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Office of the Minister of Commerce and Consumer Affairs
Chair, Cabinet Economic Growth and Infrastructure Committee

Takeovers Code: Proposed Amendments

Proposal

- 1 This paper seeks approval to amend the *Takeovers Code Approval Order 2000* (the **regulations**) and to make an amendment to the *Unsolicited Electronic Messages Regulations 2007*.

Background

- 2 The Takeovers Panel (the **Panel**) is an independent Crown entity established under the Takeovers Act 1993 (the **Act**) to administer and enforce the Takeovers Code (the **Code**). The Panel is a body of experts experienced in takeovers and capital markets.
- 3 The Code is a schedule to the regulations. Its purpose is to ensure transparency and equitable processes for control-change transactions in the shares of companies covered by the Code (**Code companies**). This objective supports the integrity of the capital markets environment.
- 4 As part of their broader function of administering and enforcing the Code, the Panel is required to:
 - 4.1 keep under review the law relating to takeovers of Code companies; and
 - 4.2 recommend to the Minister of Commerce and Consumer Affairs any changes to that law that it considers necessary.
- 5 Under its law review function, the Panel periodically consults on proposed changes and makes recommendations to the Minister of Commerce and Consumer Affairs. These recommendations often stem from difficulties or inefficiencies in Code compliance experienced by users. Users are predominantly legal and accounting practitioners who advise clients that are subject to the Code. Previous recommendations for technical changes were made in 2003, 2005, 2008 and 2012.
- 6 The Panel's latest recommendations were provided to me in March 2017. These recommendations included changes to the Act and to the regulations. The Act changes were approved by Cabinet for inclusion in Regulatory Systems Bill (No. 2) (**RSB2**) [CAB-17-MIN-0164].
- 7 The changes to the Act will follow a parallel process. RSB2 is expected to be released as an exposure bill in August 2017 and to be introduced into the house by the end of 2017 [CAB-16-MIN-0683] [CAB-17-MIN-0164].

Comment

- 8 This paper seeks approval to amend the Code in line with the Panel's recommendations. The changes are minor and technical in nature but will improve clarity, efficiency and transparency in working with the Code.

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- 9 The proposed amendments to the regulations, set out in **ANNEX 1**, will:
- 9.1 clarify timeframes by standardising how timeframes are expressed and changing references from calendar days to working days;
 - 9.2 facilitate and prioritise electronic communication by enabling the existing communication requirements to be conducted electronically; and
 - 9.3 improve transparency by ensuring information disclosed to shareholders is clear and consistent and that shareholders are fully informed about the entity who will have a controlling interest as a result of a Code regulated transaction.
- 10 An amendment to the *Unsolicited Electronic Messages Regulations 2007* is required to support electronic communication under the Code. Presently, electronically sending an offer or notice of a takeover to shareholders would be prohibited under the *Unsolicited Electronic Messages Act 2007* as it would be considered a commercial electronic message. An exemption is sought to allow electronic communication under the Code.
- 11 I consider that an exemption is appropriate to modernise the existing requirements of sending paper based commercial messages.

Consultation

- 12 In October 2016, the Panel issued a discussion document for public comment on a series of identified issues. The document was sent to more than 2,000 lawyers, accountants, and firms and had a consultation period of six weeks.
- 13 The Panel received ten submissions. The submissions were made by a number of major law firms, the New Zealand Law Society, the New Zealand Shareholders Association, Chartered Accountants Australia and New Zealand, interested individuals, small finance firms, and crowd funding platforms.
- 14 The Panel consulted with the Privacy Commissioner in developing their recommendations. The Privacy Commissioner did not have any concerns with the proposals.
- 15 The Minister for Communications has been informed as the Minister responsible for the *Unsolicited Electronic Messages Act 2007*.
- 16 The Department of Internal Affairs, which is responsible for enforcing the *Unsolicited Electronic Messages Regulations 2007*, has been consulted and supports the proposal.
- 17 The Treasury has been consulted and the Department of Prime Minister and Cabinet has been informed.
- 18 Due to the technical nature of the proposed changes, I intend to release an exposure draft of the amended Code for public comment in the last quarter of 2017.

Financial Implications

- 19 There are no financial implications for the proposals in this paper.

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Human rights

- 20 The proposals in this paper are consistent with the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993.

Legislative implications

- 21 The *Takeovers Code Approval Order 2000* and the *Unsolicited Electronic Messages Regulations 2007* will be amended as a result of the proposals in this paper.
- 22 I intend to seek Cabinet approval for the drafted regulations in the first half of 2018. The Parliamentary Counsel Office has been informed of the timeframes.

Regulatory impact analysis

- 23 The regulatory impact analysis requirements do not apply to the proposals in this paper as the changes are minor and technical.

Publicity

- 24 I intend to release a media statement to accompany the exposure draft of the amended Code. This paper will also be published on Ministry of Business, Innovation and Employment's web site at that time.

Recommendations

The Minister of Commerce and Consumer Affairs recommends that the Committee:

- 1 **note** the Takeovers Code is a schedule to the Takeovers Code Approval Order 2000 (regulations).
- 2 **note** the Takeovers Panel identified a number of areas to improve the efficiency, workability and clarity of the Takeovers Code and in 2016 undertook public consultation on these areas.
- 3 **note** in line with its statutory functions, the Takeovers Panel has subsequently recommended to the Minister of Commerce and Consumer Affairs, changes to the Takeovers Code.
- 4 **agree** to amend the Takeovers Code in line with the proposals in Annex 1 to:
 - 4.1 clarify timeframes by standardising how timeframes are expressed and changing references from calendar days to working days;
 - 4.2 facilitate and prioritise electronic communication by enabling the existing communication requirements to be conducted electronically; and
 - 4.3 improve transparency by ensuring information disclosed to shareholders is clear and consistent and that shareholders are fully informed about the entity who will have a controlling interest as a result of a Code regulated transaction.
- 5 **agree** to amend the *Unsolicited Electronic Messages Regulations 2007* to exempt communication under the Takeovers Code from the *Unsolicited Electronic Messages Act 2007*.

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- 6 **invite** the Minister of Commerce and Consumer Affairs to issue drafting instructions to the Parliamentary Counsel Office.
- 7 **authorise** the Minister of Commerce and Consumer Affairs to make minor or technical changes, consistent with the policy decisions in this paper, on any issues that arise during drafting.
- 8 **authorise** the Minister of Commerce and Consumer Affairs to release exposure draft of the amended Code for public comment in late 2017.
- 9 **authorise** the Minister of Commerce and Consumer Affairs to approve the publication of this paper on the Ministry of Business, Innovation and Employment's website, at the time the exposure draft is released.

Authorised for lodgement

Hon Jacqui Dean
Minister of Commerce and Consumer Affairs