

## Financial Markets Conduct (Moorhouse Central Proportionate Ownership Scheme) Exemption Notice 2016

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 (Moorhouse Central Proportionate Ownership Scheme) Exemption Notice 2016.

#### 2 Commencement

This notice comes into force on 1 December 2016.

#### 3 Revocation

This notice is revoked on the close of 31 March 2018.

#### 4 Interpretation

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

**Act** means the Financial Markets Conduct Act 2013

**effective date** has the same meaning as in clause 16 of schedule 4 of the Act

**scheme** means the Moorhouse Central Proportionate Ownership Scheme in relation to the property at 343 to 347 Moorhouse Avenue (corner of Moorhouse Avenue and Madras Street), Christchurch and established in accordance with the Securities Act (Real Proportionate Ownership Schemes) Exemption Notice 2002

**scheme participants** means the holder of one or more units in the scheme

**Regulations** means the Financial Markets Conduct Regulations 2014

**winding up plan** means a written plan for the winding up of the scheme which includes the steps required to be taken to wind up the scheme, any matters for which scheme participants' approval is required, proposed timeframes and any other material information relating to the wind up.

- (2) Any term 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 from registration and updating of governing documents**

The manager of the scheme is exempted, in relation to the scheme, from—

- (a) sections 135 and 137 of the Act;
- (b) section 127(1)(b) of the Act to the extent that it requires the scheme's governing document to comply with sections 135 and 137 of the Act;
- (c) section 133(a) of the Act to the extent that it relates to the requirements in subclause (a); and
- (d) clause 22(1)(b) of schedule 4 of the Act to the extent that it requires the copy of the scheme's governing document lodged with the Registrar to comply with sections 135 and 137 of the Act.

## **6 Exemptions from requirement to have a licensed manager**

The manager of the scheme is exempted, in relation to the scheme, from—

- (a) section 127(1)(c) of the Act, to the extent that it requires the scheme to have a licensed manager designated or appointed under the governing document (or the Act) whose licence covers management of the scheme;
- (b) section 133(a) of the Act to the extent that it relates to the requirement referred to in subclause (a); and
- (c) section 388(a) of the Act.

## **7 Exemptions from requirement to have a licensed supervisor and consequential obligations relating to the supervisor**

The manager of the scheme is exempted, in relation to the scheme, from—

- (a) section 127(1)(d) of the Act, to the extent that it requires the scheme to have a licensed supervisor designated or appointed under the governing document (or the Financial Markets Supervisors Act 2011) whose license covers the supervision of the scheme;
- (b) section 133(a) of the Act to the extent that it relates to the requirement referred to in subclause (a);
- (c) clause 22(1)(c)(ii) of schedule 4 of the Act to the extent that it requires the manager to supply to the Registrar and the FMA the name and address of the person who, on the effective date, will be the licensed supervisor;

- (d) clauses 15(e)(ii) and (h) of schedule 1 of the Regulations;
- (e) section 147 of the Act;
- (f) section 149 of the Act; and
- (g) section 162 of the Act.

## **8 Conditions of exemptions in clause 7**

The exemptions in clause 7 are subject to the condition that the person who was the manager of the scheme immediately before the scheme was wound up must—

- (a) within 4 months after the date on which the winding up of the scheme takes effect, ensure that final financial statements of the scheme, showing the financial position of the scheme as at the date on which the winding up takes effect, are prepared in accordance with generally accepted accounting practice and audited;
- (b) within 20 working days after the final financial statements for the scheme have been audited, ensure that:
  - (i) a copy of those financial statements is sent to the FMA and to every person who was a scheme participant immediately before the scheme was wound up;
  - (ii) the FMA and scheme participants are advised in writing as to the manner in which the remaining assets (if any) of the scheme are to be distributed; and
- (c) inform the FMA of the date on which the distribution of the assets is completed.

## **9 Exemption from requirement to have a statement of investment policy and objectives**

The manager of the scheme is exempted, in relation to the scheme, from—

- (a) section 164 of the Act; and
- (b) clause 15(k) of schedule 1 to the Regulations.

## **10 Exemption from requirement to audit or review registers**

The manager of the scheme is exempted from section 218 of the Act in relation to the scheme.

## **11 Exemption from annual assurance engagement**

The custodian of the scheme property is exempted from regulation 87(1) of the Regulations in relation to the scheme.

## **12 Exemption from daily cash reconciliation**

The custodian of the scheme property is exempted from regulation 86(3) of the Regulations in relation to the scheme.

## **13 Conditions of exemption in clause 12**

- (1) The exemption in clause 12 is subject to the condition that the custodian must reconcile all records of money for the scheme at a frequency that the custodian reasonably determines, in accordance with regulation 86(2) of the Regulations and subclause (2), to be appropriate for the purpose of ensuring that the custodian's records accurately state the scheme's money and all transactions relating to that money.



- (2) For the purposes of determining the appropriate frequency for reconciling records of money for the scheme under subclause (1) the custodian must—
- (a) consider the frequency and volume of the transactions in respect of the scheme's property;
  - (b) consider, whether there is a material change in the frequency or volume of cash transactions and in any case not less than annually, whether reconciliations are being carried out at an appropriate frequency;
  - (c) consult with the manager of the scheme; and
  - (d) act to the standard of a prudent and professional custodian.

