

Securities Act (Argosy Property Limited) Exemption Notice 2011

Pursuant to section 70B of the Securities Act 1978, the Financial Markets Authority gives the following notice (to which is appended a statement of reasons of the Financial Markets Authority).

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Notice

- 1 Title**
This notice is the Securities Act (Argosy Property Limited) Exemption Notice 2011.
- 2 Commencement**
This notice comes into force on 22 December 2011.
- 3 Expiry**
 - (1) Clauses 5 to 10 expire on the close of 31 March 2012.
 - (2) The rest of this notice expires on the close of 30 September 2015.

4 Interpretation

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

Act means the Securities Act 1978

allotment means the transfer of specified securities to eligible unit holders in consideration for the redemption of units held by those unit holders

allotment date means the date on which the allotment occurs

APL group means APL and all its subsidiaries

APL means Argosy Property Limited

company DRP means a dividend reinvestment plan established by APL

corporatisation proposal means the package of proposals that includes the redemption of units in the trust and the allotment of specified securities to eligible unit holders

eligible unit holder means a unit holder whose address in the unit register is shown as being in New Zealand or Australia

existing distribution reinvestment plan participant means a person who was a unit holder who elected to participate in the trust DRP and who became a holder of ordinary shares in APL as a result of the corporatisation proposal being approved

manager means Argosy Property Management Limited as manager of the trust

meeting date means the date of the meeting of unit holders held to approve the corporatisation proposal

notice date means the date, as notified to NZX Limited, on which the notice of meeting is sent to unit holders

NZSX means the securities market operated by NZX Limited under that name

NZSX listing rules means the listing rules of NZSX, and includes any waivers from those rules

prospectus means the registered prospectus for the offer of specified securities

Regulations means the Securities Regulations 2009

specified DRP securities means ordinary shares in APL allotted under the company DRP to existing distribution reinvestment plan participants

specified securities means the ordinary shares in APL to be allotted to eligible unit holders under the corporatisation proposal

trust means the unit trust called Argosy Property Trust, established under a trust deed dated 30 October 2002 (as amended)

trust-controlled entity means—

- (a) any company the shares in which are owned by the trustee; and
- (b) any subsidiary of a company referred to in paragraph (a)

trust DRP means the Argosy Property Trust distribution reinvestment plan recorded in a document dated 11 May 2011

trustee means the New Zealand Guardian Trust Company Limited

trust group means the trust and all trust-controlled entities

unit means a unit in the trust

unit holder means, at any time, a person shown on the unit register as being a holder of 1 or more units at that time

unit register means the register of units kept by the manager in accordance with section 51(1)(d) of the Act

- (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 sections 34(2)(a) and 37A(1)(a) of Act and regulation 5(1)(a) of Regulations

APL, the manager, and every person acting on behalf of either or both of them are exempted from sections 34(2)(a) and 37A(1)(a) of the Act and regulation 5(1)(a) of the Regulations in respect of the specified securities.

6 Conditions relating to exemptions in clause 5

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

- (a) the prospectus contains—
 - (i) all the information, statements, and other matters specified in the Schedule; and
 - (ii) a statement to the effect that APL will take steps to ensure that the specified securities are listed immediately after allotment; and
- (b) no allotment of specified securities is made unless, before the meeting date, a copy of the prospectus, and a copy of any memorandum of amendments to the prospectus that is registered under section 43 of the Act after the notice date but before the meeting date, has been sent to—
 - (i) every person who, on the notice date, is an eligible unit holder; and
 - (ii) every person who, after the notice date but before the meeting date, becomes an eligible unit holder; and

- (c) it is a term of the offer that the manager sends, as soon as practicable and without charge, a prospectus to any eligible unit holder that requests a copy of the prospectus; and
- (d) any advertisement published by APL or the manager in relation to the corporatisation proposal includes a statement that the prospectus will be provided to any eligible unit holder on request and without charge; and
- (e) if FMA gives a notice under clause 9, the allotment does not occur until after—
 - (i) the expiry of the period specified in the notice; or
 - (ii) the notice is revoked; and
- (f) at the time of the allotment, APL is a public issuer; and
- (g) the units in the trust remain listed until the allotment date.

7 Exemptions from regulation 26 of Regulations

APL, the manager, and every person acting on behalf of either or both of them are exempted from regulation 26 of the Regulations in respect of the specified securities.

