

Financial Markets Conduct (UBT Invest NZ Funds) 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 (to which is appended a statement of reasons of the Financial Markets Authority).

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Notice

1 Title

This notice is the Financial Markets Conduct (UBT Invest NZ Funds) Exemption Notice 2020.

2 Commencement

This notice comes into force on 1 April 2020.

3 Revocation

This notice is revoked on the close of 31 March 2025.

4 Interpretation

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

Act means the Financial Markets Conduct Act 2013

Fund means the UBT Invest NZ Retail Fund established under the Scheme

impaired loan means a loan that is impaired as determined in accordance with generally accepted accounting practice

Manager means Implemented Investment Solutions Limited

property means an estate or interest in real property in New Zealand

register entry means, in relation to the Fund, the register entry for the offer of managed investment products in the Fund

Regulations means the Financial Markets Conduct Regulations 2014

risk rating means in relation to the Fund, the risk rating allocated to the loan by the Manager

Scheme means the UBT Invest NZ Funds, being a managed investment scheme established by a deed dated 16 December 2019 between the Manager and Public Trust as amended from time to time

secured loan means a loan:

- (a) that has been advanced in respect of the Fund or that has been assigned or novated to the Fund or its custodian by the original lender; and
- (b) in respect of which a charge over the borrower's assets secures payment or performance of the borrower's obligations under the loan

unsecured loan means a loan:

- (a) that has been advanced in respect of the Fund or that has been assigned or novated to the Fund or its custodian by the original lender; and
 - (b) that is not secured by the borrower's assets.
- (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.

5 Exemptions in relation to register entry and fund updates

- (1) Subject to subclause (3), the Manager is exempted, in relation to the Fund, from the provisions in sub-clause (2) to the extent that—
- (a) an individual asset of the Fund is a loan; and
 - (b) the provisions require information to include the name of the borrower for the purpose of naming or identifying that individual asset.
- (2) The provisions are—
- (a) clause 53(l)(c)(viii) of Schedule 4 of the Regulations;
 - (b) clause 53(l)(j)(i) of Schedule 4 of the Regulations;
 - (c) clause 54(l)(a)(i) and (d) of Schedule 4 of the Regulations;
 - (d) clause 70(l)(a)(i) of Schedule 4 of the Regulations.
- (3) The exemptions in this clause only apply to loans in respect of which, in the reasonable opinion of the Manager, naming the borrower would be likely to identify individuals who are owners of the borrower.

6 Conditions of exemptions relating to register entry and fund updates

- (1) The exemptions in clause 5 are subject to the condition that, in each place where the Regulations require the register entry or a fund update to name or identify an individual asset that is a loan, the register entry or fund update must name or identify the individual asset that is a loan by stating—
- (a) which of the following the manager reasonably considers describes the primary security asset type for the loan:
 - (i) residential property; or
 - (ii) commercial property; or
 - (iii) rural property; or
 - (iv) other assets; or
 - (v) if there is no security for the loan, a statement that the loan is unsecured.

- (b) the risk rating of the loan or other risk based category as allocated by the Manager.
- (2) The exemptions in clause 5 are subject to the further condition that the fund update must include the following additional information:
- (a) the composition of the Fund's assets, expressed as a percentage of the value (calculated in accordance with generally accepted accounting practice) of total assets:
 - (i) loans with a term of one year or less;
 - (ii) loans with a term of more than one year and less than, or equal to, five years;
 - (iii) loans with a term of more than five years and less than, or equal to, ten years; or
 - (iv) loans with a term of more than ten years;
 - (b) a clear, concise, and effective statement by the Manager describing the criteria used for determining which of its secured loans fall within each asset type in accordance with the categories specified in paragraph (1)(a)(i) to (iii);
 - (c) a clear, concise, and effective statement by the Manager describing the categories of other assets specified in paragraph (1)(a)(iv);
 - (d) The total number of loans advanced by the Fund;
 - (e) The 10 largest loans as a percentage of the value of the Fund;
 - (f) For the risk rating or other risk categorisation allocated by the Manager:
 - (i) A breakdown of the percentage of loans by risk rating (or other risk based categorisation as allocated by the Manager); and
 - (ii) A clear, concise and effective statement by the Manager stating that investors can find more information about the risk rating or other risk based categorisation in the 'Other Material Information' section of the register entry.
- (3) The exemptions in clause 5 are subject to the further condition that both the register entry and the fund update must include the the composition of the Fund's assets, expressed as a percentage of the value (calculated in accordance with generally accepted accounting practice) of total assets, according to the following asset types:
- (i) secured loans for which the secured asset is residential property; and
 - (ii) secured loans for which the secured asset is commercial property; and
 - (iii) secured loans for which the secured asset is rural property; and
 - (iv) secured loans for which the secured asset is any other asset; and
 - (v) unsecured loans; and
 - (vi) cash and cash equivalents, and New Zealand fixed interest assets, with registered banks; and
 - (vii) all other assets (if any).