**14 Conditions of exemptions in clauses 5, 6, 7, 9, 10, 11 and 12**

The exemptions in clauses 5, 6, 7, 9, 10, 11 and 12 are subject to the conditions that the manager of the scheme must—

- (a) not issue any new managed investment products in the scheme;
- (b) on or before 31 January 2017, prepare a winding up plan and send a copy of the winding up plan to scheme participants with a written notice that includes:
  - (i) a statement that the scheme is being wound up and the date by which it is anticipated winding up of the scheme will be completed (as detailed in the winding up plan);
  - (ii) a statement that the scheme is relying on an exemption which has been granted to enable it to close down in a timely manner while not imposing additional compliance costs that would arise if full compliance with the Act was required;
  - (iii) a statement that some of the usual governance requirements of the Act will not apply to the scheme while it is being wound up and details of the requirements that will not apply by reason of the exemption; and
  - (iv) an explanation of the nature and practical effect of the exemptions relied on (including that there will be no independent oversight of the winding up of the scheme) and a description of the alternative governance requirements that the conditions to the exemption impose;
- (c) report to scheme participants in writing not less than once every three months on the progress of the winding up of the scheme as against the winding up plan; and
- (d) notify scheme participants in writing within 10 working days of becoming aware of any material change to or deviation from the winding up plan.

Dated at Auckland this

24<sup>th</sup>

day of

November

2016.



Nick Kynoch  
General Counsel  
Financial Markets Authority

## Statement of reasons

This notice comes into force on 1 December 2016 and is revoked on 31 March 2018.

This notice exempts the manager of the Moorhouse Central Proportionate Ownership Scheme (**scheme**), subject to certain conditions, from the following licensing and governance requirements of the Financial Markets Conduct Act 2013 (the **Act**) and Financial Markets Conduct Regulations 2014 (the **Regulations**)—

- The requirement to update the scheme's governing document to comply with the content requirements of the Act.
- The requirement to have a licensed manager designated or appointed under the Act or the scheme's governing document whose licence governs management of the scheme.
- The requirement to have a licensed supervisor designated or appointed under the governing document (or the Financial Markets Supervisors Act 2011) whose licence covers supervision of the scheme and reporting requirements by the manager to the supervisor.
- The requirement to have a statement of investment policy and objectives (**SIPO**).
- The requirement to have the register of regulated products audited or reviewed by a qualified auditor.

This notice also exempts the custodian of scheme property from the requirements to perform daily cash reconciliations and obtain an annual assurance engagement.

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

- In general, the exemptions will reduce compliance costs for the scheme by relieving it of certain obligations that are not required, in view of the fact that the scheme is in wind up, to ensure that appropriate governance arrangements are in place to allow for effective monitoring and reduce governance risks.
- In addition, the manager remains subject to the general duties in the Act that apply in the exercise of its functions, including the obligation to act honestly and in the best interests of scheme participants, and to exercise the care, diligence and skill of a prudent person.
- In relation to the exemptions from the requirement to update governing documents and the licensing requirements—
  - The costs of updating governing documents are unnecessary when the scheme is closed to new investors and is in wind up with an expected completion date of 31 March 2018:
  - The costs of licensing are not commensurate with the benefits for investors in the scheme in circumstances where the manager and supervisor have a relatively limited role in the winding up process and other important protections for investors will continue to apply under the Act. The conditions of the exemption require the manager to notify investors of the exemption from the licensing requirements and its practical consequences and to periodically report to investors on progress with the winding up plan.
- In relation to the exemption from the requirement to have a statement of investment policy and objectives, the costs of preparing a SIPO are unnecessary when the scheme is in wind up and the winding up plan will provide investors with all relevant information that would otherwise be given to them in the SIPO.

- In relation to the exemption from the requirement to have the register of regulated products audited, the scheme is closed to new investors and no further units will be issued. In these circumstances, there will be no significant benefit to scheme participants in requiring the manager to have the register audited, particularly when scheme participants will already know the number of units they hold and the corresponding amount they ought to receive from the winding up (assessed with reference to the final audited set of accounts that the manager is required to send to the FMA and scheme participants).
- In relation to the exemption from the daily cash reconciliation requirement, the scheme typically has a low volume and frequency of transactions, and daily reconciliation of records of money for the scheme by the custodian is unlikely to be required to ensure that the records accurately state the scheme's money and all transactions relating to that money.
- In relation to the exemption from the annual assurance engagement requirement, the custodian's processes, procedures and controls are less complex than other managed investment schemes, in view of the fact that the scheme's assets consist primarily of real property, and the risks in relation to custody of those assets are likely to be reduced. In these circumstances, the annual audit of scheme financial statements provides regular and appropriate independent verification in relation to the scheme's property without requiring an annual assurance engagement.

Therefore, the FMA is satisfied that—

- Granting the exemptions is necessary or desirable in order to promote the purposes of the Act. Specifically the exemptions will:
  - avoid unnecessary compliance costs; and
  - promote innovation and flexibility in the financial markets; and
- The exemptions are not broader than is reasonably necessary to address the matters that gave rise to the exemptions because the exemptions are restricted to the scheme and limited to the period it is in wind up.