

Financial Markets Conduct (Silverwood Land 2015 Limited Partnership) 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.

		Page
1	Title	1
2	Commencement	1
3	Revocation	1
4	Interpretation	1
5	Exemptions from independent custody requirements for real property assets	2
6	Conditions of exemptions in clause 5	2
7	Exemption from annual assurance engagement	3
8	Conditions of exemption in clause 7	3
9	Exemption from daily cash reconciliation	3
10	Condition of exemption in clause 9	3
11	Exemption from statement of investment policy and objectives (SIPO) limit break quarterly reporting	4
12	Exemptions from governing documents requirements	4
13	Exemptions from licensing requirements	4
14	Conditions of exemptions in clauses 12 and 13	4
15	Conditions of exemptions in clauses 5, 7, 9, 11, 12 and 13	5

Notice

1 Title

This notice is the Financial Markets Conduct (Silverwood Land 2015 Limited Partnership) 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 2021.

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(1) of schedule 4 of the Act

general partner means Silverwood Corporation Limited or any successor general partner appointed by the scheme participants

Regulations means the Financial Markets Conduct Regulations 2014

relevant date, in respect of a custodian, has the same meaning as in regulation 87(4) of the Regulations

relevant period, in respect of a custodian, has the same meaning as in regulation 88(4) of the Regulations

relevant person, in respect of a custodian, has the same meaning as in regulation 87(4) of the Regulations

scheme means the Silverwood Land 2015 Limited Partnership which was registered as a limited partnership under the Limited Partnerships Act on 20 February 2015

scheme participants means any person admitted to the scheme and registered as a limited partner for so long as they remain a limited partner of 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 from independent custody requirements for real property assets

- (1) The manager of the scheme is exempted, in relation to the scheme, from—
- (a) section 127(1)(f) of the Act to the extent that it requires the scheme's real property to be held by the supervisor or another person who meets the external custodianship requirements in section 156 of the Act; and
 - (b) section 133(a) of the Act to the extent that it relates to the requirement referred to in subclause (1)(a).
- (2) The supervisor of the scheme is exempted from section 156(1) of the Act to the extent that section requires the supervisor to hold the scheme's real property or, if authorised by the governing document, contract the holding of that scheme property to another person who meets the external custodianship requirements in that section.

6 Conditions of exemptions in clause 5

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

- (a) the scheme's real property must be held by the general partner on trust for the scheme participants; and
- (b) the real property referred to in paragraph (a) is subject to an encumbrance in favour of the supervisor that is registered against the title to the scheme's real property and the following requirements are met:
 - (i) the encumbrance secures all present and future obligations of the general partner that are owed, under the governing document for the scheme, to the supervisor and the scheme participants; and
 - (ii) the encumbrance or the scheme's governing document contains a prohibition on the general partner doing any of the following, otherwise than with the prior written consent of the supervisor:
 - A leasing all or any part of the real property except in the ordinary course of business of the scheme and in accordance with the scheme's governing document:
 - B selling, transferring, or otherwise disposing of the scheme's real property or any interest in it:
 - C creating, or permitting the continuation of, any mortgage charge or other security interest over the scheme's real property:

- D creating, or permitting the continuation of, any right or interest in or over the scheme's real property, or any right to use any of the scheme's real property, except in the ordinary course of business of the scheme and in accordance with the scheme's governing document:
 - E agreeing to do any of the things referred to in sub-subparagraphs (A) to (D); and
- (iii) the encumbrance is otherwise in a form and on terms approved in writing by the supervisor of the scheme.

7 Exemption from annual assurance engagement

A custodian of the scheme's property is exempted from regulation 87(1) of the Regulations to the extent that it requires an annual assurance engagement to be obtained that covers custody of the scheme's property.

