

## **Silverwood Land 2015 Limited Partnership**

C/- Silverwood Corporation Limited  
Geoff Bowker CA, Level 3, 142 Broadway, Newmarket, Auckland, 1023

28 February 2017

Dear Limited Partner,

### **Reliance on exemptions granted by the Financial Markets Authority**

The purpose of the bulletin is update investors about the reliance by Silverwood Corporation Limited, as the general partner (in its capacity as 'manager'), of the Limited Partnership on an exemption recently granted by the Financial Markets Authority ("**FMA**") and to give a brief explanation of the impact of the exemptions relied on.

### **Background**

On 30 November 2016, after more than 18 months of concerted effort on the part of a number of managers of investment schemes including Silverwood, the FMA granted Silverwood an exemption<sup>1</sup> that will have a significant impact on the compliance burden and costs that would have otherwise been faced by the Limited Partnership.

The exemption was granted after the FMA accepted submissions about the impact, on smaller investment schemes (including a number of forestry schemes), of the transition of regulatory framework applying to financial market activities in New Zealand from the old regime under the Securities Act 1978 to the new regime under the Financial Markets Conduct Act 2013 ("**FMC Act**").

In keeping with a number of other investment schemes, the Limited Partnership is classified as a 'managed investment scheme' ("**MIS**") for the purposes of the FMC Act. In general terms, an MIS pools money from investors who rely on the investment expertise of the scheme manager.

Under the FMC Act, most MIS must have a licensed manager and, whilst the FMA has sought to ensure that the conditions attaching to (manager) licensing are appropriately tailored, to both the nature of the investment under management and the size and scale MIS, manager licensing and the associated requirements are designed to cater for much larger, more actively-managed investment vehicles – such as the more common forms of managed fund including Kiwisaver schemes (which are typically open-ended and continuing to gather new investment) as well as some of the larger closed-end type schemes, such as some property schemes.

---

<sup>1</sup> Financial Markets Conduct (Silverwood Land 2015 Limited Partnership) Exemption Notice 2016.

Typically, the managers of these managed funds have the bulk of their funds under management (the FMA uses a threshold of 80%) in a spread of investment assets that are readily realisable (saleable)<sup>2</sup>.

By contrast, the principal investment policy and objectives of Silverwood are much narrower – reflecting both its history and asset base. Consequently, Silverwood will generate its primary financial return from land sales, debtors' collections and settlement of claims, and then undertaking the following steps:

- the sale of the land and the distribution of the proceeds to the limited partners (net of all costs);
- the collection of debtors from previous land sales and the distribution of the proceeds to the limited partners (net of costs);
- the settlement of claims for land taken by the Crown and the Porirua City Council and the distribution of the proceeds to the limited partners (net of costs); and
- the winding up of the Limited Partnership and the distribution of any remaining proceeds to the limited partners.

The FMA has accepted that being subject to the full weight of the new licensing and governance regime under the FMC Act would, for a relatively small, closed<sup>3</sup> investment scheme, result in the imposition of a compliance burden and costs which would be out of all proportion to the potential benefits that might accrue to the participants (investors).

The FMA also concluded that:

- in general, the exemptions will reduce transition and ongoing compliance costs by providing relief from certain obligations that are not required, in view of the characteristics of the scheme, to ensure that appropriate governance arrangements are in place to provide effective monitoring and reduce governance risks; and
- in relation to the exemptions from updating governing documents and manager licensing:
  - the costs of updating governing documents are unnecessary when existing schemes already have governing documents that are broadly comparable to the requirements under the FMC Act and where the scheme is closed to new investors and has a finite life; and
  - the costs of licensing are likely to exceed the benefits for an existing scheme that is closed to new investment and which has a low level of

---

<sup>2</sup> The FMA uses benchmarks assets/investment products that are capable of being redeemed or sold within 10 working days and debt securities (typically deposits) of not more than 90 days.

