



TAKEOVERS PANEL
TE PAE WHITIMANA

**Takeovers Code (Smith & Caughey Holdings Limited)
Exemption Notice 2018**

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.

Contents

	Page
1 Title	1
2 Application	1
3 Expiry	1
4 Interpretation	2
5 Exemption from rule 6(1) of Code	3
6 Conditions of exemption in clause 5	3
7 Additional conditions in relation to multi-stage transfers	4

Notice

1 Title

This notice is the Takeovers Code (Smith & Caughey Holdings Limited) Exemption Notice 2018.

2 Application

This notice applies to acts or omissions occurring on or after 28 August 2018.

3 Expiry

This notice expires on the close of 27 August 2023.

4 Interpretation

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

Act means the Takeovers Act 1993

clause 7 transfer means a transfer of voting securities in accordance with clause 7 of the Company's constitution

Code means the Takeovers Code under the Act

Company means Smith & Caughey Holdings Limited

multi-stage transfer means a transfer of voting securities between relevant shareholders in accordance with clause 7.25b. of the Company's constitution that is part of 1 series of related or linked transfers in respect of those voting securities

relevant shareholder means—

- (a) a person (**A**) who is a descendant of Andrew Clarke Caughey and Lucy Hannah Caughey, or who is A's present or former spouse or partner; and
- (b) The Marianne Caughey Smith-Preston Memorial Rest Homes Trust Board, a trust constituted by a deed dated 30 September 1950 and incorporated under part 2 of the Charitable Trusts Act 1957; and
- (c) a person who is a present or former director or employee of the Company or a subsidiary of the Company; and
- (d) a person, including a company or the trustees of a trust, who represents the interests, or who holds or will hold voting securities on behalf, of a person referred to in paragraphs (a) to (c)

shareholder means a shareholder in the Company

spouse or partner, in relation to a person (**A**), means—

- (a) A's husband or wife; or
- (b) A's civil union partner; or
- (c) A's de facto partner within the meaning of the Property (Relationships) Act 1976

voting security means a voting security in the Company.

- (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 the Company.
- (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 Exemption from rule 6(1) of Code

- (1) Every relevant shareholder who increases voting control as a result of a clause 7 transfer is exempted from rule 6(1) of the Code in respect of that increase in voting control.
- (2) The exemption is subject to the conditions in clause 6 and, in the case of a multi-stage transfer, the additional conditions in clause 7.

6 Conditions of exemption in clause 5

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

- (a) the number of voting securities transferred in reliance on the exemption in any 12-month period does not carry an aggregate of more than 10% of the total voting rights at the commencement of the 12-month period; and
- (b) in calculating whether the number of voting securities to which paragraph (a) applies has been exceeded,—

- (i) a transfer of voting securities to a relevant shareholder effected under rule 7 of the Code, or under any other exemption from the Code, is not included; and
- (ii) in the case of a multi-stage transfer, only the first transfer of voting securities to a relevant shareholder is included; and
- (c) a shareholder who holds or controls less than 20% of the voting securities does not become the holder or controller of more than 20% of the voting securities; and
- (d) a shareholder who holds or controls 20% or more of the voting securities does not increase the percentage of voting securities held or controlled by that shareholder; and
- (e) every annual report of the Company must contain, or be accompanied by,—
 - (i) information setting out a summary of the terms and conditions of the exemption in clause 5 and the effect of the exemption; and
 - (ii) a description of every transfer under the exemption in clause 5 that took place during the financial year to which the Company's annual report relates; and
- (f) clause 7 of the Company's constitution must not be amended or revoked prior to the expiry of this notice.

7 Additional conditions in relation to multi-stage transfers

The exemption in clause 5 is subject to the following conditions in relation to a multi-stage transfer:

- (a) the multi-stage transfer is made in accordance with clause 7.25b. of the Company's constitution:
- (b) the final transfer of the multi-stage transfer is completed no later than 4 months after the day on which the first transfer of the multi-stage transfer was completed:
- (c) the transferee in every transfer that is part of the multi-stage transfer is a relevant shareholder.

Dated at Auckland this **13th** day of **August** 2018

[signed]

R A Coupe
Chairperson

Statement of Reasons

This notice applies to acts or omissions occurring on or after 27 August 2018 and expires on the close of 27 August 2023.

The Takeovers Panel (**Panel**) has granted an exemption from rule 6(1) of the Takeovers Code (**Code**) in respect of any increase in the following persons' voting control in Smith & Caughey Holdings Limited (**Company**) that results from a transfer in accordance with clause 7 of the Company's constitution (**clause 7 transfer**):

- (a) a person (**A**) who is a descendant of Andrew Clarke Caughey and Lucy Hannah Caughey, or A's present or former spouse or partner; and
- (b) the Marianne Caughey Smith-Preston Memorial Rest Homes Trust Board (**Trust Board**); and
- (c) a person who is a present or former director or employee of the Company or a subsidiary of the Company; and
- (d) a person, including a company or the trustees of a trust, who represents the interests, or who holds or will hold voting securities on behalf of or for the benefit, of a person referred to in paragraph (a) to (c).

The Company, which is a Code company because it has 50 or more parcels of shares and 50 or more shareholders, is essentially a private family company. Various members of the extended Caughey family and/or trusts established for their benefit hold 51.97% of the shares in the Company. The Trust Board holds 48.02% of the shares in the Company. T R Cornelius holds the remaining 0.01% of Company shares.

The Company applied for this exemption on the basis that all of its shareholders are or may be associates for the purposes of the Code. The Panel considered the exemption on this basis.

Rule 6(1) of the Code prohibits a person who holds or controls, together with their associates, 20% or more of the voting rights in a Code company from becoming the holder or controller of an increased percentage of voting rights. The Trust Board, as a 48.02% shareholder, is subject to this restriction. The remaining shareholders (the Caughey family members and their related family trusts), although they each individually hold or control less than 20% of the voting rights in the Company, and T R Cornelius, will hold or control 20% or more of the voting rights in the Company when aggregated with their associates. Accordingly, the Caughey family members/family trusts and T R Cornelius cannot increase the percentage of the voting rights in the Company that they hold or control.

Rule 7(c) of the Code states that a person may become the holder or controller of an increased percentage of the voting rights by an acquisition of voting securities in a code company from 1 or more other persons if the acquisition has been approved by an ordinary resolution of the code company in accordance with the Code. However, rule 17(1) of the Code provides that the persons acquiring and disposing of the securities and their associates must not vote on a resolution for the approval of an acquisition referred to in rule 7(c) of the Code. If all of the shareholders in the Company are effectively associates, no share transfer may be approved in accordance with the requirements of rules 7(c) and 17(1) because no shareholder would be able to vote on the resolution.

The Panel considered that it was appropriate and consistent with the objectives of the Code to grant the exemption in respect of a clause 7 transfer because—

- (a) every shareholder in the Company (including, for this purpose, the Trust Board) is a member of, or is closely associated with, a single extended family; and
- (b) the exemption is intended to facilitate transfers of shares between family interests; and
- (c) the exemption is necessary to address an unintended consequence of the Code, which effectively prevents the Company's shareholders approving share transfers under rule 7(c) of the Code if they are associated; and
- (d) the proposed conditions of the exemptions ensure that the exemption could not be used to effect a material change of control of the Company.

Date of Notification in the *Gazette*: 14 August 2018
