

Financial Markets Conduct (Centuria Capital Group) Exemption Notice 2020

Pursuant to section 556 of the Financial Markets Conduct Act 2013, the Financial Markets Authority, being satisfied on the matters set out in section 557 of the Act, gives the following notice.

Contents

	Page
1 Title	1
2 Commencement	1
3 Revocation	1
4 Interpretation	1
5 Exemption	3
6 Conditions	3
7 Application of exemption in clause 5	4
8 Offers made in reliance on this notice are not regulated offers	5
Schedule 1	5
Prescribed Information	
Schedule 2	6
Warning Statements	

Notice

1 Title

This notice is the Financial Markets Conduct (Centuria Capital Group) Exemption Notice 2020.

2 Commencement

This notice comes into force on 18 March 2020.

3 Revocation

This notice is revoked on the close of 31 December 2020.

4 Interpretation

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

Act means the Financial Markets Conduct Act 2013

ASIC means the Australian Securities and Investments Commission

ASIC technical relief instrument means a technical relief instrument as defined in the ASIC Corporations (Disregarding Technical Relief) Instrument 2016/73 made under sections 741 and 1020F of the Corporations Act

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

ASX listing rules means the listing rules of ASX made by ASX Limited that deal with—

- (a) admitting entities to, or removing entities from, the official list of ASX, whether for the purpose of enabling financial products of those entities to be traded on ASX or for other purposes; or
- (b) the activities or conduct of entities that are included on the official list of ASX

Augusta means Augusta Capital Limited

Australian continuous disclosure obligation means an obligation to notify ASX of information under the provisions of the ASX listing rules in accordance with section 674 of the Corporations Act

Australian financial reporting obligations means requirements imposed under—

- (a) Chapter 2M of the Corporations Act, as it applies to the Centuria Capital Group, to prepare consolidated financial statements for the Centuria Capital Group for the most recently completed accounting period, to have those statements audited, and to lodge or register those statements; and
- (b) the ASX listing rules in relation to providing financial statements for release to the market in relation to any more recent interim accounting period than the period referred to in paragraph (a) of this definition

bidder means Centuria Holdings New Zealand 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 the Commonwealth of Australia

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

Centuria Funds Management means Centuria Funds Management Limited (ACN 607 153 588), a company incorporated in Australia and the responsible entity for Centuria Capital Fund

Centuria stapled security means one fully paid ordinary share in Centuria Capital and one 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 in reliance on the exemptions in clause 5, are to be immediately after issue) jointly quoted on the ASX as a 'stapled security' under the ticker 'CNI'

control has the meaning in clause 48 of Schedule 1 of the Act

Corporations Act means the Corporations Act 2001 (Aust)

excluded information means information to which an Australian continuous disclosure obligation would apply but that has not been disclosed under such an obligation as a result of an exclusion in, or in a waiver given under, the ASX listing rules

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

offer document has the same meaning as in rule 3(1) of the Takeovers Code

quoted means approved for trading on ASX (and, to avoid doubt, financial products do not cease to be quoted merely because trading in those products is suspended)

Regulations means the Financial Markets Conduct Regulations 2014

relevant time means a time within the 24-hour period before the bidder makes the offer by first sending the offer document to the holders of equity securities in Augusta under rule 43B of the Takeovers Code

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

stapled group means a group of entities whose securities are stapled

takeover notice has the same meaning as in rule 3(1) of the Takeovers Code.

- (2) Any term or expression that is defined in the Act or the Regulations and used, but not defined, in this notice has the same meaning as in the Act or the Regulations.

5 Exemptions

Centuria Funds Management and Centuria Capital are each exempted from Parts 3 and 4 of the Act in respect of the offer.

