity securities number**) that the persons in that family shareholders' group hold or control, in aggregate:
    - (B) the percentage of the aggregate of all voting securities on issue, and all equity securities on issue to which voting rights could attach, that the approved maximum equity securities number represents:
    - (C) the maximum percentage of all voting securities on issue that the persons in that family shareholders' group could hold or control, in aggregate, after completion of the voting rights attachment:
    - (D) the maximum percentage of all voting securities on issue that the persons in that family shareholders' group, and the associates of those persons, could hold or control, in aggregate, after completion of the voting rights attachment:
    - (E) the assumptions on which the particulars in clause 12(b)(ii)(A) to (D) are calculated, which must include -
      - (I) that the number of voting securities on issue is the number of voting securities on issue on the calculation date:
      - (II) that there is no change in the total number of voting securities on issue between the calculation date and the completion of the voting rights attachment, other than as a result of that attachment:



- (III) that, in relation to clause 12(b)(ii)(A) to (C), voting rights attach to all equity securities that the persons in that family shareholders' group could hold or control:
  - (IV) that, in relation to clause 12(b)(ii)(D), voting rights attach to all equity securities that the persons in that family shareholders' group, and the associates of those persons, could hold or control:
  - (V) any other assumptions that are reasonably necessary to ensure that shareholders in Fulton Hogan are provided with the material information required for them to be able to determine whether to approve the resolution:
- (iii) a statement to the effect that the increase in the voting control of the persons in that family shareholders' group that could result from the voting rights attachment, if approved, would be permitted as an exception to rule 6(1) of the Code under clause 10 of the Takeovers Code (Fulton Hogan Limited) Exemption Notice 2015:
  - (iv) a report from an independent adviser in relation to the increase in the voting control of the persons in that family shareholders' group that could result from the voting rights attachment, that complies with rule 18 of the Code as if references in that rule to -
    - (A) an allotment under rule 7(d) of the Code were references to that attachment; and
    - (B) a notice of meeting were references to the notice of meeting referred to in this clause 12(b); and
  - (c) if Fulton Hogan, or a person in that family shareholders' group, publishes, or sends to shareholders of Fulton Hogan, a statement or information that relates to the meeting but that was not required by the Code, or by this exemption notice, to be published or sent, that person must, at the same time, send to the Panel, in electronic form, a copy of that statement or information.

***Further condition of exemptions in clauses 5, 8 and 10 for persons in Fulton/Hogan family shareholders group***

**13 Further condition of exemptions in clauses 5, 8 and 10 for persons in Fulton/Hogan family shareholders' group**

The exemptions in clauses 5, 8 and 10 are subject to the further condition that each notice of meeting prepared under the conditions for the exemptions prominently discloses, or is accompanied by prominent disclosure of, the following, calculated as at the calculation date:

- (a) the maximum percentage of voting securities that could be held or controlled by each family shareholders' group as a result of the combined effect of the approved buyback, the approved employee share scheme allotment, the approved share bonus scheme allotment, and the approved voting rights attachment; and
- (b) the maximum percentage of voting securities that could be held or controlled by each family shareholders' group, and the associates of any person or persons in that family shareholders' group, as a result of the combined effect of the approved buyback, the approved employee share scheme allotment, the approved share bonus scheme allotment, and the approved voting rights attachment.

### *Intra-family transfers*

#### **14 Exemption from rule 6(1) of Code in respect of intra-family transfers**

Each person in a Fulton/Hogan family shareholders' group is exempted from rule 6(1) of the Code in respect of any increase in that person's voting control that results from a transfer of voting securities to that person under an intra-family transfer.

