

Financial Markets Conduct (Vital Healthcare Property Trust Restructure – Disclosure) Exemption Notice 2020

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 (Vital Healthcare Property Trust Restructure – Disclosure) Exemption Notice 2020.

2 Commencement

This notice comes into force on 27 February 2020.

3 Revocation

This notice is revoked on the close of 26 February 2021

4 Interpretation

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

Act means the Financial Markets Conduct Act 2013

Corporations Act means the Corporations Act 2001 (Cth) of Australia

manager means NorthWest Healthcare Properties Management Limited

material information means information that a reasonable person would expect to, or to be likely to, influence persons who commonly invest in financial products in deciding whether to accept the proposal

notice of meeting means the notice of meeting to be provided by the manager to unit holders convening the special meeting

NZX Main Board means the main financial product market operated by NZX Limited as a licensed market

proposal means collectively the trust deed amendments, the restructuring and the various associated corporate changes described in the notice of meeting

record date means the date identified as such by the manager and announced through the NZX Main Board

register entry means a register kept or maintained by the Registrar of Financial Service Providers

Regulations means the Financial Markets Conduct Regulations 2014

restructuring means the proposed restructuring and re-domiciling of Vital Healthcare Property Trust and its wholly-owned and controlled holding vehicles (namely, Vital Healthcare Property Limited and Colma Services Limited) whereby:

- (a) Vital NZ is established as a registered managed investment scheme under the Act. Vital NZ units are issued to Vital Healthcare Property Trust;
- (b) Vital Healthcare Property Trust's New Zealand property assets are transferred to Vital NZ;
- (c) Vital NZ units are distributed in specie by the manager to unit holders that hold Vital Healthcare Property Trust units at the time of the distribution;
- (d) Vital NZ units are immediately stapled to Vital Healthcare Property Trust units;
- (e) Vital Healthcare Property Limited and Colma Services Limited migrate to Australia pursuant to Part 19 of the Companies Act 1993 and the corresponding provisions of the Corporations Act; and
- (f) Vital Healthcare Property Trust migrates to Australia through making the trust deed amendments, removing the manager and supervisor and appointing a responsible entity (as contemplated by the Corporations Act) and de-registering as a managed investment scheme under the Act and registering as a managed investment scheme under the Corporations Act

special meeting means the special meeting of unit holders to consider the proposal

stapling means the linking together of the rights and obligations which attach to a Vital Healthcare Property Trust unit and a Vital NZ unit so that a Vital Healthcare Property Trust unit and a Vital NZ unit may only be dealt with together, and **stapled** has a corresponding meaning

supervisor means Trustees Executors Limited

trust deed amendments means the amendment to the trust deed of Vital Healthcare Property Trust to allow the restructuring to be implemented, including amendments:

- (a) to allow for the distribution in specie of Vital NZ units;
- (b) to give effect to the stapling of units with Vital NZ units; and
- (c) to achieve the migration of Vital Healthcare Property Trust to Australia

unit holder means a holder of a Vital Healthcare Property Trust unit from time to time

variation means the offer to vary the terms of the Vital Healthcare Property Trust units as a result of the proposal

Vital Healthcare Australia means, pursuant to the terms of the Restructuring, Vital Healthcare Property Trust after it is migrated to Australia and registered as a managed investment scheme under the Corporations Act

Vital Healthcare Property Group means the stapled group comprising Vital Healthcare Australia and Vital NZ

Vital Healthcare Property Trust means the managed investment scheme called Vital Healthcare Property Trust (scheme number SCH11214), originally established pursuant to a trust deed dated 11 February 1994

Vital Healthcare Property Trust unit means a unit in Vital Healthcare Property Trust

Vital NZ means a managed investment scheme to be established and registered under Part 4 of the Act, with the manager as its licensed manager and the supervisor as its licensed supervisor

Vital NZ units means a unit in Vital NZ

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

5 Exemption in relation to limited disclosure document and register entry

The manager is exempted, in relation to the variation, from:–

- (a) clause 33 of Schedule 8 to the Regulations; and
- (b) clause 38 of Schedule 8 to the Regulations.

