

Securities Act (Kiwi Income Property Trust) Exemption Notice 2014

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 (Kiwi Income Property Trust) Exemption Notice 2014.
- 2 Commencement**
This notice comes into force on 30 June 2014.
- 3 Revocation**
This notice is revoked on the close of 30 November 2016.
- 4 Interpretation**
(1) In this notice, unless the context otherwise requires,—
Act means the Securities Act 1978

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borrowing group means the manager and the guaranteeing subsidiaries

debt securities means debt securities of the trust that are to be issued after the commencement of this notice

debt trustee means New Zealand Permanent Trustees Limited or any other person appointed under the trust deed from time to time who holds a licence under the Securities Trustees and Statutory Supervisors Act 2011

group means the trust and all guaranteeing subsidiaries and controlled entities in respect of the periods since they became guaranteeing subsidiaries or controlled entities

guaranteeing subsidiary means the unit trust trustee (in its capacity as trustee of the trust) and any subsidiary of the trust that -

- (a) is unconditionally liable (whether or not jointly or severally with the manager or any other person) to repay the debt securities; or
- (b) is liable to repay the debt securities subject only to the condition that the manager or any other person has failed to do so

manager means Kiwi Property Management Limited or any other person acting as manager of the trust from time to time

prospectus means the registered prospectus for the offer of the debt securities

Regulations means the Securities Regulations 2009

trust means the unit trust called the Kiwi Income Property Trust established under a trust deed dated 21 August 1992 originally entered into between KIP NZ Limited (formerly named Kiwi Income Properties Limited) and the unit trust trustee, as amended

trust deed means the trust deed for the debt securities

unit trust trustee means New Zealand Permanent Trustees Limited or any other person acting as trustee of the trust from time to time for the purposes of the Unit Trusts Act 1960.

- (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 for unit trust trustee from sections 37, 37A, 38A, and 51 to 54B of Act and Regulations

The unit trust trustee and every person acting on its behalf (but not the manager) are exempted from sections 37, 37A, 38A, and 51 to 54B of the Act and the Regulations in respect of the debt securities.

6 Exemptions for manager and unit trust trustee from sections 33(2), 34(2)(a), 41, and 43 of Act

The manager, the unit trust trustee, and every person acting on behalf of either or both of them are exempted, in respect of the debt securities, from—

- (a) sections 33(2) and 34(2)(a) of the Act; and
- (b) sections 41 and 43 of the Act to the extent that those sections require the prospectus, or an amendment to the prospectus, to be signed by the unit trust trustee's directors.

7 Conditions of exemptions in clauses 5 and 6

(1) The exemptions in clauses 5 and 6 are subject to the conditions that—

- (a) a debt trustee has been appointed as trustee in respect of the debt securities and both the manager and that person have signed a trust deed relating to the debt securities; and
- (b) the trust deed must contain clauses equivalent to clauses 1 to 3E of Schedule 15 of the Regulations; and
- (c) the debt securities must be issued pursuant to the trust deed; and
- (d) the trust deed (including amendments) must be, or has been, lodged with the Registrar under section 46 of the Act as if the trust deed were a "trust deed" required by section 33(2)(a) of the Act; and
- (e) the prospectus must contain the following:
 - (i) a description of the effect of the exemption from section 33(2) of the Act; and
 - (ii) a statement that it is a term of the offer of the debt securities that the disclosure obligations that the unit trust trustee would otherwise have, have been undertaken by the manager; and
 - (iii) a statement that it is a term of the offer of the debt securities that the obligations the unit trust trustee would otherwise have to keep a register of debt securities and to permit access to that register under sections 51 and 52 of the Act, have been undertaken by the manager; and
- (f) any advertisement relating to the debt securities must be authorised or instigated by, or on behalf of the manager or prepared with the co-operation of, or by arrangement with, the manager.

(2) Subclause (1)(e)(ii) is subject to clauses 8 and 9.

8 Exemptions from section 37A(1)(a) of Act and regulation 5(1)(b) of Regulations

The manager and every person acting on its behalf are exempted from section 37A(1)(a) of the Act and regulation 5(1)(b) of the Regulations in respect of the debt securities.