#### **15 Conditions of exemption in clause 14**

The exemption in clause 14 is subject to the conditions that—

- (a) the maximum percentage of voting securities that may be transferred to persons in that family shareholders' group under intra-family transfers is approved by an ordinary resolution of the shareholders of Fulton Hogan in respect of that family shareholders' group and before any intra-family transfer to persons in that group; and
- (b) no person in a Fulton/Hogan family shareholders' group, nor any associate of a person in a Fulton/Hogan family shareholders' group, may vote in favour of a resolution approving a maximum percentage of voting securities that may be transferred to persons in either family shareholders' group under intra-family transfers; and
- (c) the notice of meeting containing the proposed resolution to approve a maximum percentage of voting securities that may be transferred to persons in that family shareholders' group under intra-family transfers must contain, or be accompanied by, the following:
  - (i) the reasons for the intra-family transfers:
  - (ii) a description of the persons in that family shareholders' group whose increase in voting control would result, or could result, from the transfer of securities, under an intra-family transfer approved by the proposed resolution:

- (iii) particulars of the maximum percentage of voting securities that may be transferred under intra-family transfers to persons in that group in any 12-month period;
  - (iv) a statement to the effect that the increases in the voting control of the persons in that group that could result from intra-family transfers, if approved, would be permitted as an exception to rule 6(1) of the Code under clause 14 of the Takeovers Code (Fulton Hogan Limited) Exemption Notice 2015;
  - (v) a summary of the terms and conditions of the exemption in clause 14; and
- (d) at the same time that the notice of meeting is sent to shareholders of Fulton Hogan, Fulton Hogan also sends to the Panel, in electronic form, a copy of the notice and any document accompanying it that relates to the meeting; and
  - (e) if Fulton Hogan, or a person in that family shareholders' group, publishes or sends to the shareholders of Fulton Hogan a statement or information that relates to the meeting but is not required by the Code, or by this exemption notice, to be published or sent, that person must, at the same time, send to the Panel, in electronic form, a copy of that statement or information; and
  - (f) the maximum number of voting securities that may be transferred under intra-family transfers to persons in that family shareholders' group in a 12-month period is voting securities that carry in aggregate not more than 15% of the total voting rights in Fulton Hogan at the commencement of the 12-month period; and
  - (g) a transfer of voting securities that increases the voting control of a person in that family shareholders' group is not to be taken into account in determining whether the maximum number of voting securities permitted to be transferred by clause 15(f) has been exceeded, if the increase in voting control resulting from that transfer is exempt from rule 6(1) of the Code under any of the following:
    - (i) the Takeovers Code (Trustees of Family Trusts) Exemption Notice 2012;
    - (ii) clauses 20, 21 or 22 of the Takeovers Code (Class Exemptions) Notice (No 2) 2001;
    - (iii) any other exemption granted in respect of Fulton Hogan by the Panel; and
  - (h) every annual report of Fulton Hogan issued from the year after a resolution referred to in clause 15(a) is passed until the expiry of this notice contains, or is accompanied by, information prominently setting out—
    - (i) a general description of the intra-family transfers to persons in that family shareholders' group; and
    - (ii) a summary of the terms and the conditions of the exemption in clause 14 and its effect; and

- (iii) the maximum percentage of voting securities that can be transferred under intra-family transfers to persons in that family shareholders' group in any 12-month period.

Dated at Auckland this 31<sup>st</sup> day of August 2015:

[signed]

David Oliver Jones

Chairman.

## Statement of reasons

This notice applies to acts or omissions occurring on or after 1 September 2015 and expires on 31 October 2018.

The Takeovers Panel (the **Panel**) has granted exemptions to—

- any person who is a Fulton family shareholder (as that term is defined in this notice) from rule 6(1) of the Code, subject to conditions, in relation to any increase in the percentage of voting securities that are held or controlled (**voting control**) by that person that results from—
  - Fulton Hogan Limited (**Fulton Hogan**) acquiring its own voting securities under Fulton Hogan's buyback programme (the **buyback**);
  - allotments of voting securities under Fulton Hogan's employee share scheme;
  - allotments of voting securities under Fulton Hogan's share bonus scheme;
  - the attachment of voting rights to equity securities which that person holds or controls and which were issued under the rights issue of equity securities by Fulton Hogan in accordance with the offer by Fulton Hogan to its shareholders in respect of which Fulton Hogan issued and registered a prospectus on 17 October 2013 (the **2013 rights issue**);
  - transfers of voting securities between persons who are Fulton family shareholders;
- any person who is a Hogan family shareholder (as that term is defined in this notice) from rule 6(1) of the Code, subject to conditions, in relation to any increase in that person's voting control that results from—
  - Fulton Hogan acquiring its own voting securities under the buyback;
  - allotments of voting securities under Fulton Hogan's employee share scheme;
  - allotments of voting securities under Fulton Hogan's share bonus scheme;
  - the attachment of voting rights to equity securities which that person holds or controls and which were issued under the 2013 rights issue;
  - transfers of voting securities between persons who are Hogan family shareholders.