<sup>3</sup> i.e. schemes which are closed to new investment.

manager activity and the manager has a limited amount of assets under management:

Importantly, the FMA granted these exemptions to Silverwood because the scheme is currently in wind up mode as a result of having sold its forestry assets – with its primary activity being that of disposing of its remaining land assets. As is discussed below, it is anticipated that those land assets will be sold and the net proceeds will be distributed to the limited partners (investors) before the end of the 5-year lifespan of the exemptions.

The exemptions remain in force until 31 March 2021 – during which time Silverwood will continue to be required to have a licensed supervisor.

### **The main effects of the exemptions**

In summary, there are five broad headings under which exemptions will impact on Silverwood. Each heading and its main effect is summarised below.

#### **1. Exemptions from independent custody requirements for land**

Silverwood is relying on an exemption from the requirements for independent custody of its land assets.

The FMA accepted that the independent custody requirements imposed on other MIS are not necessary. The FMA is well aware that the land can be transferred, or otherwise dealt with, only by registration under the Land Transfer Act 1952. In view of this, the FMA accepted that independent custody of the land was not needed to ensure effective monitoring and to reduce governance risks. As a result, the General Partner can continue to hold the land (on trust for scheme participants (investors)) - and not be required to transfer that land into the ownership of the licensed supervisor (Covenant Trustee<sup>4</sup>) or a custodian.

This exemption is subject to the condition that the title to that land is subject to a registered encumbrance in favour of the licensed supervisor – to protect participants' (investors') interests. A template for such an arrangement has already been agreed with Covenant Trustee and it is expected that a registered encumbrance will be put in place shortly.

#### **2. Exemptions from governing document and licensing requirements**

a. **Governing documents:** Silverwood is relying on the exemption from the requirement to update its governing documents.

---

<sup>4</sup> Covenant Trustee Services Limited.

The FMA has decided the requirement to update its governing documents is unnecessary - when the scheme already has governing documents that are broadly comparable to the requirements under the FMC Act and the costs of updating are unnecessary when the scheme is closed to new investors and is in wind up mode.

- b. **Licensing:** Silverwood is also relying on the exemption from the requirement for manager licensing.

FMA has also accepted that the costs of (manager) licensing exceed the potential benefits for investors in circumstances where the scheme is being wound down and accordingly there is a low level of manager activity and the manager has a limited amount of assets under management for the remaining life of the scheme.

The exemptions from the governing document and licensing requirements are subject to the conditions that the General Partner (as manager of the scheme) must:

- By **28 February 2017** give Covenant Trustee (as the supervisor) a wind-up plan that:
  - provides for the scheme to be wound up by 31 March 2021; and
  - describes the key steps and anticipated timetable for realisation of Silverwood's property, repayments of liabilities and distribution of the proceeds to investors; and
  - provides that the proceeds from the realisation of Silverwood's property are to be distributed to investors in a timely manner, except and only to the extent that funds are reasonably required to facilitate the realisation of Silverwood's property or withheld to meet reasonably anticipated liabilities; and
  - includes information that is material to the wind-up plan; and
- Also by **28 February 2017**, inform investors by means of this update:
  - of the wind-up plan including providing investors with a summary of the wind-up plan; and
  - that Silverwood is relying on the exemptions - hence the explanation, contained in this update, 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.

The summary of the wind-up plan is **attached** to this update as an appendix.

In addition, the General Partner must:

- report to Covenant Trustee every 6 months from **1 December 2016**, on progress of the winding up of the scheme against the winding up plan; and

- notify Covenant Trustee in writing within 10 working days of becoming aware of any material change to or deviation from the wind-up plan.

It should also be noted that Silverwood will continue to be required to have a licensed supervisor – which has statutory duties to act in the best interests of investors and to carry out their functions and duties to a professional standard of care. In the present case, Covenant Trustee, which holds a Securities Trustees and Statutory Supervisors licence issued by the FMA, continues in its role and brings important continuity to the supervision of the Limited Partnership.

### **3. Exemption from annual assurance engagement requirement**

An exemption has been granted from the requirement for an annual assurance engagement with a qualified auditor of the processes, procedures, and controls surrounding Silverwood's property and assets. Instead, an assurance engagement must be obtained – only when the licensed supervisor considers that this is desirable to provide reasonable assurance in relation to custody of the scheme property.