8 Conditions of exemption in clause 7

- (1) The exemption in clause 7 is subject to the conditions that, if this subclause applies,—
- (a) the custodian must, within 4 months after the relevant date, obtain an assurance engagement with a qualified auditor for the most recently completed relevant period (done in accordance with applicable auditing and assurance standards) that—
 - (i) covers custody of the scheme's property held by that custodian; and
 - (ii) complies with the requirements in regulation 88 of the Regulations.
 - (b) The custodian must, within 20 working days after obtaining an assurance report required by subclause 1(a), provide a copy of the assurance report to each of the relevant persons as if it were a report required by regulation 87(1) of the Regulations.
- (2) The conditions in subclause (1) apply if, before the relevant date, the supervisor, acting in its capacity as the licensed independent supervisor of the scheme, reasonably determines that it would be desirable to obtain an assurance engagement for the relevant period ending on that relevant date to provide reasonable assurance in respect of the matters provided for in regulation 88 of the Regulations, after the supervisor has had regard to—
- (a) the nature and value of the scheme property; and
 - (b) whether there are any circumstances that are likely to increase or mitigate risks in relation to custody of the scheme property.

9 Exemption from daily cash reconciliation

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

10 Condition of exemption in clause 9

- (1) The exemption in clause 9 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; and

- (b) consider, whenever there is a material change in the frequency, value, or volume of cash transactions and in any case not less than annually, whether reconciliations are being carried out with appropriate frequency; and
- (c) consult the manager of the scheme (and the supervisor, if the supervisor is not the custodian); and
- (d) act to the standard of a prudent and professional custodian.

11 Exemption from statement of investment policy and objectives (SIPO) limit break quarterly reporting

The manager of the scheme is exempted from regulation 95(1) of the Regulations if there were no limit breaks in that quarter to which section 167 of the Act applies.

12 Exemptions from governing documents requirements

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

- (a) section 135 of the Act; and
- (b) section 127(1)(b) of the Act to the extent that it requires governing documents to comply with section 135 and 136 of the Act;
- (c) Section 133(a) of the Act to the extent that it relates to sections 135 and 136 of the Act; and
- (d) Clause 22(1)(b) of Schedule 4 of the Act to the extent that it requires a copy of the governing document lodged with the Registrar to comply with sections 135 and 136 of the Act.

13 Exemptions from licensing requirements

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 license covers management of the scheme; and
- (b) section 133(a) of the Act to the extent that it relates to the requirement in subclause (a); and
- (c) Section 388(a) of the Act.

14 Conditions of exemptions in clauses 12 and 13

The exemptions in clause 12 and 13 are subject to the conditions that the manager of the scheme must—


- (a) within 3 months after the scheme's effective date, give the supervisor a wind up plan that:—
 - (i) provides for the scheme to be wound up by 31 March 2021; and
 - (ii) describes the key steps and anticipated timetable for realisation of scheme property, repayments of scheme liabilities and distribution of the proceeds to the scheme participants; and
 - (iii) provides that the proceeds from the realisation of scheme property are to be distributed to scheme participants in a timely manner, except and only to the extent that funds are reasonably required to facilitate the realisation of scheme property or withheld to meet reasonably anticipated scheme liabilities; and

- (iv) includes information that is material to the wind up plan; and
- (b) within 3 months after the scheme's effective date, inform scheme participants by written notice:—
 - (i) of the wind up plan including providing scheme participants with a summary of the wind up plan; and
 - (ii) that the scheme is relying on the exemptions in this notice along with an explanation of the nature and practical effect of the exemptions relied on and a description of the alternative governance and custodian requirements that the conditions to the exemption impose; and
- (c) the manager of the scheme reports to the supervisor of the scheme every six months from the scheme's effective date, on progress of the winding up of the scheme against the winding up plan; and
- (d) notify the supervisor in writing within 10 working days of becoming aware of any material change to or deviation from the wind up plan.

15 Conditions of exemptions in clauses 5, 7, 9, 11, 12 and 13

The exemptions in clauses 5, 7, 9, 11, 12 and 13 are subject to the further condition that the manager of the scheme does not offer or issue further managed investment products in the scheme.

Dated at Auckland this 30th 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 the close of 31 March 2021.