9 Conditions of exemptions in clauses 5 and 8

(1) The exemptions in clauses 5 and 8 are subject to the conditions that—

- (a) no allotment of a debt security may be made if the subscriber did not receive, before subscribing for the debt security, a copy of—
 - (i) a prospectus that complies with subclause (2); and
 - (ii) every instrument amending the prospectus that is registered under section 43 of the Act before the time of allotment; and
- (b) no allotment of a debt security may be made if the FMA has given a delayed allotment notice as referred to in clause 10 and the subscriber subscribed for the debt security before the notice was given; and
- (c) if the FMA has given a delayed allotment notice as referred to in clause 10, no allotment of a debt security may be made—
 - (i) in contravention of the terms or conditions of the notice or of its revocation; or
 - (ii) if a term or condition of the notice remains unfulfilled; or
 - (iii) until after the notice expires or is revoked; and
- (d) the debt securities must, on the winding up of the trust on its termination, rank equally with, or in priority to, the units in the trust that are listed at the time of the offer; and
- (e) the prospectus must, when it is delivered to the Registrar for registration under the Act, have attached to it or be accompanied by the disclosed information as defined in clause 14 of the Schedule.

(2) For the purposes of subclause (1)(a), the prospectus must—

- (a) contain, in respect of the debt securities, all of the information, statements, and other matters specified in the Schedule that are applicable; and
- (b) relate only to the offer of the debt securities; and
- (c) contain a statement on the front page that clearly identifies the prospectus as being a prospectus for the offer of the debt securities and their ranking; and
- (d) contain 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 securities are debt securities offered for the purposes of a unit trust); and

- (e) contain a statement to the effect that the manager is subject to a disclosure obligation that requires it to notify certain material information to a registered exchange for the purpose of making that information available to participants in the registered exchange's securities market.

10 FMA may give notice to delay allotment

- (1) The delayed allotment notice referred to in clause 9(1)(b) is a written notice given by the FMA to the manager that requires the date of allotment of the debt securities to be delayed for a period specified in the notice.
- (2) The delayed allotment notice may specify terms and conditions that must be complied with before allotment of the debt securities may be made (for example, a condition that the manager disclose or give public notice of specified information in any manner that the FMA thinks fit in the circumstances).
- (3) The FMA may vary a delayed allotment notice by giving written notice to the manager.
- (4) The FMA may revoke a delayed allotment notice, on any terms and conditions, by giving written notice to the manager.

11 Exemption for manager from section 54B(3)(b) of Act

The manager and every person acting on its behalf are exempted from section 54B(3)(b) of the Act to the extent that it requires financial statements of the unit trust trustee as issuer of the debt securities to be sent to any person on request.

12 Exemption for manager from regulation 26 of Regulations

The manager and every person acting on its behalf are exempted from regulation 26 of the Regulations in respect of the debt securities.

13 Conditions of exemption in clause 12

The exemption in clause 12 is subject to the conditions that—

- (a) any statement of assets or net assets of any person in any advertisement relating to the debt securities is in respect of the trust; and
- (b) any statement of total assets of the trust in any advertisement relating to the debt securities also states with equal prominence the total liabilities of the trust; and
- (c) any statement of financial position, statement of financial performance, or statement of cash flows for the trust

contained in an advertisement relating to the debt securities is the same as any statement of financial position, statement of financial performance, or statement of cash flows for the trust contained or referred to in the prospectus (whether it is a financial statement or an interim financial statement); and

- (d) if the advertisement relating to the debt securities contains an unaudited interim statement of financial position, unaudited interim statement of financial performance, or unaudited interim statement of cash flows for the trust, the advertisement states that those statements are unaudited.

Schedule

Prospectus Requirements

1 Names, addresses, and other information

- (1) The name of the manager, and the address of its registered office.
- (2) The name of every director of the manager.
- (3) The name and address of every promoter of the debt securities being offered.
- (4) The name and address of the debt trustee.

2 Experts and underwriter

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

3 Main terms of offer

- (1) A brief description of the debt securities being offered.
- (2) The maximum amount of the debt securities being offered (excluding any amount that may result from the replacement of debt securities redeemed after the specified date).
- (3) The price or other consideration to be paid or provided for the debt securities being offered, if this is a fixed amount. If the price or other consideration is not a fixed amount, a description of the manner by which that amount is fixed.
- (4) The following information relating to the money payable by a subscriber to the trust or any associated person in respect of the debt securities:
 - (a) the person to whom, and the manner in which, payments are to be or may be made:
 - (b) if the subscriber is required to make payments on specified dates or at a specified frequency, the payment dates or

frequency and the consequences of failing to make the payments.