The FMA accepted that the processes, procedures, and controls affecting the custody of Silverwood's assets are likely to be less complex than other MIS because Silverwood's investments consist primarily of land and the proceeds of sale of that land, and the risks in relation to custody of those assets are likely to be reduced. In these circumstances, the annual audit of the Silverwood's financial statements provides regular independent verification in relation to Silverwood's assets, without requiring a more detailed assurance engagement.

Instead, the FMA accepted that adequate protection will be provided for investors in relation to custody of Silverwood's assets if an assurance engagement is obtained – only when the licensed supervisor determines that circumstances have resulted in increased risks for custody of those assets and therefore the value to investors of such an assurance engagement outweighs costs. The FMA noted that licensed 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.

### **4. Exemption from daily cash reconciliation requirement**

As noted above, by contrast to an MIS which is a managed fund, Silverwood's assets comprise its remaining land, debtors (accounts receivable) from previous land sales and claims in respect of land takings. From time to time, the General Partner will also hold relatively modest amounts of cash. Consequently, the FMA accepted that Silverwood has a low volume and frequency of transactions, and therefore daily reconciliation of records of money are unlikely to be necessary to ensure that Silverwood's records verify the money and all transactions relating to that money. Instead,

adequate protection will be provided for investors if those records are reconciled with a frequency suited to the level of transactions.

As a result, Silverwood's cash records will not be required to be reconciled daily – and, instead, can be reconciled with a frequency suited to the level of transactions. This level of frequency will be determined in conjunction with Covenant Trustee, as licensed supervisor, and the auditors.

#### **5. Exemption from quarterly limit break reporting requirement**

Silverwood will not be required to make a quarterly report on 'limit breaks'.

Every MIS is required to have a SIPO (statement of investment policy and objectives). A limit break occurs where there is a material breach of any limits set out in the SIPO on either:

- the nature or type of investments that can be made, or
- the proportion of each type of assets that may be invested in.

In the case of Silverwood, the FMA noted that the low volume and frequency of activity in the period leading up to the completion of winding up of the scheme means it is unlikely limit breaks will occur. That is, in periods where there are no limit breaks, routine quarterly limit break reports are of no value.

#### **Further information**

If you have any queries regarding the impact of the exemptions on Silverwood, please do not hesitate to contact any of the following representatives of the General Partner:

**Peter Tiedemann**

Tel: 021 764 664

E: [pect@xtra.co.nz](mailto:pect@xtra.co.nz)

**Tony Loveday**

Tel: 027 224 7297

E: [tony@citystop.co.nz](mailto:tony@citystop.co.nz)

**Malcolm Johnson**

Tel: (04) 479 3377 /

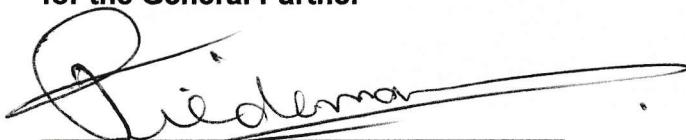
E: [aratas@xtra.co.nz](mailto:aratas@xtra.co.nz)

**Peter Bould**

Mob 021 923 198

E: [peterb@peterbould.co.nz](mailto:peterb@peterbould.co.nz)

**Yours sincerely,  
for the General Partner**



Peter Tiedemann

**Appendix**  
**Silverwood Land 2015 Limited Partnership**  
**summary of wind-up plan**

**Introduction**

The FMA considered it appropriate to grant Silverwood a number of exemptions from the licensing and governance requirements of the Financial Markets Conduct Act 2013 (the “**FMC Act**”) because the scheme is currently in wind up mode as a result of having sold its forestry assets – with its primary activity being that of disposing of its remaining land assets. As is discussed below, it is anticipated that those land assets will be sold and the net proceeds will be distributed to the Limited Partners (investors) before the end of the 5-year lifespan of the exemptions.

As a result, the exemptions from the licensing and governance requirements of the FMC Act are subject to the conditions that the general partner, as manager of the scheme, must provide for the scheme to be wound up by 31 March 2021. Consequently, the general partner has formulated a wind-up plan the key elements of which are summarised below.