7 Further conditions of exemptions relating to information to be lodged with Registrar for updating register

The exemptions in clause 5 are subject to the further conditions that the manager of the Fund must lodge with the Registrar,—

- (a) at the same time as or before each fund update is lodged with the Registrar, the information required to be included in the register entry in respect of the list of the 10 highest-value individual assets of the fund under clause 6(1), as at the relevant date of the fund update; and

- (b) within 40 working days after 31 March and 30 September in each year, the information required to be included in the register entry in respect of the complete list of individual assets under clause 6(1), as at 31 March or 30 September (whichever is more recent).

Dated at Wellington this 25th day of March 2020.



Sarah Vrede
Director of Capital Markets
Financial Markets Authority

Statement of Reasons

This notice comes into force on 1 April 2020. The notice is revoked on 31 March 2025. The notice exempts Implemented Investment Solutions Limited (**IIS**) in respect of the UBT Invest NZ Retail Fund (**Fund**) from clauses 53(1)(c)(viii), 53(1)(j)(i), 54(1)(a)(i) and (d) and 70(1)(a)(i) of Schedule 4 of the Financial Markets Conduct Regulations 2014 (**the Regulations**):

Under those provisions the Manager would be required to provide the following information:

- a list of the 10 highest-value individual assets of the Fund and certain information against that list, including the name of the individual asset, in both the register entry for the offer and each quarterly fund update;
- a complete list of the individual assets of the Fund and certain information against that list, including the name of the asset, in the register entry for the offer. This information must also be updated within 40 working days after 31 March and 30 September in each year.

For assets such as loans the name of the individual asset would need to reference the name of the borrower under that loan.

The primary assets of the Fund are intended to be commercial loans made to closely held entities. As such, the individuals who own those entities may be readily identifiable. So by naming a borrower the Manager may be indirectly identifying individuals. Further, the Fund is targeted at investors and entities owned by people who are all members of a particular faith-based community. As such, the ownership of borrowers might be known to investors by virtue of them all being part of that same broader faith-based community.

This notice exempts IIS, in respect of the Fund, from the requirement to provide the name of the borrower subject to the conditions set in clause 6 and 7 in the notice. The conditions require IIS to provide alternative information with respect to loans made by IIS (**the alternative disclosure**). In summary the manager is required to provide the following information:

- The term and security asset for the loan;
- Information about the Fund's composition i.e. according to various security asset types and by loan term;
- How many loans have been advanced by the Fund and the 10 largest loans as a percentage of the value of the Fund;
- Risk rating information for each of the loans in the Fund, and a breakdown of the percentage of loans according to each risk rating;

While this notice exempts IIS from providing the name of the borrower, there is no exemption from the requirement to disclose all material information. IIS must still disclose any circumstances relating to a borrower that is material (eg, the borrower is a discharged bankrupt).

The Financial Markets Authority (**the FMA**), after satisfying itself as to the matters set out in section 557 of the Financial Markets Conduct Act 2013 (**the Act**), considers it appropriate to grant the exemptions, subject to the IIS providing the alternative disclosure, because—

- the FMA considers that granting the exemption would avoid unnecessary compliance costs for IIS. Entities who borrow from the Fund may need to provide consent to IIS so that IIS could disclose the borrower's name on the Register. This would have a compliance cost for IIS. However, it is unlikely that an investor would be able to obtain useful information about a loan asset from the name of the borrower because such information is unlikely to be publicly available. Additionally, the name of the borrower is not information which would help an investor to monitor the investment practices of the fund manager or help an investor assess whether those practices are consistent with the fund's investment philosophy as set out in the SIPO. Accordingly, the FMA considers that this compliance cost is unnecessary. Consequently, granting the exemption would avoid unnecessary compliance costs:
- the FMA considers that the alternative disclosure would provide more useful information to investors about the loan assets because the term of the loan will assist investors identifying their exposure to short term and long term economic volatility. Additionally, the security type and the risk rating information will assist investors with establishing the risk exposure of the Fund, and the manner in which the alternative disclosure information will be presented will be more easily understood by a broader range of investors.
- the FMA also considers that if the names of borrowers were publicly disclosed it may constrain the ability of the Fund to attract borrowers. As such, the exemptions, together with the conditions, will promote the the confident and informed participation of businesses, investors, and consumers in the financial markets:

As such, the FMA is satisfied that—

- the granting of the exemptions is desirable in order to promote the purposes of the Act, specifically to promote the confident and informed participation of businesses, investors, and consumers in the financial markets, to provide for timely, accurate, and understandable information to be provided to persons to assist those persons to make decisions relating to the financial products, and to avoid unnecessary compliance costs:
- the exemptions are not broader than is reasonably necessary to address the matters that gave rise to them because the exemptions will apply only to IIS in respect of the Fund, and will exempt IIS only from the requirement to name individual borrowers where, in the reasonable opinion of IIS, naming the borrower would be likely to identify individuals who are owners of the borrower.