



**TAKEOVERS PANEL**  
TE PAE WHITIMANA

## Takeovers Code (Augusta Capital Limited) Exemption Notice 2020

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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 (Augusta Capital Limited) Exemption Notice 2020.

#### 2 Application

This notice applies to acts or omissions occurring on or after 5 June 2020.

#### 3 Revocation

This notice is revoked on the close of 1 December 2020.

#### 4 Interpretation

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

**acquisition notice** means the acquisition notice that is required by rule 54 of the Code for a compulsory sale

**Act** means the Takeovers Act 1993

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

**AFS Licensee** means a person that holds an Australian financial services licence as defined in the Corporations Act 2001 (Cth) (Australia)

**ASIC** means the Australian Securities and Investments Commission

**ASX** means the securities exchange operated by ASX Limited under that name

**Augusta** means Augusta Capital Limited

**Centuria** means Centuria New Zealand Holdings Limited

**Centuria Capital** means Centuria Capital Limited (ACN 095 454 336), a company incorporated in Australia

**Centuria Capital Fund** means Centuria Capital Fund (ARSN 613 56 358), a registered managed investment scheme established under the laws of Australia which has Centuria Funds Management Limited (ACN 607 153 588) as its responsible entity

**Centuria Capital Group** means the stapled group comprising Centuria Capital and Centuria Capital Fund

**Centuria FMC Exemption** means the Financial Markets Conduct (Centuria Capital Group) Exemption Notice 2020 issued on or about the date of this exemption notice

**Centuria stapled security** means a fully paid ordinary share in Centuria Capital and a fully paid ordinary unit in Centuria Capital Fund that—

- (a) are stapled; and
- (b) are (or in respect of the Centuria stapled securities to be offered under clause 5 of the Centuria FMC Exemption are to be immediately after issue) jointly quoted on the ASX as a 'stapled security' under the ticker 'CNI'

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

**compulsory sale** means a compulsory sale that occurs as a result of the offer

**offer** means the offer under the Takeovers Code by Centuria to acquire all of the equity securities in Augusta, which offers as consideration cash and Centuria stapled securities and includes an acquisition of equity securities in Augusta under part 7 of the Takeovers Code

**overseas shareholder** means a person who is registered as a shareholder in Augusta and whose address on Augusta's share register is not in New Zealand or Australia

**scrip consideration** means Centuria stapled securities to be issued as consideration under the offer, or Centuria stapled securities to be issued under a compulsory sale, as the case may be

**stapled** means the linking together of two or more securities pursuant to constitutional or contractual arrangements that ensure those securities are treated as one security, to the extent permitted by law, and prevent those securities from being dealt with separately

- (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 voting rights in Augusta Capital Limited.
- (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.

## 5 Exemptions from rule 20 of the Code

Centuria is exempted from rule 20 of the Code to the extent that scrip consideration offered under the offer relates to overseas shareholders.

## 6 Conditions of exemption

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

- (a) Centuria appoints a person to act as nominee for the offer who is, or is a wholly owned subsidiary of, a registered AFS Licensee authorised to provide financial services in relation to financial products of the same class as the Centuria stapled securities and, to the best of Centuria's knowledge:
  - (i) the AFS Licensee is independent, having not provided any advice or services in respect of the offer other than acting as a joint lead manager in respect of any capital raising connected with the offer and which has been completed prior to 1 March 2020; and
  - (ii) on the date of the appointment, the AFS Licensee is not under investigation by ASIC; and
  - (iii) on the date of the appointment, ASIC is not taking enforcement action against the AFS Licensee; and
- (b) in a manner consistent with the terms of the offer, Centuria procures the issue to the nominee of the scrip consideration that would otherwise be issued to overseas shareholders under the offer; and
- (c) Centuria uses its best endeavours to ensure that the nominee as soon as is reasonably practicable and in a manner consistent with the terms of the offer sells, on arm's length terms, the scrip consideration that is issued to the nominee under paragraph (b); and
- (d) Centuria uses its best endeavours to ensure the payment to each overseas shareholder, within eight working days after the scrip consideration that is issued to the nominee under paragraph (b), the relevant share of the proceeds from the sale of the scrip consideration under paragraph (c) to which that overseas shareholder is entitled, net of any applicable expenses, brokerage costs and taxes, calculated in a manner consistent with the terms of the offer, on the basis that the payment of the net proceeds to the overseas shareholder in Australian dollars may, in Centuria's discretion, be made by:
  - (i) cheque sent to the overseas shareholder's most recent address in Augusta's share register; or
  - (ii) by electronic payment to the New Zealand bank account:
    - (A) specified in the overseas shareholder's acceptance form for the offer; or
    - (B) notified by the overseas shareholder to Augusta's share registrar for the purposes of dividend payments; and
- (e) Centuria Capital Group indemnifies and holds harmless each overseas shareholder against any damages, expenses, costs, losses or liabilities suffered or incurred by that overseas shareholder as a result of a failure by the nominee (or AFS Licensee) to comply with any of its obligations in respect of the sale of the Centuria stapled securities contemplated by clauses 6(a), (b), (c) and (d) of this exemption notice (irrespective of whether each such obligation exists under New Zealand or Australian law or arises under statute, contract or otherwise).