6 Conditions

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

- (a) the offer at all times complies with:
 - (i) the Takeovers Code; or
 - (ii) if the offer is made in reliance upon an exemption granted under section 45 of the Takeovers Act 1993, the terms and conditions of the exemption and the applicable provisions of the Takeovers Code from which there is no exemption; and
- (b) the Centuria stapled securities are quoted and have been quoted on ASX at all times during the 3-month period before the time of the offer; and
- (c) trading in the Centuria stapled securities on ASX was not suspended for more than a total of 5 trading days during the 3-month period referred to in paragraph (b); and
- (d) all necessary steps will be taken to ensure that the Centuria stapled securities are, immediately after the issue, quoted on ASX; and
- (e) a notice to ASX Limited is provided at a relevant time, containing the information prescribed in Schedule 1 for the purpose of that information being notified to ASX; and
- (f) the offer must not proceed unless the Centuria Capital Group, as at the date of the notice required under paragraph (e), is in compliance with its Australian continuous disclosure obligations and its Australian financial reporting obligations; and
- (g) the offer document, at the time it is sent to the holders of equity securities in Augusta under rule 43B of the Takeovers Code, includes or is accompanied by all material information as to the effect of accepting Centuria stapled securities in exchange for shares in Augusta, including without limitation:
 - (i) the purpose and effect of the offer;
 - (ii) the steps necessary to complete the offer;

- (iii) a description of the nature of and rights attached to Centuria stapled securities, including a statement that the Centuria stapled securities are stapled and that the securities comprising the Centuria stapled securities may only be dealt with together;
 - (iv) the information required under paragraph (e)
 - (v) a comparison and description of the rights, protections and obligations that result from holding Centuria stapled securities as opposed to equity securities in Augusta, including in respect of the following:
 - (A) voting rights;
 - (B) dividends or distributions;
 - (C) appointment and removal of directors;
 - (D) issue and buyback of financial products;
 - (E) takeover rules; and
 - (F) rights to receive audited financial statements and the currency in which those financial statements are presented;
 - (vi) a description of the governance arrangements of the stapled group, Centuria Capital Group, including the names of the directors and senior managers of Centuria Capital and Centuria Funds Management;
 - (vii) an overview of the business undertaken by the Centuria Capital Group;
 - (viii) the date of the most recent audited consolidated financial statements for the Centuria Capital Group, and a specified link or URL to where those statements may be obtained;
 - (ix) a statement identifying what Centuria Capital and Centuria Funds Management consider to be the key risks associated with the holders of equity securities in Augusta electing to receive Centuria stapled securities as consideration under the offer, and a specified link or URL (being a link to or a URL for the page of the Internet site maintained by ASX Limited that relates to the Centuria stapled securities) to where further information about those risks can be obtained;
 - (x) particulars of any material differences in taxation obligations and liabilities of New Zealand tax residents holding, or disposing of, equity securities of Augusta as opposed to the taxation obligations of New Zealand tax residents holding, or disposing of, Centuria stapled securities; and
 - (xi) the warning statements set out in Schedule 2.
- (h) the offer document contains a statement to the effect that further information in respect of the Centuria Capital Group may be obtained from a specified link or URL (being a link to or a URL for the page of the Internet site maintained by ASX Limited that relates to Centuria Capital Group, and a link to the Centuria Capital Group website).

7 Application of exemptions in clause 5

The exemptions in clause 5 do not apply if—

- (a) the offer is made within 3 months after a change to the essential nature of the business of the Centuria Capital Group; or

- (b) the offer is made within 3 months after a transaction for which the Centuria Capital Group has provided disclosure to ASX as if it were listing on ASX; or
- (c) the offer is made in connection with enabling:
 - (i) a change to the essential nature of the business of the Centuria Capital Group; or
 - (ii) a transaction for which the Centuria Capital Group will be required to provide disclosure to ASX as if it were listing on ASX; and
- (d) an exemption order under section 340 or 341 of the Corporations Act, other than an ASIC technical relief instrument, covered a Centuria entity, or any person as director or auditor of a Centuria entity, at any time during the period referred to in paragraph 6(b); or
- (e) an exemption under section 111AS or 111AT of the Corporations Act covered a Centuria entity, or any person as director or auditor of a Centuria entity, at any time during the period referred to in paragraph 6(b); or
- (f) ASIC has made a determination under section 708AA(3), 708A(2), 1012DAA(3), or 1012DA(2) of the Corporations Act in respect of a Centuria entity that is in force at the time of the offer.

8 Offers made in reliance on this notice are not regulated offers

An offer of a Centuria stapled security made in reliance on this notice is not a regulated offer.

