

Financial Markets Conduct (Silver Chef Limited)

Exemption Notice 2019

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

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Notice

1 Title

This notice is the Financial Markets Conduct (Silver Chef Limited) Exemption Notice 2019.

2 Commencement

This notice comes into force on 12 July 2019.

3 Revocation

This notice is revoked on the close of 30 November 2019.

4 Interpretation

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

Act means the Financial Markets Conduct Act 2013

approval meetings means the meetings of Silver Chef shareholders that are to be held to consider and vote on whether to approve the scheme

bidder means:

- (a) Next Capital Services IVA Pty Limited as trustee for Next Capital Trust IVA; and
- (b) Next Capital Services IVC Pty Limited as trustee for Next Capital Trust IVC; and
- (c) Next Capital Services IVD2 Pty Limited as trustee for Next Capital Trust IVD2, or their respective nominees; and
- (d) Next Capital (Services A) Pty Limited as trustee for the Apollo Co-Investment Trust; and
- (e) Next Capital (Services B) Pty Limited as trustee for Apollo Co-investment Trust B

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Corporations Act means the Corporations Act 2001 (Cth)

contingent value notes means the contingent value notes which are, pursuant to the scheme, to be offered to eligible shareholders at the rate of one contingent value note for each Silver Chef share held as at the record date

Court means the Supreme Court of Queensland, Australia, or such other court of competent jurisdiction agreed upon by Silver Chef and the bidder

electing founder shareholder means a founder shareholder who has made a valid election to retain all of their Silver Chef shares in lieu of receiving the cash consideration and contingent value notes in accordance with the scheme

eligible shareholder means a persons who is registered as a holder of Silver Chef shares as at the record date, has a registered address on Silver Chef's share register in New Zealand and is eligible under all applicable securities laws to receive the contingent value notes, excluding electing founder shareholders

founder shareholders has the meaning given in the scheme document

proposal means the transfer of all Silver Chef shares to the bidder in exchange for a cash consideration and one contingent value note for each Silver Chef share held by Silver Chef shareholders (other than electing founder shareholders) as at the record date in accordance with the scheme

record date means the date to determine eligibility to participate in the scheme, being 5.00pm (AEST) on the fifth business day after the day on which an order of the Court approving the scheme is lodged with the Australian Securities & Investments Commission

register entry means entry for the offer in the register of offers of financial products

Regulations means the Financial Markets Conduct Regulations 2014

retained shares means the Silver Chef shares held by electing founder shareholders as at the record date, which will not be transferred to the bidder

scheme means the scheme of arrangement under part 5.1 of the Corporations Act under which all the Silver Chef shares (other than the retained shares) will be transferred to the bidder substantially in the form in Attachment C to the scheme document together with any amendment or modification made pursuant to section 411(6) of the Corporations Act

scheme document means the document prepared by Silver Chef in accordance with the Corporations Act, and containing the information prescribed by clause 6(h), which is to be reviewed by the Australian Securities and Investment Commission as required by section 411 of the Corporations Act and approved by the Court

Silver Chef means Silver Chef Limited (ACN 011 045 828) an Australian public company listed on the Australian Securities Exchange having its registered office at Park Tower, 20 Pidgeon Close, West End, Queensland, Australia

Silver Chef shares means the ordinary shares in the capital of Silver Chef

Silver Chef shareholders means all holders of Silver Chef shares as at the record date

specified securities means the contingent value notes being offered to the eligible shareholders in accordance with the scheme

- (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

Silver Chef is exempted in relation to the specified securities from Parts 3 and 4 of the Act.

6 Conditions

The exemption in clause 5 is subject to the conditions that:

- (a) the proposal must proceed by way of the scheme approved by the Court under Part 5.1 of the Corporations Act; and
- (b) the issue of the contingent value notes must comply with the laws of Australia; and
- (c) the Silver Chef shareholders approve the scheme at the approval meetings; and
- (d) the only persons in New Zealand who are able to acquire the contingent value notes are eligible shareholders; and
- (e) it is a term of the offer that, in addition to the payment of the cash consideration, the contingent value notes are issued to eligible shareholders in exchange for their Silver Chef shares, in accordance with the scheme; and
- (f) the scheme document is distributed to Silver Chef shareholders with the notice of meeting for the relevant approval meeting; and
- (g) the scheme becomes effective in accordance with its terms; and
- (h) the scheme document includes particulars of all matters that may be material to Silver Chef shareholders in making a decision on whether to approve the scheme, including without limitation —
 - (i) the terms of the contingent value notes; and
 - (ii) the purpose and effect of the scheme; and
 - (iii) the steps necessary to bring the scheme into effect; and
 - (iv) a statement as to why the directors of Silver Chef recommend that Silver Chef shareholders vote in favour of the scheme; and
 - (v) a summary of the impact of the scheme, including any material advantages and disadvantages of the scheme; and
 - (vi) information prescribed by the Corporations Act; and
 - (vii) particulars of any material taxation obligations for New Zealand tax resident shareholders resulting from the implementation of the scheme.