## 7 Exemption from rule 56 of the Code

Centuria is exempted from rule 56 of the Code to the extent that scrip consideration issued under a compulsory sale relates to overseas shareholders.

## 8 Conditions of exemption

The exemption in clause 7 is subject to the conditions that —

- (a) Centuria appoints a person to act as nominee for the offer who is, or is a wholly owned subsidiary of, a registered AFS Licensee authorised to provide financial services in relation the financial products of the same class as the Centuria stapled securities and, to the best of Centuria's knowledge:
  - (i) the AFS Licensee is independent, having not provided any advice or services in respect of the offer other than acting as a joint lead manager in respect of any capital raising connected with the offer and which has been completed prior to 1 March 2020; and
  - (ii) on the date of the appointment, the AFS Licensee is not under investigation by ASIC; and
  - (iii) on the date of the appointment, ASIC is not taking enforcement action against the AFS Licensee; and
- (b) in a manner consistent with the terms of the offer, Centuria procures the issue to the nominee of the scrip consideration that would otherwise be issued to overseas shareholders under the offer; and
- (c) Centuria uses its best endeavours to ensure that the nominee as soon as is reasonably practicable and in a manner consistent with the terms of the offer sells, on arm's length terms, the scrip consideration that is issued to the nominee under paragraph (b); and
- (d) Centuria uses its best endeavours to ensure the payment to each overseas shareholder, within eight working days after the scrip consideration is issued to the nominee under paragraph (b), the relevant share of the proceeds from the sale of the scrip consideration under subparagraph (c) to which that overseas shareholder is entitled, net of any applicable expenses, brokerage costs and taxes, calculated in a manner consistent with the terms of the offer, on the basis that the payment of the net proceeds to the overseas shareholder in Australian dollars may, in Centuria's discretion, be made by:
  - (i) cheque sent to the overseas shareholder's most recent address in Augusta's share register; or
  - (ii) by electronic payment to the New Zealand bank account:
    - (A) specified in any transfer form returned by the overseas shareholder in respect of a compulsory sale; or
    - (B) notified by the overseas shareholder to Augusta's share registrar for the purposes of dividend payments; and
- (e) Centuria Capital Group indemnifies and holds harmless each overseas shareholder against any damages, expenses, costs, losses or liabilities suffered or incurred by that overseas shareholder as a result of a failure by the nominee (or AFS Licensee) to comply with any of its obligations in respect of the sale of the Centuria stapled securities contemplated by clauses 8(a), (b), (c) and (d) of this exemption notice (irrespective of whether each such obligation exists under New Zealand or Australian law or arises under statute, contract or otherwise).

Dated at Auckland this 5th day of June 2020

[signed]

R A Coupe  
Chair

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## Statement of Reasons

This notice applies to acts or omissions occurring on or after 5 June 2020.

Centuria New Zealand Holdings Limited (**Centuria**) proposes to make a full offer in accordance with the Takeovers Code (the **Code**) for all the equity securities in Augusta Capital Limited (**Augusta**) that it does not already hold (the **offer**). Centuria proposes to offer Augusta shareholders as consideration under the offer a combination of cash and stapled financial products in the Centuria Capital Group (being stapled financial products (**scrip consideration**) consisting of one ordinary share in Centuria Capital Limited (ACN 095 454 336) and one unit in the Centuria Capital Fund (which is a registered managed investment scheme established under the law of Australia, the responsible entity for which is Centuria Funds Management Limited (ACN 607 153 588)) as quoted on the ASX market under ticker code "CNI")(**Centuria stapled securities**).

The Takeovers Panel has granted an exemption from:

- rule 20 of the Code, to the extent that the scrip consideration issued under the offer relates to overseas shareholders; and
- rule 56 of the Code, to the extent that Centuria must issue scrip consideration to overseas shareholders under a compulsory sale that results from the offer.

The conditions of the exemptions provide that –

- the scrip consideration that would otherwise be issued to overseas shareholders under the offer, or under a compulsory sale, must be issued to a person appointed by Centuria to act as nominee for the offer or compulsory sale; and
- Centuria must use its best endeavours to ensure that the nominee, as soon as is reasonably practicable and in a manner consistent with the terms of the offer or acquisition notice, sells the scrip consideration that is issued to the nominee;
- Centuria must use its best endeavours to ensure the payment of the proceeds of sale of the scrip consideration net of any applicable expenses, brokerage costs and taxes arising from the sales to the relevant overseas shareholders.

The Panel considers that it is appropriate and consistent with the objectives of the Code to grant the exemptions, subject to conditions, from the Code because –

- it is impractical and unreasonably expensive in the context of the offer for Centuria to make an offer to all shareholders on the Augusta share register on the same terms, as required by rule 20 of the Code, because of the costs of complying with the securities laws that apply in the various jurisdictions in relation to the overseas shareholders; and
- the conditions of the exemptions require that the overseas shareholders that accept the scrip consideration under the offer will, in effect, receive equivalent cash consideration and, accordingly, are not disadvantaged by not being able to accept the scrip consideration under the offer; and

- the exemptions are consistent with the principle of providing equal consideration to all shareholders of the same class; and
  - it is important for competition for the control of Code companies that offerors are not precluded from offering securities as consideration in takeover transactions; and
  - the exemption from rule 56 of the Code is consequential to the exemption from rule 20 of the Code.
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Date of Notification in the *Gazette*: 19 June 2020

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