

## Financial Markets Conduct (Abacus Storage King) Exemption Notice 2024

This exemption is granted by the Financial Markets Authority under section 556 of the Financial Markets Conduct Act 2013 after being satisfied of the matters set out in section 557 of that Act.

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### Notice

#### 1 Title

This notice is the Financial Markets Conduct (Abacus Storage King) Exemption Notice 2024.

#### 2 Commencement

This notice comes into force on 9 May 2024.

#### 3 Revocation

This notice is revoked on the close of 8 May 2029.

#### 4 Interpretation

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

**Abacus Storage King ESP** means an employee security plan established by the issuers under which an eligible person may acquire stapled securities

**Act** means the Financial Markets Conduct Act 2013

**ASFML** means Abacus Storage Funds Management Limited, a company incorporated under the laws of Australia with Australian Business Number 41 109 324 834 and the responsible entity of the Trust

**ASOL** means Abacus Storage Operations Limited, a company incorporated under the laws of Australia with Australian Business Number 37 112 457 075

**control** has the same meaning as in clause 48, Schedule 1 of the Act

**eligible person** means a person who is, at the time of the offer or at the time when the stapled securities are acquired, 1 or more of the following:

- (a) an employee or a director of either of the issuers or any of their respective subsidiaries; or
- (b) a person who provides personal services (other than as an employee) principally to either of the issuers or any of their respective subsidiaries; or
- (c) a trustee of a trust of which a person described in paragraph (a) or (b) is a beneficiary; or
- (d) a company that is controlled by a person described in paragraph (a) or (b)

**issuers** means each of ASOL and the Trust

**offer** means an offer of stapled securities made under an Abacus Storage King ESP to an eligible person in New Zealand

**Regulations** means the Financial Markets Conduct Regulations 2014

**relevant financial statements** has the meaning set out in clause 2 of Schedule 8 of the Regulations

**responsible entity** is the manager and trustee of a registered managed investment scheme under Australian law and is specifically defined in section 9 of the Corporations Act 2001 (Aust)

**stapled security** means a share in ASOL and a unit in the Trust that are:

- (a) linked together so that one cannot be traded, or otherwise dealt with, without the other; and
- (b) quoted as a single tradable financial product on the market operated by ASX Limited with a single ticker code

**Trust** means Abacus Storage Property Trust, an Australian managed investment scheme with Australian Registered Scheme Number 111 629 559.

- (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

- (1) The issuers and ASFML (in its capacity as responsible entity of the Trust) are each exempt from Part 3 of the Act in respect of an offer.
- (2) The Trust and ASFML (in its capacity as responsible entity of the Trust) are each exempt from Part 4 of the Act in respect of an offer.

## 6 Conditions of exemptions in clause 5

- (1) The exemptions in clause 5 are subject to the conditions that—
  - (a) the offer must be made as part of the remuneration arrangements for any of the following or otherwise be made in connection with the employment or engagement of any of the following:
    - (i) an employee or a director of either of the issuers or any of their respective subsidiaries; or

- (ii) a person who provides personal services (other than as an employee) principally to either of the issuers or to any of their respective subsidiaries; and
  - (b) the offer must not be for the primary purpose of raising funds for either of the issuers or for any of their respective subsidiaries; and
  - (c) the total number of stapled securities issued or transferred under all of the Abacus Storage King ESPs to eligible persons in any 12-month period does not exceed 10% of the stapled securities of the issuers that are of the same class as at the start of the 12-month period; and
  - (d) the offer must be made only to eligible persons, so that—
    - (i) the only investors who are able, under the terms of the offer, to acquire the stapled securities are eligible persons; and
    - (ii) all of the investors who acquire the stapled securities under the offer are eligible persons; and
  - (e) the issuers must not accept an application from, or issue or transfer stapled securities to, an eligible person if the following have not been provided to that person before the application was made:
    - (i) a document that contains, in a prominent position, the warning statement referred to in the Schedule; and
    - (ii) a document that contains a description of the Abacus Storage King ESP and its terms and conditions; and
    - (iii) the document or documents referred to in clause 6(2).
- (2) For the purposes of clause 6(1)(e)(iii), the document or documents are—
- (a) each of the following:
    - (i) a copy of the issuers' latest annual report prepared under any enactment or overseas law; and
    - (ii) a copy of the relevant financial statements of the issuers and, if those statements are not audited or reviewed by an auditor, a statement to that effect; and
    - (iii) a copy of the auditor's report on those financial statements; or
  - (b) a notice that contains each of the following:
    - (i) a statement to the effect that the eligible person has a right to receive from the issuers, free of charge, a copy of the documents referred to in clause 6(2)(a) if the eligible person makes a request to the issuers to receive a copy of those documents; and
    - (ii) a statement to the effect that the eligible person may obtain a copy of those documents by electronic means; and
    - (iii) a statement as to how the eligible person may obtain a copy of those documents by electronic means (for example, from a specified Internet site address).
- (3) One or more of the documents specified in clauses 6(1)(e) and 6(2) may be combined in a

single document.

- (4) In calculating the total number of stapled securities issued or transferred under all of the Abacus Storage King ESPs to eligible persons for the purposes of clause 6(1)(c), an issue or sale to a person must be disregarded if the issue or sale results from an offer that—
- (a) does not require disclosure under Part 3 of the Act for any reason other than as a result of the application of clause 8 of Schedule 1 of the Act or this notice; or
  - (b) is not received in New Zealand; or
  - (c) is a regulated offer that is separate from the offer under the Abacus Storage King ESP.
- (5) For the purposes of clauses 6(1)(e) and 6(2)—
- (a) a document must be provided to an eligible person by giving it to that person or delivering or sending it to that person's address; and
  - (b) if an eligible person requests a document referred to in clause 6(1)(e) or 6(2), the issuers must provide that document to that person within 5 working days after the issuers receive that request.