8 Conditions of exemptions in clause 7

- (1) The exemptions in clause 7 are subject to the following conditions:
 - (a) any advertisement relating to the specified securities must not state the amount of assets, or net assets, of any person or persons, other than the total assets, or net assets, of the APL group or the trust group:
 - (b) any advertisement relating to the specified securities must not state the amount of the total assets of the APL group or the trust group without also stating, with equal prominence, the amount of the total liabilities of the APL group or the trust group, as the case may be:
 - (c) any advertisement relating to the specified securities must not state the amount of the net assets, or the amounts of the total assets and total liabilities, of the trust group unless it complies with subclause (2).
- (2) An advertisement may state the amounts referred to in subclause (1)(c) if—
 - (a) the amounts shown appear in the most recent audited statement of financial position of the trust, and that statement is dated no earlier than 18 months before the date of distribution of the advertisement; and
 - (b) the advertisement states—
 - (i) the date of the statement of financial position; and

- (ii) that the amounts have been calculated as at that date; and
 - (iii) that the amounts have been taken from audited financial statements.
- (3) Subclause (1) does not prevent an advertisement from containing or referring to –
 - (a) a statement of financial position for the trust that complies with generally accepted accounting practice; or
 - (b) a summary statement of financial position for the trust prepared in accordance with FRS-43.

9 Notice requiring allotment to be delayed

- (1) The notice referred to in clause 6(e) is a written notice given by FMA to the manager, before the allotment date, that—
 - (a) requires the allotment to be delayed for a period specified in the notice; and
 - (b) is given because FMA is of the opinion that—
 - (i) information has been disclosed in the prospectus that has not previously been publicly disclosed by the manager under its disclosure obligations in respect of the trust, and that information is adverse to APL and material to the offer of the specified securities contained in the prospectus; or
 - (ii) information has been disclosed by the manager under its disclosure obligations in respect of the trust between the date of the prospectus and the allotment date, and that information is adverse to APL and material to the offer of the specified securities contained in the prospectus; or
 - (iii) there has been a failure by the manager to comply with its disclosure obligations in respect of the trust at any time during the previous 12 months.
- (2) FMA may revoke a notice given under this clause before the expiry of the period specified in it if FMA is satisfied, on the grounds that the market has been adequately informed and investors have been given sufficient time to consider all disclosures, that the notice should no longer delay the allotment.

10 Exemptions from sections 37, 37A, 38A, 41, 43, and 43B of Act and regulations 30 to 34 of Regulations

- (1) The trustee and every person acting on its behalf (but not APL) are exempted from sections 37, 37A, 38A, and 43B of the Act and

regulations 30 to 34 of the Regulations in respect of the specified securities.

- (2) The trustee, and every person acting on its behalf are exempted, in respect of the specified securities, from sections 41 and 43 of the Act, to the extent that those sections require a prospectus, or any memorandum of amendments to the prospectus, to be signed by the trustee's directors.

11 Exemption from section 54B of Act

The trustee and every person acting on its behalf (but not APL) are exempted from section 54B of the Act.

12 Exemptions from sections 37 and 37A of the Act and Regulations (except regulation 23) for distribution reinvestment plan

APL and every person acting on its behalf are exempted from sections 37 and 37A of the Act and the Regulations (except regulation 23) in respect of the specified DRP securities.

13 Conditions of exemptions in clause 12

- (1) The exemptions in clause 12 are subject to the condition that the prospectus sent out before the meeting date contains, or is accompanied by statements to the following effect:
- (a) if the corporatisation proposal is effected:
 - (i) the company DRP will replace the trust DRP;
 - (ii) the company DRP will be implemented on the same terms and conditions as the trust DRP, except for changes necessary to reflect the fact that it applies to APL and to shares in APL, rather than to the trust and to units in the trust;
 - (b) there is available from APL, on request and free of charge, a copy of the company DRP;
 - (c) elections already made by unit holders under the trust DRP will apply at the commencement of the company DRP; and
 - (d) unit holders who have elected to participate in the trust DRP can at any time, while the trust DRP continues, cancel or change their participation in it, and shareholders under the company DRP will be able to cancel or change their participation in the company DRP at any time.
- (2) The exemptions in clause 12 are subject to the further condition that the company DRP must contain provisions requiring that -
- (a) there is available from APL, on request and free of charge, a copy of the most recent annual report of APL (if any), and

financial statements of APL (if any) complying with the Financial Reporting Act 1993;

- (b) at the time the price of the securities issued under the company DRP is set, APL has no information that is not publicly available that would, or would be likely to, have a material adverse affect on the realisable price of the security if the information were publicly available;
- (c) the right to subscribe for, or require APL to allot, securities issued under the company DRP is offered to all holders of securities of APL of the same kind, other than securities holders who are resident outside New Zealand and who are excluded by APL to avoid a risk of breaching the laws of the relevant overseas country;
- (d) every securities holder to whom the right is offered is given a reasonable opportunity to accept it;
- (e) the securities are issued on the terms disclosed to holders under the company DRP; and
- (f) the securities are subject to the same rights as the securities issued to all holders of securities of the same kind who agree to receive the securities.