This notice exempts the manager of the Silverwood Land 2015 Limited Partnership (**scheme**), subject to certain conditions, from the following licensing and governance requirements of the Financial Markets Conduct Act 2013 (the **Act**) and the Financial Markets Conduct Regulations 2014 (the **Regulations**):

- exemptions from sections 127(1)(c), 133(a) and 388(a) of the Act (requirement to have a licensed manager):
- exemptions from sections 135, 127(1)(b), 133(a) and clause 22(1)(b) of schedule 4 of the Act (requirement for the scheme's governing document to be updated to comply with the content requirements in the FMC Act), subject to the condition that the manager prepares a wind up plan, provides this to the supervisor and investors and regularly reports to the supervisor on progress against the plan:
- exemptions from sections 127(1)(f), 133(a) and 156(1) of the Act (requirement for the scheme's real property assets to be held by the supervisor or an independent custodian), subject to the condition that a registered encumbrance is registered against the title of the real property assets in favour of the supervisor:

- exemption from regulation 87(1) of the Regulations (requirement for the custodian of the scheme's property to obtain an annual assurance engagement) subject to a condition that such an engagement will be obtained if the supervisor determines it is desirable in the circumstances:
- exemption from regulation 86(3) of the Regulations (requirement for daily reconciliation of all money held by the custodian of the scheme), subject to the condition that such reconciliation takes place at a frequency determined by the custodian that is appropriate in the circumstances:
- exemption from regulation 95(1) of the Regulations (requirement to report on statement of investment policy and objective (**SIPO**) limit breaks if no break occurs).

The scheme was established in September 1990 as a special partnership under Part II of the Partnership Act 1908 and investment in the scheme was structured as a participatory security under the Securities Act 1978. The original investment objective of the scheme was to invest in both forestry rights and a forested land block. Subsequently the forestry rights were sold and the forest harvested. The scheme is currently in wind up with its primary activity to dispose of its remaining land assets.

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:—

- The exemptions will reduce compliance costs for the scheme by relieving the scheme's manager and supervisor of certain obligations that are not required, in view of the fact that the scheme is in wind up and the conditions imposed in the notice. The conditions impose appropriate governance arrangements to allow for effective monitoring and reduce governance risks:
- In addition, important protections for investors will continue to apply under the Act. These include that 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 exemption from the requirement to update the scheme's governing documents, the costs of updating the governing documents are unnecessary when the scheme is closed to new investors and is in wind up, and given that alternative governance and reporting arrangements having been put in place by the conditions in the notice:
- In relation to the exemption from the requirement to have a licensed manager, the costs of licensing are not commensurate with the benefits for investors in the scheme in circumstances where the scheme is being wound down and accordingly there is a low level of manager activity and a limited amount of assets under management for the remaining life of the scheme:
- In relation to the exemption from the independent custody requirements, these requirements are not necessary to ensure effective monitoring or to reduce governance risks in circumstances where the real property of the scheme is held on trust and there is a registered encumbrance over the property in favour of the supervisor to protect scheme participants' interests:
- In relation to the exemption from the daily cash reconciliation requirement, the scheme has a low volume and frequency of transactions, and therefore daily reconciliation of records of money for the scheme by the custodian is unlikely to be necessary to ensure the records accurately state the scheme's money and all transactions relating to that money. Adequate protection will be provided for scheme participants if those records are reconciled with a frequency suited to the level of transactions for the scheme:

- 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 therefore reduced. In these circumstances, the annual audit of the scheme's financial statements provides regular and appropriate independent verification in relation to the scheme's property without requiring an annual assurance engagement. Furthermore, adequate protection will be provided for scheme participants in relation to custody of the scheme's assets if an assurance engagement is obtained when the supervisor determines that circumstances have resulted in increased risks for custody of scheme property. Supervisors are well placed to decide when an assurance engagement is needed, given their independence, licensed status, and statutory duties to act in the best interests of scheme participants and to carry out their functions and duties to a professional standard of care. Accordingly, the value to investors of an assurance engagement outweighs the associated costs:
- In relation to the exemption from the quarterly limit break reporting requirement, the low volume and frequency of activity in the period leading up to the completion of wind up for the scheme means it is unlikely limit breaks will occur in this period. In these circumstances, routine quarterly limit breaks are of no value.

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 by allowing the scheme to continue to operate largely in accordance with its current governance structure (with alternative disclosure and reporting requirements) during its wind up; and
- the exemptions are not broader than is reasonably necessary to address the matters that gave rise to the exemptions because the exemption is restricted to the scheme which has a finite life and special characteristics due to the nature and location of its investment.