4 Relationship with listed securities and ranking of debt securities

- (1) A description of the ranking of the debt securities as compared with each of the manager's other securities that are listed in respect of a liquidation of the trust.
- (2) The aggregate amount (as at the date of the latest statement of financial position contained or referred to in the prospectus) of any securities that are secured by a mortgage or charge over any of the assets of the borrowing group and that rank in point of security ahead of the debt securities being offered.
- (3) The aggregate amount (as at the date of the latest statement of financial position contained or referred to in the prospectus) of any securities that are secured by a mortgage or charge over any of the assets of the borrowing group and that rank in point of security equally with the debt securities being offered.

5 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.

6 Returns

- (1) The following information about the returns to subscribers from the debt 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 subscribers, 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 debt 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 debt 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.

7 Guarantors

- (1) The name of each guaranteeing subsidiary.
- (2) If the prospectus or an advertisement relating to the debt securities offered states or implies that any person (other than a guaranteeing subsidiary) guarantees the repayment of the debt securities offered (in whole or in part) or the payment of any interest or other money to holders of the debt securities, the following matters in respect of each of those persons:
 - (a) the name of the person:
 - (b) a description, and (if practicable) quantification, of the liability of the person to holders of the debt securities:
 - (c) a statement as to whether the liability of the person is secured by a mortgage or other charge and, if so, the nature and amount of the charge:
 - (d) the amount of the net tangible assets of the person as shown in the most recent audited statement of financial position of the person (excluding any assets that are also assets of the borrowing group), together with a statement of any fundamental uncertainty or qualifications in the auditor's report in respect of the statement of financial position (subject to subclause (3)):
 - (e) whether there are any contingent liabilities that could materially affect those net tangible assets:
 - (f) whether the financial statements of the person are available for inspection and, if so, where:
 - (g) if the person and the manager are associated persons, a statement to that effect and particulars of the nature of the relationship.
- (3) If there is no audited statement of financial position of the person dated within 18 months of the specified date,—
 - (a) the figure given for the amount of the person's net tangible assets in the prospectus must be that as at a date stated in the prospectus (being a date not earlier than 6 months before the specified date); and
 - (b) the prospectus must include a statement to the effect that the figure for the person's net tangible assets has not been taken from an audited statement of financial position.

8 Provisions of trust deed and other restrictions on borrowing group

- (1) In respect of the trust deed—
 - (a) the date of the trust deed:
 - (b) particulars of the parties to the trust deed that are sufficient to identify the trust deed:
 - (c) brief particulars of any terms of the trust deed that impose limitations relating to—
 - (i) the creation of new mortgages or charges ranking in point of security ahead of, or equally with, any mortgage or charge securing the debt securities being offered; or
 - (ii) any ratio of liabilities, or of any class of liabilities, to assets, or to any class of assets, of the trust:
 - (d) if there are no terms of the kind described in paragraph (c), a statement to that effect:
 - (e) brief particulars of the duties stated by the trust deed to be those of the debt trustee.
- (2) Brief particulars of any restrictions on the ability of any member of the borrowing group to borrow that—
 - (a) result from any undertaking given, or contract or deed entered into, by the member; and
 - (b) are not set out elsewhere in the prospectus.
- (3) A statement by the debt trustee that—
 - (a) the offer of debt securities complies with any relevant provisions of the trust deed; and
 - (b) the debt trustee does not guarantee the repayment of the debt securities or payment of interest on the debt securities.

9 Consequences of insolvency

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

10 Alteration of securities

- (1) A brief description of any right of a subscriber, the manager, or any other person to—

- (a) alter the amount of moneys payable by a subscriber, including a brief description of any continuing obligation of the subscriber to pay that amount; or
 - (b) otherwise alter the terms of any debt security.
- (2) If any charges on any of those alterations are payable by a subscriber to the manager, a promoter, or an associated person of the manager or promoter, a statement of those charges.

11 Early termination

- (1) A brief description of any right of the manager, a subscriber, or any other person to terminate, cancel, surrender, or otherwise make or obtain payment of the returns from the debt securities, other than as described in clause 7.
- (2) If any of the following charges on any of those payments are payable by a subscriber to the manager, a promoter, or an associated person of the manager or promoter, 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 debt securities).

12 Right to sell debt securities

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

13 Other terms of offer and debt securities

- (1) All terms of the offer, and all terms of the debt securities being offered, 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.
- (2) However, the prospectus is not required to state the rate or rates of interest that may be earned by holding the debt securities if the prospectus contains—
 - (a) a statement to the effect that the interest rate or rates that may be earned by holding the debt securities being offered will be those set by the manager at any particular time or from time to time, as the case may be; and

- (b) a statement of the method by which the interest rate or rates may be ascertained.