Ultimately, the process of terminating (and liquidating) the Limited Partnership requires the approval of a “Special Resolution”. A Special Resolution is a resolution passed at a meeting of the Limited Partners, by Limited Partners holding at least 75% of total LP Units. Whilst the general partner is still working on aspects of this process, it is likely that the general partner will seek approval at an early stage to commence winding-up the affairs of the Limited Partnership and the distribution of the net proceeds of sale of its assets to the limited partners (in proportion to the LP Units held by them). One of the drivers for an early approval is to get a clear mandate for making early distributions to the limited partners – as Silverwood’s land assets are sold.

**Key steps and anticipated timetable**

As has previously been advised, the process of selling the balance of Silverwood’s land assets is impacted by the designations (and land takings) for the Transmission Gully Motorway. Amongst other things, some of those takings split the land in blocks without access. Consequently, to receive fair value for investors, the general partner has not only had to negotiate to receive fair value for land taken, but also has had to negotiate to regain title to the balance of land let and access to the new lots created by these designations. This process is ongoing. It is expected that the negotiations will be conclude, and balance of the compensation received, in respect of the land takings, in the next 2-3 years.

It has also been necessary to wait for NZTA and the Porirua City Council to build new roads and physically create new access to the blocks of land to re-establish a reasonable market value. In essence, this has been an exercise in re-gaining access in order to ensure that the residual land is attractive to a property developer. It is expected that this process will have been completed by the scheduled completion of the Transmission Gully Motorway – in 2020.

In the meantime, the balance of the proceeds of sale of the residential lots in the Silverwood residential subdivision, which was undertaken by a joint venture partner,

FEB 28 2011 



**SILVERWOOD CORPORATION**™

General Partner of and managing  
Silverwood Land 2015 Limited Partnership

are being received over the next 18 months are will be distributed, net of sale costs and the costs of winding up the joint venture, incrementally over that period.

It is also expected that scheme liabilities (other than the deferred management fees referred to below) will be repaid incrementally out of the proceeds of realisation of Silverwood's land assets. Primarily, these liabilities comprise trade payables (for goods and services – largely those relating to the realisation process).

The balance of the scheme liabilities comprise deferred directors' remuneration and management fees (in respect of the general partner). These arrangements are described in some detail in Silverwood's financial statements. The amount and timing of the payments was approved by investors in the 2006. As noted in the financial statements, the deferred fees are only payable once distributions to limited partners have exceeded the Limited Partnership's equity as at 31 March 2006 (i.e. \$4,844,773 or \$4623 per LP Unit). As the 6<sup>th</sup> distribution (made in the 2015 financial year) resulted in the aggregate distributions to limited partners exceeding March 2006 equity, the deferred fees have begun to be payable. Consequently, it is expected that they will be paid on a broadly pro rata basis with each distribution to the limited partners of the net proceeds of realisation of Silverwood's land assets.

### **Timeline**

From this summary, it can be concluded that the process of:

- realisation of Silverwood's remaining land assets;
- repayment of scheme liabilities; and distribution of the proceeds to the scheme participants (investors),

is expected to be completed by late 2020.

### **Interim distributions**

It also bears repeating that the general partner seeks to continue its current pattern of seeking to make interim distributions at the earliest available opportunity on the basis that, having decided that the scheme is wind up mode, it is more appropriate that those funds be returned to investors as soon as they become available. Therefore, the general partner proposes to continue with the pattern of seeking to ensure that the proceeds from the realisation of scheme property are distributed to scheme participants in a timely manner, except and only to the extent that funds are reasonably required to:

- facilitate the realisation process; or
- meet reasonably anticipated scheme liabilities – such as the costs of termination of the scheme and liquidation of the limited partnership.

### **Further reporting**

It is also a condition of the exemptions granted by the FMA that the general partner:

- reports to Covenant Trustee (the supervisor of the scheme) every 6 months, on progress of the winding up of the scheme against the winding up plan; and
- notify the supervisor in writing within 10 working days of becoming aware of any material change to or deviation from the wind up plan.

FEB 28 2011