

Financial Markets Conduct (Capital Mortgage Income Trust Group Investment Fund) Exemption Notice 2018

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 the Act gives the following notice.

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Notice

1 Title

This notice is the Financial Markets Conduct (Capital Mortgage Income Trust Group Investment Fund) Exemption Notice 2018.

2 Commencement

This notice comes into force on 1 May 2018.

3 Revocation

This notice is revoked on the close of 30 April 2023.

4 Interpretation

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

Act means the Financial Market Conduct Act 2013

additional secured properties means in relation to a mortgage loan, any property other than the secured property that is subject to a first ranking mortgage in favour of FM Custodians Limited to secure repayment of the mortgage loan

CMIT GIF means Capital Mortgage Income Trust Group Investment Fund being a managed investment scheme established by deed dated 13 September 2003 between the Manager and

Trustees Executors Limited as subsequently amended, and re-stated by deed dated 18 November 2016

CMIT GIF fund update means each fund update for CMIT GIF required to be prepared by the Manager and made publicly available in accordance with the Regulations

geographical region means each of the following:

- (a) Northland;
- (b) Auckland;
- (c) Waikato;
- (d) Bay of Plenty;
- (e) Gisborne;
- (f) Hawkes Bay;
- (g) Taranaki;
- (h) Manawatu-Wanganui;
- (i) Wellington;
- (j) Tasman;
- (k) Nelson;
- (l) Marlborough;
- (m) West Coast;
- (n) Canterbury;
- (o) Otago;
- (p) Southland.

LVR means the loan to value ratio of a mortgage loan which is determined at the time the loan is approved by comparing the principal amount of the mortgage loan with the aggregate of the Manager's valuation of the secured property and the Manager's valuation of any additional secured properties relating to that mortgage loan

Manager means Fund Managers Otago Limited, in its capacity as manager of the CMIT GIF

mortgage loan means a loan advanced by CMIT GIF to a person (including an entity) and secured by a registered first ranking mortgage over secured property and (if applicable) secured by a registered first ranking mortgage over any additional secured properties

relevant date means in relation to a CMIT GIF fund update, the last day of the quarter as at which the CMIT GIF fund update is prepared (being the most recently completed quarter)

registered mortgage number means, in relation to a mortgage loan, the mortgage number issued by Land Information New Zealand on registration of the mortgage over the secured property

Regulations means the Financial Markets Conduct Regulations 2014

secured property means in relation to a mortgage loan, the principal property (by value) that is subject to a first ranking mortgage in favour of FM Custodians Limited to secure repayment of the mortgage loan.

- (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 Exemption from clauses 54(1)(a)(i) and 54(1)(d) of Schedule 4 of the Regulations in relation to information to be lodged with the Registrar for updating the register

The Manager is exempted, in relation to the CMIT GIF, from:

- (a) clause 54(1)(a)(i) of Schedule 4 of the Regulations, to the extent that that clause requires the information required by clause 53(1)(c)(viii) of Schedule 4 of the Regulations to be lodged with the Registrar; and
- (b) clause 54(1)(d) of Schedule 4 of the Regulations.

6 Conditions of exemption in clause 5

(1) The exemptions in clause 5 are subject to the condition that:—

- (a) a list of the 10 highest-value individual assets of the CMIT GIF as at the relevant date of each CMIT GIF fund update, identified in accordance with clause 70(2) of Schedule 4 of the Regulations and, against that list, the information about each individual asset required by clause 6(2) must be lodged with the Registrar at the same time as or before each CMIT GIF fund update is lodged with the Registrar; and
- (b) a complete list of individual assets of the CMIT GIF as at 31 March or 30 September (whichever is more recent) and, against that list, the information about each individual asset required by clause 6(3) must be lodged with the Registrar within 40 working days after 31 March or 30 September in each year.

(2) The list of the 10 highest-value individual assets must contain the following information about each individual asset:

- (a) if the individual asset is a mortgage loan:
 - (i) the registered mortgage number; and
 - (ii) a description of the secured property as residential, commercial or rural; and
 - (iii) the geographical region that the secured property is located;
- (b) if the individual asset is not a mortgage loan, the name of the individual asset;
- (c) the country of the individual asset;
- (d) the type of the individual asset according to one of the categories specified in clause 1(4) of Schedule 4 of the Regulations (however, if clause 1(5) of Schedule 4 of the Regulations applies, the type of the individual asset is an interest in a fund of a particular asset type or an interest in a diversified fund);
- (e) if the individual asset is a debt security, the credit rating of the debt security that the Manager reasonably considers to be reliable or, if there is no reliable credit rating of the of the security, the credit rating of the issuer that the Manager reasonably considers to be reliable (or the classification “unrated” if neither the debt security nor the issuer has a reliable credit rating);
- (f) the value of the individual asset as a percentage of the net asset value of the CMIT GIF.