SCHEDULE

MATTERS REQUIRED TO BE STATED OR CONTAINED IN PROSPECTUS

cl 6(a)(i)

1 Information at front of prospectus

- (1) A statement on the front page that clearly identifies the prospectus as being a prospectus for the issue of specified securities as consideration for the redemption of units in the trust.
- (2) A statement to the effect that, as a result of an exemption granted under the Act, the prospectus contains information similar to that which would be provided in a simplified disclosure prospectus (modified as necessary, given that the specified securities are issued by APL rather than the trust).
- (3) A statement to the effect that—
 - (a) the manager is subject to a disclosure obligation in respect of the trust that requires it to notify certain material information to NZX Limited for the purpose of that information being made available to participants in NZSX; and
 - (b) APL will (once the specified securities are listed) be subject to a disclosure obligation that will require it to notify certain

material information to NZX Limited for the purpose of that information being made available to participants in NZSX.

2 Names, addresses, and other information

- (1) The name of APL, and the address of its registered office.
- (2) The name of every director of APL.
- (3) The name and address of every promoter of the specified securities.

3 Experts and underwriter

- (1) The names, addresses, and qualifications of any experts named in the prospectus.
- (2) If the offer of securities is underwritten, the name and address of any underwriter.

4 Main terms of offer

- (1) A brief description of the specified securities.
- (2) A statement as to whether there is any maximum number or amount of the specified securities and, if so, the number or amount.
- (3) The consideration to be provided for the specified securities.
- (4) A statement as to how eligible unit holders will be allotted specified securities.

5 Relationship with listed securities

A description of the ranking of the specified securities (in respect of APL) as compared with units (in respect of the trust) in respect of—

- (a) a liquidation of APL or the trust (as the case may be); and
- (b) the payment of dividends

6 Preliminary and issue expenses

Particulars of any issue expenses, including—

- (a) their amount or estimated amount; and
- (b) in respect of any commission payable,—
 - (i) the rate of commission; and
 - (ii) the persons or classes of persons to whom the commission is payable.

7 Returns

- (1) The following information about the returns to allottees from the specified securities:
 - (a) a brief description of the nature of the returns:

- (b) a brief description of the key factors that determine the returns:
- (c) a statement as to whether or not an amount of returns, quantifiable as at the specified date and enforceable by allottees, has been promised and, if so, the amount or a description of how that amount can be calculated:
- (d) a statement as to which of the following (if any) will, or is likely to, affect the returns:
 - (i) taxes or duties:
 - (ii) reserves or retentions.
- (2) The dates on which, or frequency with which, the returns from the specified securities will be due and paid, or, if there are no such dates or frequency or the dates or frequency are unknown, a statement to that effect.
- (3) If payment of all or any of the returns from the specified securities will or may be withheld until a particular date or for a particular period, a statement to that effect and a brief description of the circumstances that may produce this result.
- (4) The name of the person legally liable to pay the returns.

8 Consequences of insolvency

- (1) A statement as to whether or not allottees will or may be liable to pay money to any person as a result of the insolvency of APL and, if so, a brief description of the liability.
- (2) A brief description of any claims on the assets of APL that will or may rank ahead of claims of allottees in the event of APL being put into liquidation.
- (3) A brief description of any claims on the assets of APL that will or may rank equally with the claims of allottees in the event of APL being put into liquidation.

9 Alteration of securities

- (1) A brief description of any right of an allottee, APL, or any other person to—
 - (a) alter the amount of moneys payable by an allottee, including a brief description of any continuing obligation of the allottee to pay that amount; or
 - (b) otherwise alter the terms of any specified security.
- (2) If any charges on any of those alterations are payable by an allottee to APL or the manager, or to an associated person of either of them, a statement of those charges.