6 Conditions relating to limited disclosure document and register entry exemption

- (1) The exemptions in clause 5 are subject to the conditions that–

- (a) it is a term of the variation that Vital NZ units are to be distributed in specie by the manager to unit holders that hold Vital Healthcare Property Trust units at the time of the distribution; and
- (b) it is a term of the variation that Vital NZ units will be stapled to Vital Healthcare Property Trust units; and
- (c) it is a term of the variation that the assets and business of the Vital Healthcare Property Group immediately after the restructuring are substantially the same as the assets and business of Vital Healthcare Property Trust immediately prior to the implementation of the restructuring; and
- (d) the notice of meeting is provided to all unit holders as at the record date giving unit holders not less than 15 working days' notice of the special meeting at which unit holders will vote on the proposal; and
- (e) the notice of meeting includes a clear warning statement prominently displayed advising investors that the proposal involves restructuring Vital Healthcare Property Trust to form a stapled group, which will have a more complex operational and governance structure as it will involve two legal entities across two legal jurisdictions subject to two different regulatory regimes; and
- (f) the notice of meeting includes particulars of all matters in relation to the proposal that are material information; and
- (g) without limiting (f) above, the notice of meeting includes the following:
 - (i) a summary of the proposal;
 - (ii) a summary of the key indicative dates for the implementation of the proposal;
 - (iii) a section setting out the answers to questions that the manager considers that unit holders may have when considering the proposal including information regarding 'how to complain':

- (iv) a description of actions required by unit holders for the special meeting including an outline of the matters to be voted on:
- (v) a description of the Vital Healthcare Property Group following the implementation of the proposal, focussing on what will be the same and what will be different, including in relation to—
 - (A) financial and other periodic reporting; and
 - (B) the composition of the boards, management teams and associated governance arrangements; and
 - (C) investment strategy, particularly that the strategy will not change as a result of the proposal; and
 - (D) management fees; and
 - (E) stapling and its implication for unit holders; and
 - (F) distribution policy, distribution payment methods and the distribution reinvestment plan; and
 - (G) financing arrangements:
- (vi) details of the variation and restructuring, including—
 - (A) a summary of the terms of the variation; and
 - (B) the purpose and effect of the variation and restructuring; and
 - (C) the key steps necessary to give effect to the variation and restructuring;
 - (D) a summary of the costs of the restructuring; and
 - (E) particulars of any other matters relating to the restructuring that are material information:
- (vii) an overview of the key advantages and disadvantages of the variation and restructuring for unit holders:
- (viii) a summary of the expected impact of the restructuring on unit holders' distributions including particulars of any material taxation issues relevant to unit holders resulting from the implementation of the variation and restructuring:
- (ix) a description of the circumstances that the manager is aware of that exist or are likely to arise as a result of the restructuring that significantly increase the risk to returns for unit holders, and which must include:
 - (A) particulars that make it clear why each circumstance is of particular significance in relation to the restructuring; and
 - (B) particulars that will, to the extent that is reasonably practicable, assist a unit holder to assess the likelihood of any impact arising from those circumstances, the nature of that impact, and the potential magnitude of that impact.
- (x) a summary of the key legal agreements:
- (xi) a report from an independent expert on the merits of the proposed restructuring and a statement of the relevant qualifications of the independent adviser giving the report:
- (xii) the supervisor's comments (if any) on the variation:

- (xiii) a detailed description of the trust deed amendments.
- (2) Clauses 6(1)(f) and (g) do not require the manager to include information in the notice of meeting that:
- (a) relates to financial products or issuers generally rather than units; or
 - (b) is about an identifiable unit holder.

7 Further conditions relating to limited disclosure document exemption

The exemptions in clause 5 are further subject to the condition that the manager arranges for the following documents to be published via the NZX's market announcements platform, on Vital Healthcare Property Trust's internet page and the register entry of both Vital Healthcare Property Trust and Vital NZ:

- (a) **notice of meeting:** a copy of the notice of meeting; and
- (b) **trust deed amendments:** a copy of the Vital Healthcare Property Trust's trust deed showing the details of the trust deed amendments.

Dated at Wellington this 25th day of February 2020.



Nick Kynoch
General Counsel
Financial Markets Authority

Statement of reasons

This notice, which comes into force on 27 February 2020 and is revoked on 26 February 2021.