The exemption from Part 4 in clause 5 is subject to the further conditions that:

- (a) a contingent value note trustee be appointed pursuant to section 283AA(1) of the Corporations Act; and
- (b) Silver Chef enters into a trust deed relating to the contingent value notes pursuant to Part 2L.1 of the Corporations Act.

Dated at Wellington this 11th day of July 2019.


Nick Kynoch
General Counsel
Financial Markets Authority

Statement of Reasons

This notice comes into force on 12 July 2019 and expires on 30 November 2019.

This notice exempts Silver Chef Limited (**Silver Chef**), subject to conditions, from Parts 3 and 4 of the Financial Markets Conduct Act (2013) (**Act**) in relation to an Australian scheme of arrangement involving the transfer of all Silver Chef shares (other than Silver Chef shares held by founder shareholders who have made a valid election to retain their Silver Chef shares (**electing founder shareholders**) to:

- a) Next Capital Services IVA Pty Limited as trustee for Next Capital Fund IVA; and
- b) Next Capital Services IVC Pty Limited as trustee for Next Capital Fund IVC; and
- c) Next Capital Services IVD2 Pty Limited as trustee for Next Capital Fund IVD2 or their respective nominees; and
- d) Next Capital (Services A) Pty Limited as trustee for the Apollo Co-Investment Trust; and
- e) Next Capital (Services B) Pty Limited as trustee for Apollo Co-investment Trust B

(together, **bidder**), on the basis that each Silver Chef shareholder (other than electing founder shareholders) will receive a cash consideration and one contingent value note in exchange for each Silver Chef share (**Scheme**).

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

- The offer is made in connection with a proposal to transfer all shares in Silver Chef (other than the retained shares held by electing founding shareholders) to the bidder. It asks shareholders of Silver Chef (other than electing founder shareholders) to exchange their shares for cash consideration and contingent value notes. This means that the offer is limited to eligible shareholders of Silver Chef and therefore to persons who may be expected to already be familiar with the assets and business of Silver Chef:
- The offer will be implemented by way of a court approved scheme of arrangement under the Corporations Act 2001 and a Scheme document will be provided to investors with the notice of meeting to approve the Scheme. Further the Scheme document will be reviewed by ASIC and approved by the Court before being dispatched to shareholders prior to the Approval Meetings:
- Part 3 of the Act focuses on providing information about the financial products being offered including the assets and business of the issuer. However, in these circumstances, shareholders require information about the Scheme, including its effects in order to decide whether or not to approve it. Accordingly, the nature of the information that shareholders require to assess the offer is different from that prescribed by the Act. As such, the exemption, which includes conditions requiring shareholders to be provided with information about the effect, benefits and detriments of the scheme, supports the providing of timely, accurate and understandable information to persons to assist those persons to make decisions relating to financial products:
- Silver Chef will remain subject to the laws of Australia, including those that relate to the governance of the contingent value notes. This is also reflected in conditions to the exemption which require Silver Chef to comply with Australian governance requirements in respect of debt securities (in particular the appointment of a contingent value note trustee pursuant to section 283AA(1) of the Corporations Act and to enter into a trust deed relating to the contingent value notes pursuant to Part 2L.1 of the Corporations Act). Placing additional New Zealand law compliance obligations on Silver Chef would impose additional compliance costs, which would outweigh the expected benefits to New Zealand subscribers in circumstances where comparable protection is provided to investors by virtue of the Australian legislative requirements and given

the relatively small number of subscribers in New Zealand compared to those taking part in the Scheme as a whole:

- Silver Chef will remain subject to the fair dealing provisions in Part 2 of the Act and therefore New Zealand shareholders will have protection against misleading or deceptive information being included in the Scheme document.
- As such, the FMA is satisfied that the exemption is desirable in order to promote the purposes of the FMC Act, namely to provide for timely, accurate and understandable information to be provided to Silver Chef shareholders in order to assist them to make decisions relating to the proposed Scheme. It also avoids unnecessary compliance costs (in terms of additional disclosure and governance requirements as required by the Act and Financial Markets Conduct Regulations 2014) in circumstances where alternative and appropriate disclosure and governance requirements are already in place in Australia pursuant to the Court approved scheme of arrangement and under the Corporations Act.
- The FMA is further satisfied that the exemptions are not broader than reasonably necessary to address the matters that give rise to it, given that the exemptions are limited to the offer of financial products made in the context of the Scheme proposal, and their key impacts are to provide relief from the requirement to provide information about the issuer and financial product which is not material to the decision on whether to approve the scheme proposal and to remove unnecessary governance requirements where there is already a level of protection for investors comparable to that provided by New Zealand law.