10 Early termination

- (1) A brief description of any right of APL, an allottee, or any other person to terminate, cancel, surrender, or otherwise make or obtain payment of the returns from the specified securities, other than as described in clause 7.
- (2) If any of the following charges on any of those payments are payable by an allottee to APL or the manager, or to an associated person of either of them, a statement of the charges:
 - (a) early termination charges:
 - (b) switching or sale charges (including the difference between any buying and selling prices for the specified securities).

11 Right to sell securities

- (1) A statement as to whether or not an allottee is entitled to sell the allottee's interest in a specified security to another person and, if so, whether, in the opinion of APL, there is an established market for those sales.
- (2) If any charges on any such sale are payable by an allottee to APL or the manager, or to an associated person of either of them, a statement of those charges.

12 Other terms of offer and specified securities

All terms of the offer, and all terms of the specified securities, not elsewhere set out in the prospectus, other than—

- (a) any terms implied by law; or
- (b) any terms set out in a document that—
 - (i) is registered with a public official; and
 - (ii) is available for public inspection; and
 - (iii) is referred to in the prospectus.

13 Information available under the trust's disclosure obligation

- (1) Particulars of the disclosed information that are sufficient to identify that information (for example, the title of a document and its date of notification to NZX Limited).
- (2) A statement to correct or update the disclosed information if it is misleading in the context of the offer.
- (3) In this clause, **disclosed information** means information, notified to NZX Limited by the manager in respect of the trust in accordance with the NZSX listing rules, that is material to the offer of specified securities.

14 Financial statements

- (1) A reference to the latest financial statements for the trust that comply with, and have been registered under, the Financial Reporting Act 1993, the accounting period covered by those statements, and the date of registration.
- (2) The date on which the latest financial statements referred to in subclause (1) have been notified by the trust to NZX Limited in accordance with the NZSX listing rules.
- (3) If APL so wishes, the latest financial statements referred to in subclause (1).

15 Additional interim financial statements

- (1) A reference to interim financial statements for the trust if—
 - (a) those statements are for a period from or after the date of the financial statements contained or referred to in the prospectus under clause 14; and
 - (b) those statements have been prepared in accordance with NZ IAS 34 (but need not be audited); and
 - (c) those statements have been notified by the trust to NZX Limited in accordance with the NZSX listing rules.
- (2) If APL so wishes, the interim financial statements referred to in subclause (1).
- (3) If interim financial statements are contained or referred to in the prospectus under this clause, statements as to—
 - (a) the date on which the interim financial statements were notified by the trust to NZX Limited; and
 - (b) all material changes (if any) in matters contained in the interim financial statements from the matters contained in the financial statements contained or referred to in the prospectus under clause 14; and
 - (c) all transactions (if any) that are material related party transactions under generally accepted accounting practice and that were entered into or were being performed in the period of the interim financial statements.

16 Access to information and statements

- (1) A statement—
 - (a) to the effect that the disclosed information identified under clause 13(1), and the financial statements and any interim financial statements contained or referred to in the prospectus under clauses 14 and 15,—

- (i) are filed on a public register at the Companies Office of the Ministry of Economic Development and are available for public inspection (including at www.business.govt.nz/companies); and
 - (ii) will be made available on request, and free of charge, by the manager and APL; and
- (b) explaining how the request under paragraph (a)(ii) should be made.

17 Other material matters

- (1) Particulars of any material matters relating to the offer of specified securities (other than matters elsewhere set out in the prospectus, in the disclosed information identified under clause 13, or in the financial statements or interim financial statements referred to in the prospectus under clauses 14 and 15, and contracts entered into in the ordinary course of business of the issuing group).
- (2) In subclause (1), **contracts entered into in the ordinary course of business of the issuing group** includes the following:
 - (a) contracts entered into by the manager in the ordinary course of business as manager of the trust:
 - (b) contracts entered into by the trustee in the ordinary course of business as trustee of the trust:
 - (c) contracts entered into by any trust-controlled entity in the ordinary course of business of that trust-controlled entity:
 - (d) contracts entered into by any company in the APL group—
 - (i) in the ordinary course of business of that company; or
 - (ii) as a result of the novation of, or the assignment of any rights under, any contract referred to in paragraphs (a) to (c) to that company; or
 - (iii) in substitution or as a replacement for any contract referred to in paragraphs (a) to (c):
 - (e) any amendments to any contract referred to in paragraphs (a) to (d).

18 Directors' statement

A statement by the directors of the manager to the effect that, in their opinion, after due enquiry by them, the trust is in compliance with the requirements of the continuous disclosure provisions that apply to it.