This notice exempts Northwest Healthcare Properties Management Limited (the **Manager**) from clauses 33 and 38 of Schedule 8 to the Financial Markets Conduct Regulations 2014 (**Regulations**) in relation to a proposed restructure of Vital Healthcare Property Trust (**VHPT**) (**Restructure**) pursuant to which existing VHPT unit holders (**Unit Holders**) must vote to approve the Restructure, various associated corporate changes and amendments to VHPT's trust deed (**Trust Deed Amendments**) (together the **Proposal**) which will result in a variation to the terms of their existing VHPT units (**Variation**). The effect of this exemption is that the Manager is not required to prepare and lodge with the Registrar a limited disclosure document in respect of the Variation, as required by clause 33 and 38 of Schedule 8 to the Regulations. This exemption is subject to a number of conditions including that the notice of meeting convening the special meeting of Unit Holders, at which the Proposal will be voted on, includes particulars of all matters that are material to Unit Holders making a decision on whether to approve the Proposal.

In addition to being made available to Unit Holders pursuant to the terms of Vital Healthcare Property Trust's trust deed, the Manager must ensure that the notice of meeting is published on the NZX market announcements platform, on VHPT's internet page and on the register entry for VHPT and Vital NZ.

The FMA, after satisfying itself as to the matters set out in section 557 of the Financial Markets Conduct Act 2013 (**Act**), considers it appropriate to grant the exemption because—

- Unit Holders already have economic exposure to the assets of VHPT. The Proposal effectively involves Unit Holders continuing their interests in the same assets, in the same proportions, but through a different ownership structure. The Proposal will only effect Unit Holders and therefore will be limited to persons who are already familiar with the assets and business of VHPT. Conditions of the exemption require the underlying assets and business of the Vital Healthcare Property Group to be substantially the same after the implementation of the Proposal as before it:
- the prescribed information that the Act and Regulations require to be included in a limited disclosure document (**Prescribed Information**) is different to the nature of information VHPT unitholders require in order to make an informed decision about the Proposal, particularly given that the Prescribed Information will only relate to one side of the Vital Healthcare Property Group. This will not assist unit holders, who will be invested in the wider stapled group and not able to invest in one side without the other:
- a condition of the exemption requires Unit Holders to receive alternative information via a notice of meeting which will provide them with more meaningful relevant information in connection with the Proposal. The information in the notice of meeting will be more targeted to the matters that Unitholders must decide in respect of the Variation than that which would be otherwise provided to Unit Holders:
- a condition of the exemption also requires the Manager to ensure that the notice of meeting and Trust Deed Amendments are published on the NZX market announcements platform, on VHPT's internet page and on VHPT and Vital NZ's register entry:
- the Proposal requires the approval of Unit Holders by way of special resolution. By virtue of section 163 of the Act, the Manager and its associated persons are prevented from voting on the Proposal:
- the Manager will still be subject to the fair dealing provisions of Part 2 of the Act with respect to the notice of meeting and therefore Unit Holders have protection against misleading and deceptive information being included in the notice of meeting:
- the Supervisor will oversee the implementation of the Proposal and, pursuant to s.139(1)(a) of the Act, must approve the Trust Deed Amendments before they have any legal effect:
- Unit Holders will receive meaningful disclosure as a result of the disclosure requirements of the NZX Listing Rules, both in respect of the notice of meeting, and pursuant to the Vital Healthcare Property Group's ongoing continuous disclosure obligations:
- as such, the FMA is satisfied that the granting of the exemptions are necessary and desirable in order to promote the purposes of the Act, namely to provide timely, accurate, and understandable information to Unit Holders to assist them to make decisions relating to the Proposal, and also in order to avoid unnecessary compliance costs to produce a limited disclosure document and register entry under the Act and Regulations, in addition to the notice of meeting relating to the Proposal:
- in the circumstances that the exemptions are limited to the offer of the Variation made in the context of the Proposal, and their key impact is to provide relief from the requirements to disclose information which is not material to Unit Holders' decision on whether to approve the Proposal, the FMA is satisfied that the exemption is not broader than reasonably necessary to address the matters that give rise to the exemptions.