## **7 Offers not regulated offers**

An offer of stapled securities made in reliance on this notice is not a regulated offer.

## **Schedule Warning statement**

### **"Warning**

This is an offer of stapled securities (each stapled security being a share in Abacus Storage Operations Limited and a unit in Abacus Storage Property Trust (together, **Abacus Storage King**)). The stapled securities give you a stake in the ownership of Abacus Storage King. You may receive a return if dividends are paid.

If either of Abacus Storage Operations Limited or Abacus Storage Property Trust runs into financial difficulties or is wound up, you will be paid only after all creditors have been paid. You may lose some or all of your investment.

New Zealand law normally requires people who offer financial products to give information to investors before they invest. This information is designed to help investors to make an informed decision.

The usual rules do not apply to this offer because it is made under an exemption granted by the Financial Markets Authority that allows Abacus Storage King to offer the stapled securities to eligible persons (as defined in the Financial Markets Conduct (Abacus Storage King) Exemption Notice 2024). As a result, you may not be given all the information usually required. You will also have fewer other legal protections for this investment.

Ask questions, read all documents carefully, and seek independent financial advice before committing yourself.

The stapled securities are quoted on the Australian Securities Exchange (**ASX**). This means you may be able to sell the stapled securities on the ASX if there are interested buyers. You may get less

than you invested. The price will depend on the demand for the stapled securities.

The stapled securities cannot be sold, transferred or otherwise dealt with other than in accordance with the terms of the offer, disposal restrictions in the Abacus Storage King Securities Trading Policy, and all applicable laws."

Dated at Wellington this 7th day of May 2024



John Horner

Director of Markets, Investors and Reporting

Financial Markets Authority

### Statement of reasons

This notice comes into force on 9 May 2024 and is revoked on the close of 8 May 2029.

This notice exempts Abacus Storage Property Trust (the **Trust**) and Abacus Storage Operations Limited (**ASOL**) (together the **issuers**), and Abacus Storage Funds Management Limited as responsible entity for the Trust (**ASFML**), from compliance with the disclosure requirements of Part 3 of the Financial Markets Conduct Act 2013 (**Act**). This notice also exempts the Trust and ASFML from compliance with the governance requirements for managed investment schemes under Part 4 of the Act.

The notice also provides that offers exempted by this notice are not regulated offers under the Act. This means that other requirements of the Act, or other Acts, that apply in connection with regulated offers (such as the financial reporting requirements) will not apply. Any other financial markets conduct obligations the issuers or ASFML may have, including obligations under Part 2 of the Act, are not affected.

The exemptions apply only to offers of stapled securities (each consisting of a share in ASOL and a unit in the Trust) which are made under an employee security plan established by the issuers (**Abacus Storage King ESP**) to certain eligible persons, including employees or directors of, or persons (other than employees) who provide personal services principally to, either of the issuers or any of their respective subsidiaries (**eligible persons**).

The exemptions are subject to certain conditions requiring offers to be consistent, as far as practicable, with the requirements of the exclusion relating to employee share purchase schemes in clause 8 of Schedule 1 of the Act (the **Schedule 1 exclusion**) and with clauses 10 to 12 of Schedule 8 of the Financial Markets Conduct Regulations 2014 (which relate to the Schedule 1 exclusion).

The Financial Markets Authority (**FMA**), after satisfying itself as to the matters set out in section

557 of the Act, considers it appropriate to grant the exemptions because—

- any return on the stapled securities is linked to the performance of the issuers. Therefore, an Abacus Storage King ESP encourages employees' involvement in the performance of the issuers and their respective controlled entities, in a manner similar to that of an employee share purchase scheme. However, due to the composite nature of the stapled securities, which consist of both equity securities and managed investment products, the issuers and ASFML (as responsible entity for the Trust) are unable to rely on the Schedule 1 exclusion:
- the exemptions therefore promote innovation and flexibility in the financial markets by allowing eligible persons to participate in an offer which is in substance similar to an employee share purchase scheme and which will be offered on a similar basis as offers made in reliance on the Schedule 1 exclusion:
- the conditions to the exemptions require eligible persons to be provided access to the same kinds of information as would be required under the Schedule 1 exclusion. In addition, the stapled securities are listed on the Australian Securities Exchange (**ASX**). The issuers are therefore subject to ASX requirements and to Australian securities laws, with the market value and material issues relating to the stapled securities publicly available and accessible to employees. In these circumstances, the FMA is satisfied that eligible persons will have access to sufficient and appropriate information for them to make an informed investment decision in relation to an offer and requiring the issuers to comply with the disclosure requirements of Part 3 of the Act is unnecessary:
- the Trust and ASFML are each regulated under Australian law and are subject to Australian laws and regulatory requirements relating to governance of managed investment schemes. Therefore, sufficient and appropriate governance arrangements and protections for investors are already in place under Australian requirements, and requiring the Trust and ASFML to comply with the governance requirements in Part 4 of the Act in relation to an offer is unnecessary.

As such, the FMA is satisfied that—

- the granting of the exemptions is desirable in order to promote the purposes of the Act, specifically by avoiding unnecessary compliance costs and by promoting innovation and flexibility in financial markets; and
- in circumstances where the exemptions are limited to the offers of stapled securities made to eligible persons in connection with an Abacus Storage King ESP, and their key impact is to provide an Abacus Storage King ESP with equivalent treatment to that which applies to employee share schemes under the Act, the FMA is satisfied that the exemptions are not broader than is reasonably necessary to address the matters that gave rise to them.