Dated at Wellington this 21st day of December 2011



Head of Primary Regulatory Operations
Financial Markets Authority

Statement of reasons

This notice comes into force on 22 December 2011, and expires on different dates, the latest being 30 September 2015.

The notice relates to a corporatisation proposal in respect of Argosy Property Trust (the **trust**), a unit trust with units quoted on the NZSX. The corporatisation proposal includes the offer and allotment of ordinary shares in a new company called Argosy Property Limited (**APL**) to certain holders of units in the trust, in consideration for the redemption of those units.

The manager of the trust is Argosy Property Management Limited (the **manager**), and its trustee is The New Zealand Guardian Trust Company Limited (the **trustee**).

This notice exempts APL and the manager from sections 34(2)(a) and 37A(1)(a) of the Securities Act 1978 (the **Act**) and from regulations 5(1)(a) and 26 of the Securities Regulations 2009 (the **Regulations**), subject to conditions. It also exempts the trustee from sections 37, 37A, 38A, 41, 43, 43B and 54B of the Act and from regulations 30 to 34 of the Regulations.

This notice also provides exemptions for APL from sections 37 and 37A of the Act and from the Regulations (except regulation 23), subject to conditions, in respect of ordinary shares allotted by APL under its dividend reinvestment plan to persons who were formerly holders of units in the trust and had elected to participate in the trust distribution reinvestment plan.

The Financial Markets Authority (**FMA**), after satisfying itself of the matters set out in section 70B(2) of the Act, considers it appropriate to grant the exemptions set out in this notice for the following reasons—

- the simplified disclosure prospectus regime enables listed issuers that are subject to continuous disclosure obligations to offer securities to the public using a single offer document. The trust is listed on the NZX. APL is a new company which will replace the trust under the corporatisation. Subject to certain conditions and approvals, the trust's assets will be transferred to APL. The unit

holders in the trust will become shareholders in APL. However, APL is not currently listed and is not currently subject to a disclosure obligation. APL is therefore not able to use a simplified disclosure prospectus to offer equity securities to the existing unit holders of the trust under the proposed corporatisation:

- the notice enables APL to use a prospectus similar to a simplified disclosure prospectus, tailored to reflect that the trust is the current listed entity and that financial information about the trust is most relevant to a unit holders' decision on the corporatisation proposals. Allowing the use of a prospectus that is similar to a simplified disclosure prospectus will ensure that unit holders have available to them all material information necessary to make an informed decision in relation to the offer of APL shares:
- further the notice enables APL to send the form of simplified disclosure prospectus to unit holders at the date on which the notice of meeting is sent, rather than to ensure receipt. Units are traded on the NZSX, so the identity of the unitholders is changing continuously. This raises difficulties for APL to be certain every unit holder who receives APL shares has received the prospectus. The conditions require APL to take steps to minimise the number of unit holders who may not receive the prospectus. This is consistent with the policy of previous exemptions granted in respect of amalgamations and reconstructions:
- under regulation 26(1) of the Regulations, any advertisement in connection with the corporatisation would only be permitted to state the total assets or net assets of the issuing group (APL and any subsidiaries). The exemption recognises that information about the assets of the trust is relevant to unit holders and facilitates advertising for the corporatisation:
- the exemptions for the trustee recognise that the trustee, as an offeror of previously allotted securities, would be subject to disclosure obligations and liability as an issuer under the Act. The exemption relieves the trustee as a technical issuer from disclosure obligations, provides that the trustee's directors are not required to sign and take responsibility for the prospectus for APL shares which is prepared by the manager and relieves the trustee from having to provide information on request to security holders:
- the exemptions from the need to produce a prospectus and investment statement in relation to the company distribution reinvestment plan (**company DRP**) recognise that the existing holders of units have already received relevant information about the trust DRP, and will receive relevant information about securities of APL by means of the new prospectus. The conditions of the exemption are consistent with those of the Securities Act (Dividend Reinvestment) Exemption Notice 1998. Additionally they require

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unit holders to receive information notifying of the replacement of the trust DRP with the company DRP and that elections under the trust DRP will be treated as elections under the company DRP but reminding investors of their right to cancel their participation at any time:

In light of the limited application of the exemptions to offers of securities made to existing holders of units in the trust, and the conditions requiring relevant information to be provided to investors, FMA considers the exemptions are not broader than reasonably necessary to address the matters that gave rise to the exemptions, and will not cause significant detriment to subscribers.