It is arguable that the Fulton family shareholders are associates for the purposes of the Code. The exemptions were considered on the basis that the Fulton family shareholders are associates for the purposes of the Code. The persons who comprise the Fulton family shareholders hold or control more than 20% of the voting securities in Fulton Hogan. Given this, if any person who is a Fulton family shareholder increases their voting control as a result of the transactions referred to above, that person would breach rule 6(1) of the Code.

It is also arguable that the Hogan family shareholders are associates for the purposes of the Code. Their exemptions were also considered on the basis that the Hogan family

shareholders are associates for the purposes of the Code. The persons who comprise the Hogan family shareholders hold or control more than 20% of the voting securities in Fulton Hogan. If any person who is a Hogan family shareholder increases their voting control as a result of the transactions referred to above, that person would breach rule 6(1) of the Code.

The Fulton family shareholders are not associated with any of the Hogan family shareholders, and the Hogan family shareholders are not associated with any of the Fulton family shareholders. However, the conditions of the exemptions restrict each family group from voting to approve resolutions in favour of the other group in order to ensure that fully informed disinterested shareholders determine the outcome of the resolutions.

### **Buybacks**

The Panel considers that the exemptions for any person who is a Fulton family shareholder or a Hogan family shareholder from rule 6(1) of the Code in relation to any future increases in that person's voting control that result from Fulton Hogan acquiring its own voting securities under the buyback are appropriate and consistent with the objectives of the Code for the reason that the conditions to the exemptions require that the buyback is approved by shareholders. Multiple resolutions in respect of shareholder approval are permitted, and the conditions to the exemption ensure that the disinterested shareholders will have an opportunity to vote on the potential increase in voting control by the Fulton family shareholders and the Hogan family shareholders as a result of the buyback.

### **Allotments of voting securities to Fulton family shareholders under Fulton Hogan's employee share scheme and share bonus scheme**

The Panel considers that the exemption for any person who is a Fulton family shareholder from rule 6(1) of the Code in relation to any increase in that person's voting control that results from that person being allotted voting securities under Fulton Hogan's employee share scheme or share bonus scheme is appropriate and consistent with the objectives of the Code for the following reasons:

- all disinterested shareholders will have an opportunity to vote on the potential allotment of voting securities to all members of the Fulton family shareholders in aggregate under those schemes;
- as the Fulton family shareholders are assumed to all be associates for the purposes of the Code and essentially one voting group, the conditions of the exemptions allow the notice of meeting to specify the maximum number of voting securities that will be allotted to all members of the Fulton family shareholders in aggregate;
- if the disinterested shareholders approve the potential maximum allotment of voting securities to the Fulton family shareholders, then, by implication, the shareholders also approve any lesser percentage of voting rights that may be acquired due to the allotment of voting securities under those schemes.

## **Allotments of voting securities to Hogan family shareholders under Fulton Hogan's employee share scheme and share bonus scheme**

The Panel considers that the exemption for any person who is a Hogan family shareholder from rule 6(1) of the Code in relation to any increase in that person's voting control that results from that person being allotted voting securities under Fulton Hogan's employee share scheme or share bonus scheme is appropriate and consistent with the objectives of the Code for the following reasons:

- all disinterested shareholders will have an opportunity to vote on the potential allotment of voting securities to all members of the Hogan family shareholders in aggregate under those schemes;
- as the Hogan family shareholders are assumed to all be associates for the purposes of the Code and essentially one voting group, the conditions of the exemptions allow the notice of meeting to specify the maximum number of voting securities that will be allotted to all members of the Hogan family shareholders in aggregate;
- if the disinterested shareholders approve the potential maximum allotment of voting securities to the Hogan family shareholders, then, by implication, the shareholders also approve any lesser percentage of voting rights that may be acquired due to the allotment of voting securities under those schemes.