14 Information available under manager'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 a registered exchange).
- (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 by the manager to a registered exchange in accordance with the listing rules for the registered market operated by that exchange that is material to the offer of debt securities.

15 Financial statements

- (1) A reference to the latest financial statements for the group 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 manager to a registered exchange in accordance with the listing rules of the exchange.
- (3) If the manager so wishes, the latest financial statements referred to in subclause (1).

16 Additional interim financial statements

- (1) A reference to interim financial statements for the group 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 16; 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 manager to a registered exchange in accordance with the listing rules of the exchange.
- (2) If the manager 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 manager to the registered exchange; 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 16; and

- (c) all transactions (if any) that are material related party transactions under generally accepted accounting practice and were entered into or were being performed in the period of the interim financial statements.

17 Access to information and statements

A statement—

- (a) to the effect that the disclosed information identified under clause 15(1), and the financial statements and any interim financial statements contained or referred to in the prospectus under clauses 16 and 17,—
 - (i) are filed on a public register at the Companies Office of the Ministry of Business, Innovation and Employment 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
- (b) explaining how the request under paragraph (a)(ii) should be made.

18 Other material matters

Particulars of any material matters relating to the offer of debt securities (other than matters elsewhere set out in the prospectus, in the disclosed information identified under clause 14, or in the financial statements or interim financial statements referred to in the prospectus under clause 15 or 16, and contracts entered into in the ordinary course of business of the manager or a member of the borrowing group).

19 Directors' statement

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

Dated at Wellington this 27th day of June 2014.



Simone Robbers
Head of Primary Markets and Investor Resources
Financial Markets Authority

Statement of reasons

This notice comes into force on 30 June 2014 and is revoked on 30 November 2016.

The notice exempts Kiwi Property Management Limited (the **manager**) as manager of the Kiwi Income Property Trust (the **trust**) and New Zealand Permanent Trustees Limited as trustee of the trust (**unit trust trustee**) from various provisions of the Securities Act 1978 (the **Act**) and the Securities Regulations 2009 (the **Regulations**) with respect to an offer of certain debt securities (**debt securities**) in the trust. The manager will appoint a debt trustee (**New Zealand Permanent Trustees Limited or any other person appointed under the trust deed from time to time who holds a licence under the Securities Trustees and Statutory Supervisors Act 2011**) for the debt securities under a trust deed (**trust deed**).

The effect of the notice is to-

- enable the use of a prospectus that is similar to a simplified disclosure prospectus in respect of the debt securities; and
- enable the manager (rather the unit trust trustee) to appoint the debt trustee for the debt securities and enter into the trust deed with the debt trustee; and
- exempt the unit trust trustee from its disclosure obligations as issuer of the debt securities on conditions that the manager assumes those responsibilities; and
- not require certain financial information to be provided about the unit trust trustee or manager; and
- enable financial information in advertising material to relate to the trust rather than the unit trust trustee and its subsidiaries.

The FMA considers that it is appropriate to grant the exemptions for the following reasons:

- the issuer of units in a unit trust is the manager of the trust, but under the Act the unit trust trustee is technically the issuer of any debt security issued by the trust. It is more appropriate that the manager is treated as issuer and appoints the debt trustee:
- the notice relieves the unit trust trustee of disclosure obligations in respect of the debt securities on the condition that these responsibilities are carried out by the manager. This notice is consistent with previous exemptions granted by the Securities Commission for debt securities offered by unit trusts. The notice means that investors will receive the financial and other information that is relevant to their investment decision:
- the notice also allows the offer of the debt securities to be made in a prospectus that is similar to a simplified disclosure prospectus. This exemption also is needed because the unit trust trustee is technically the issuer of the debt securities and so a simplified

disclosure prospectus cannot be used for these debt securities. This exemption is consistent with the policy of the Regulations, as those Regulations contemplate a simplified disclosure prospectus being used both for offers of convertible debt securities by listed issuers and for offers of units by listed trusts:

- the conditions of the exemptions are designed to ensure that the FMA has similar powers of intervention to those available where a simplified disclosure prospectus is used:

In these circumstances, FMA considers that the exemptions are not broader than reasonably necessary to address the matters that gave rise to the exemptions.