Schedule 1

Prescribed Information

- (a) A statement that the offer is being made to the holders of equity securities of Augusta in reliance on the exemptions in the Financial Markets Conduct (Centuria Capital Group) Exemption Notice 2020.
- (b) A statement that the notice is given under paragraph 6(e) of this exemption notice.
- (c) A statement that at the date of the notice the Centuria Capital Group is in compliance with its Australian continuous disclosure obligations.
- (d) A statement that as at the date of the notice the Centuria Capital Group is in compliance with its Australian financial reporting obligations.
- (e) Details of the information (if any) that is excluded information at the date of the notice.
- (f) A description of:
 - (i) The potential effect that the offer and acquisition of the Centuria stapled securities will have on the control of the Centuria Capital Group; and
 - (ii) the consequences of those effects.

The notice must contain information under paragraph (e) and paragraph (f) only to the extent to which it is material information within the meaning of section 59 of the Act (applied as if the offer were a regulated offer).

Schedule 2

Warning Statements

1. The Centuria stapled securities are governed by Australian rather than New Zealand law. In the main, the Corporations Act 2001 (Aust) and the regulations made under that Act, govern the Centuria stapled securities.
2. Stapled financial products are complex and are uncommon in New Zealand. The Centuria stapled securities comprise one fully paid ordinary share in Centuria Capital Limited and one fully paid unit in Centuria Capital Fund. Each share is stapled to one unit. This means that those securities are linked together, so that they are treated as one security, to the extent permitted by law, and may only be dealt with together.
3. There are differences in how financial products are regulated under Australian law. The rights, remedies, and compensation arrangements available to New Zealand investors in Australian financial products may differ from the rights, remedies, and compensation arrangements for New Zealand financial products.
4. The taxation treatment of Australian financial products is not the same as for New Zealand financial products. Investors in Centuria stapled securities should satisfy themselves as to the tax implications of investing in an Australian company and an Australian managed investment scheme.
5. If you are uncertain about whether investment in the Centuria stapled securities offered as consideration under the takeover offer for Augusta is appropriate for you, you should seek the advice of an appropriately qualified financial adviser.

Additional warning statement: Currency exchange risk

6. The offer of Centuria stapled securities involves a currency exchange risk. Centuria stapled securities are traded through ASX in Australian dollars and if cash distributions are paid on the Centuria stapled securities they will be paid in Australian dollars. The New Zealand dollar value of Centuria stapled securities and the New Zealand dollar value of any cash distributions will go up or down according to changes in the exchange rate between Australian dollars and New Zealand dollars. These changes may be significant.
7. If you realise Australian dollar funds from the sale of Centuria stapled securities or receive cash distributions in respect of Centuria stapled securities, you may incur significant fees in having the Australian dollar funds credited to a bank account in New Zealand in New Zealand dollars.

Additional warning statement: trading on financial product market

8. If you wish to trade the Centuria stapled securities through ASX, you will have to make arrangements for a participant in that market to sell the Centuria stapled securities on your behalf. The way in which ASX operates, the regulation of participants in that market, and the information available to you about the financial products and trading may differ from financial products markets that operate in New Zealand.

Additional warning statement: dispute resolution process

9. If you wish to make a complaint about the takeover offer for equity securities of Augusta, please contact the New Zealand Takeovers Panel in the first instance (www.takeovers.govt.nz).
10. If you have a complaint about Centuria Capital Group, please contact Centuria Capital Group in the first instance (www.centuria.com.au). If you are not satisfied with the response you receive, you may contact the Australian Financial Complaints Authority. Its contact details are:

Australian Financial Complaints Authority
GPO Box 3 Melbourne VIC 3001
Telephone 1800 931 678
Email info@afca.org.au
Website www.afca.org.au

Please note that a complaint must have gone through Centuria Capital Group's complaints handling process before it can be referred to the Australian Financial Complaints Authority.

Dated at Wellington this 17 day of March 2020.



Sarah Vrede
Director of Capital Markets
Financial Markets Authority

Statement of reasons

This notice comes into force on 17 March 2020 and is revoked on 31 December 2020.