## **2013 rights issue**

The Panel considers that the exemptions for the Fulton family shareholders and the Hogan family shareholders from rule 6(1) of the Code in relation to any increases in their voting control that result from the attachment of voting rights to equity securities which were issued under the 2013 rights issue are appropriate and consistent with the objectives of the Code for the following reasons:

- the structure of the 2013 rights issue gives rise to technical difficulties in respect of compliance with rules 7(d) and 16 of the Code, in that it would not be possible for the notice of meeting containing the proposed resolutions in respect of the attachment of voting rights to securities issued under the 2013 rights issue to comply with rule 16;
- all disinterested shareholders will have an opportunity to vote on the potential attachment of voting rights to equity securities issued under the 2013 rights issue, where such attachment relates to any Fulton family shareholder's increase in voting control;
- as the Fulton family shareholders are assumed to all be associates for the purposes of the Code and essentially one voting group, the conditions of the exemptions allow the notice of meeting to specify the maximum number of equity securities held or controlled by the Fulton family shareholders in aggregate to which voting rights could attach;
- if the disinterested shareholders approve the potential maximum percentage of all voting securities that could be held or controlled by the Fulton family shareholders in aggregate after completion of the attachment of voting rights to equity securities issued under the 2013 rights issue, then, by implication, the shareholders also approve any lesser percentage of voting rights that may be acquired due to such attachment;

- all disinterested shareholders will have an opportunity to vote on the potential attachment of voting rights to equity securities issued under the 2013 rights issue, where such attachment relates to any Hogan family shareholder's increase in voting control;
- as the Hogan family shareholders are assumed to all be associates for the purposes of the Code and essentially one voting group, the conditions of the exemptions allow the notice of meeting to specify the maximum number of equity securities held or controlled by the Hogan family shareholders in aggregate to which voting rights could attach;
- if the disinterested shareholders approve the potential maximum percentage of all voting securities that could be held or controlled by the Hogan family shareholders in aggregate after completion of the attachment of voting rights to equity securities issued under the 2013 rights issue, then, by implication, the shareholders also approve any lesser percentage of voting rights that may be acquired due to such attachment;
- rights issues are an acknowledged method of providing incentives to shareholders to participate in and contribute to a company's growth as well as providing a company with a means of raising equity capital in New Zealand.

#### **Transfers of voting securities between Fulton family shareholders**

The Panel considers that the exemption for any person who is a Fulton family shareholder from rule 6(1) of the Code in relation to any increase to that person's voting control that results from that person being transferred voting securities in Fulton Hogan from another person who is also a Fulton family shareholder is appropriate and consistent with the objectives of the Code for the following reasons:

- the transactions covered by the exemptions are confined to those that take place under Fulton Hogan's constitution, the principal purpose of which is to facilitate transfers of voting securities between family interests, not changes of control of voting rights;
- there are restrictions on the transfer of voting securities that may take place in any 12-month period to limit the possibility of a change of control occurring without using one of the mechanisms of the Code;
- intra-family transfers permitted by the exemption will not result in an effective change in the control of voting rights in Fulton Hogan.

#### **Transfers of voting securities between Hogan family shareholders**

The Panel considers that the exemption for any person who is a Hogan family shareholder from rule 6(1) of the Code in relation to any increase to that person's voting control that results from that person being transferred voting securities in Fulton Hogan from another person who is also a Hogan family shareholder is appropriate and consistent with the objectives of the Code for the following reasons:

- the transactions covered by the exemptions are confined to those that take place under Fulton Hogan's constitution, the principal purpose of which is to facilitate transfers of voting securities between family interests, not changes of control of voting rights;



- there are restrictions on the transfer of voting securities that may take place in any 12-month period to limit the possibility of a change of control occurring without using one of the mechanisms of the Code;
- intra-family transfers permitted by the exemption will not result in an effective change in the control of voting rights in Fulton Hogan.

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Date of notification in *Gazette*: 10 September 2015.