



## Takeovers Code (Pacific Retail Group Limited and ElderCare New Zealand Limited) Exemption Notice 2003

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

### Contents

1	Title	5	Exemption
2	Application	6	Conditions
3	Expiry	7	Revocation
4	Interpretation		

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### Notice

#### 1 Title

This notice is the Takeovers Code (Pacific Retail Group Limited and ElderCare New Zealand Limited) Exemption Notice 2003.

#### 2 Application

This notice applies to acts or omissions occurring on or after 6 November 2002.

#### 3 Expiry

This notice expires on the close of 6 November 2003.

#### 4 Interpretation

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

**Act** means the Takeovers Act 1993

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

**Cullen Group** means Cullen Group Limited

**Cullen Investments** means Cullen Investments Limited

**current shareholders of Victoria Equities** means Eric John Watson, Maurice Kidd, William John Strowger, and Philip Newland

**ElderCare** means ElderCare New Zealand Limited

**notes** means the convertible notes issued by ElderCare to Cullen Investments on 2 November 2001

**Pacific Retail** means Pacific Retail Group Limited

**transfer** means the transfer to Cullen Group of Eric John Watson's entire legal and beneficial title to the issued share capital of Cullen Investments

**Trust** means Valley Trust established by a trust deed dated 31 October 2002

**trust deed** means the trust deed of the Trust in force as at 31 October 2002

**Victoria Equities** means Victoria Equities 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

Cullen Group, Victoria Equities, and the current shareholders of Victoria Equities are exempted from rule 6(1) of the Code in respect of—

- (a) any increase in their control of voting rights in Pacific Retail that results from the transfer; and
- (b) any increase in their control of voting rights in ElderCare that results from the conversion of the notes after the transfer.

## 6 Conditions

The exemption is subject to the following conditions:

- (a) Victoria Equities, as trustee of the Trust, must be the only shareholder of Cullen Group;
- (b) the trust deed must provide that—
  - (i) Eric John Watson is the only "appointer" (as that term is defined in the trust deed):

- (ii) the beneficiaries of the trust are Eric John Watson and any individuals and charities appointed by him; and
- (iii) the approval of Eric John Watson must be obtained before the trust deed is amended.

## 7 Revocation

The Takeovers Code (Pacific Retail Group Limited and ElderCare New Zealand Limited) Exemption Notice 2002 (SR 2002/388) is revoked.

Dated at Auckland this 9th day of March 2003.

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

[L.S.]

D. O. Jones,  
Deputy Chairperson.

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## Statement of reasons

This notice applies to acts or omissions occurring on or after 6 November 2002, and expires on 6 November 2003.

The Takeovers Panel has previously granted an exemption from rule 6(1) of the Takeovers Code to Cullen Group Limited (**Cullen Group**), Victoria Equities Limited (**Victoria Equities**), and the “current shareholders of Victoria Equities” in respect of—

- any increase in their control of voting rights in Pacific Retail Group Limited (**Pacific Retail**) resulting from the acquisition by Cullen Group of shares in Cullen Investments Limited (**Cullen Investments**); and
- any increase in their control of voting rights in ElderCare New Zealand Limited (**ElderCare**) resulting from the conversion of ElderCare convertible notes after the acquisition by Cullen Group of shares in Cullen Investments (the Takeovers Code (Pacific Retail Limited and ElderCare New Zealand

Limited) Exemption Notice 2002 (SR 2002/388) (the **2002 notice**) refers).

The 2002 notice relates to increases in control of voting rights that resulted from the reorganisation of the shareholdings of Eric John Watson.

In the 2002 notice, **current shareholders of Victoria Equities** was defined to mean Eric John Watson, Leslie Watson Archer, Martin Goldfinch, and Philip Newland. However, the shareholders of Victoria Equities on 6 November 2002 were in fact Eric John Watson, Maurice Kidd, William John Strowger, and Philip Newland.

This notice, which applies to acts or omissions occurring on or after 6 November 2002, replaces the 2002 notice. It is in similar terms to the 2002 notice, except that **current shareholders of Victoria Equities** is defined to mean Eric John Watson, Maurice Kidd, William John Strowger, and Philip Newland.

The Takeovers Panel considers that—

- it is appropriate to grant the exemption in this notice because—
  - although the reorganisation resulted in an indirect change in the form of control of Pacific Retail and ElderCare, there was no effective change in the control of voting rights in those companies; and
  - shareholders of Pacific Retail or ElderCare were not disadvantaged in not having the opportunity to vote on the reorganisation at a meeting of shareholders, as the reorganisation had no real effect on those shareholders; and
  - the non-compliance with the Takeovers Code by Maurice Kidd and William John Strowger was inadvertent; and
- the exemption in this notice is consistent with the objectives of the Takeovers Code because—
  - the reorganisation did not result in an effective change in control of Pacific Retail or ElderCare, nor did it disadvantage shareholders of those companies; and

- the exemption avoids unnecessary compliance costs that would be incurred if it were not granted.
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Issued under the authority of the Acts and Regulations Publication Act 1989.  
Date of notification in *Gazette*: 20 March 2003.  
This notice is administered by the Takeovers Panel.

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