This notice exempts Centuria Funds Management Limited (as responsible entity for Centuria Capital Fund) and Centuria Capital Limited (**Centuria entities**) from the disclosure and governance requirements in Parts 3 and 4 of the Financial Markets Conduct Act 2013 (**Act**) in relation to a proposed full takeover offer (**offer**) under the Takeovers Code to acquire all the equity securities in Augusta Capital Limited (**Augusta**).

As consideration for the offer, holders of equity securities in Augusta (**Augusta shareholders**) will be offered a choice of cash and/or stapled securities (each consisting of one ordinary share in Centuria Capital Limited and one unit in Centuria Capital Fund, that are linked together so that one cannot be transferred or otherwise dealt with without the other, and that are jointly quoted on the ASX (**Centuria stapled security**)). The offer of the Centuria stapled securities would, in the absence of this notice, be a regulated offer of a managed investment product and a regulated offer of an equity security for the purposes of the Act.

The exemptions are subject to a number of conditions, including conditions that are consistent, as far as practicable, with the requirements of the exclusion in clause 19 of Schedule 1 of the Act (the **Schedule 1 exclusion**) and with clauses 19 to 22 and clause 46 of Schedule 8 of the Financial Markets Conduct Regulations 2014 (which relate to the Schedule 1 exclusion). Modifications of these requirements will recognise the Centuria Capital Group's compliance with Australian financial reporting and continuous disclosure obligations and require a notice of the offer to be given to ASX Limited before an offer is made. Additional conditions require the offer document provided to Augusta shareholders under the Takeovers Code to include certain material information as to the effect of accepting Centuria stapled securities in exchange for shares in Augusta, and certain warning statements analogous to those prescribed in Schedule 25 of the Regulations in relation to the mutual recognition of securities offerings.

The Financial Markets Authority (**FMA**), after satisfying itself as to the matters set out in section 557 of the Act, considers that it is appropriate to grant the exemptions because—

- Augusta is listed on the NZX, and the stapled group (**Centuria Capital Group**) comprising Centuria Capital Limited and Centuria Capital Fund is listed on the ASX. Centuria Capital Group

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exclusion, which recognises the existing quotation of the Centuria stapled securities on the ASX, and the applicable continuous disclosure reporting obligations under the ASX listing rules. Augusta shareholders will receive information required under the Takeovers Code in relation to the offer (including a report by an independent adviser on the merits of the offer, and an offer document), in addition to the information and warning statements required by the conditions to the exemptions, as described above:

- In these circumstances, the FMA is satisfied that the exemptions are desirable in order to promote the purposes of the Act, specifically by ensuring timely, accurate and understandable information is provided to Augusta shareholders in order to assist them to make confident and informed decisions relating to the offer:
- the exemptions recognise the general equivalence of the regulation of financial products offered in Australia and listed on ASX. Australian laws require disclosure of information by listed issuers to an extent broadly equivalent with New Zealand law. In particular, as the Centuria stapled securities are approved for trading on ASX, they are subject to significant listing thresholds, ongoing disclosure, and corporate governance requirements. In addition, Centuria Capital Group is subject to financial reporting (including Australian generally accepted accounting principles) and audit standards that are broadly comparable to those in New Zealand:
- the nature of the information Augusta shareholders require to assess the offer of Centuria stapled securities is different from that prescribed by the Act and Regulations and it would be unduly onerous to prepare two sets of product disclosure statements and register entries in addition to takeover offer documents. Further, producing two product disclosure statements as required by the Act would not assist shareholders, who require information in relation to the wider stapled Centuria Capital Group and are not able to invest in one component of the Centuria stapled security without the other. The exemptions are therefore desirable to avoid unnecessary compliance costs:
- given that the exemptions are limited to the offer of Centuria stapled securities to existing shareholders of Augusta made in the context of a takeover offer under the Takeovers Code, that Centuria Capital Group is subject to regulatory oversight broadly equivalent to that of New Zealand, and in light of the conditions requiring additional information and warnings to be provided to subscribers, the FMA considers the exemptions are not broader than reasonably necessary to address the matters that gave rise to them.