(3) The complete list of individual assets must contain the following information about each individual asset:

- (a) if the individual asset is a mortgage loan —
 - (i) the registered mortgage number; and
 - (ii) a description of the secured property as residential, commercial or rural; and

- (iii) the geographical region that the secured property is located:
 - (b) if the individual asset is not a mortgage loan, the name of the asset; and
 - (c) the value of the asset as a percentage of the CMIT GIF's net asset value; and
 - (d) if applicable, a security identification number, ticker symbol, or exchange code used to identify the asset.
- (4) The exemptions in clause 5 are subject to the further condition that the Manager must lodge with the Registrar, at the same time as it lodges the list referred to in clause 6(1)(a), a statement, below the list referred to in clause 6(1)(a), of the total value of the 10 highest-value individual assets referred to in clause 6(1)(a) as a percentage of the net asset value of the CMIT GIF.
- (5) The exemptions in clause 5 are subject to the further condition that any document lodged with the Registrar containing either of the lists referred to in clause 6(1) must also contain the additional information set out in the Schedule.
- (6) Clause 70(2) and (3) of Schedule 4 of the Regulations applies with all necessary modifications for the purposes of clause 6(2).
- (7) The two lists required by clause 6(1) may be contained within either one or two documents.

7 Exemption from clause 70(1)(a)(i) of Schedule 4 of the Regulations in relation to the fund update

The Manager is exempted, in relation to the CMIT GIF, from clause 70(1)(a)(i) of Schedule 4 of the Regulations.

8 Conditions of exemption in clause 7

- (1) The exemption in clause 7 is subject to the condition that against the list of the 10 highest-value individual assets of the CMIT GIF required to be included in each CMIT GIF fund update in accordance with clause 70(1) of Schedule 4 of the Regulations, the following additional information about each individual asset must be included:
 - (a) if the individual asset is a mortgage loan:
 - (i) the registered mortgage number; and
 - (ii) a description of the secured property as residential, commercial or rural; and
 - (iii) the geographical region where the secured property is located:
 - (b) if the individual asset is not a mortgage loan, the name of the individual asset.
- (2) The exemption in clause 7 is subject to the further condition that each CMIT GIF fund update includes the additional information set out in the Schedule immediately after the information required by clause 8(1).

Schedule

Additional information required in fund updates and information to be lodged with the Registrar for updating the register

As required by clauses 6(5) and 8(2), the additional information required to be included in each CMIT GIF fund update and the information to be lodged with the Registrar:—

- (a) the composition of the CMIT GIF's assets expressed as a percentage according to the following asset types:

- (i) mortgage loans for which the secured property is residential property;
- (ii) mortgage loans for which the secured property is commercial property;
- (iii) mortgage loans for which the secured property is rural property;
- (iv) cash deposits with registered banks; and
- (b) the composition of the mortgage loans expressed as a percentage according to each geographical region and within each geographical region details of the proportion of asset types in accordance with the categories in subclause (a)(i), (ii) and (iii) above; and
- (c) details regarding the value of impaired mortgage loans (if any) and the composition of those impaired mortgage loans expressed as a percentage according to each geographical region and each asset type in accordance with the categories in subclause (a)(i), (ii) and (iii) above; and
- (d) a clear, concise and effective statement by the Manager describing the criteria used by CMIT GIF for determining which of its mortgage loans fall within each asset type in accordance with the categories in subclause (a)(i), (ii) and (iii) above; and
- (e) a table in the following form (or with any changes necessary to ensure the information is not false, misleading, deceptive, or confusing) setting out the maximum LVR for each type of mortgage loan as at the date of advance of that loan:

Loans secured (or principally secured) by mortgage over residential property	Loans secured (or principally secured) by mortgage over commercial property	Loans secured (or principally secured) by mortgage over rural property
Fee simple land and buildings: up to 80% LVR	Fee simple land and buildings: up to 66.7% LVR	Fee simple land and buildings: up to 60% LVR
Leasehold: up to 50% LVR	Leasehold: up to 50% LVR	Leasehold: up to 50% LVR
Vacant land with power, water, sewage and associated services ("Services") completed: up to 70% LVR	Vacant land with power, water, sewage and associated services ("Services") completed: up to 60% LVR	
Land which does not have Services: up to 50% LVR	Land which does not have Services: up to 50% LVR	Land which does not have Services: up to 50% LVR

Dated at Wellington this 30th day of April 2018.



Garth Stanish
Director of Capital Markets
Financial Markets Authority

Statement of reasons

This notice comes into force on 1 May 2018 and is revoked on 30 April 2023.

This notice exempts Fund Managers Otago Limited (FMO) from clauses 54(1)(a)(i) of Schedule 4 of the Regulations (to the extent that that clause requires the information required by clause 53(1)(c)(viii) of Schedule 4 of the Regulations to be lodged with the Registrar for updating the offer

register), 54(1)(d) and 70(1)(a)(i) of Schedule 4 of the Financial Markets Conduct Regulations 2014 (**Regulations**) in relation to the Capital Mortgage Income Trust Group Investment Fund (**CMIT GIF**).

CMIT GIF is a managed fund that invests in loans secured by registered first mortgages over property (**Mortgage Loans**), as well as deposits with registered banks. CMIT GIF has not made a regulated offer under the Financial Markets Conduct Act 2013 (**Act**) therefore it is not required to have a register entry. However, it is subject to the ongoing disclosure obligations in the Act and the Regulations. Therefore, as a manager of a managed fund, FMO is required to provide the following information about CMIT GIF:—

- a list of the ten highest-value individual assets of the fund and certain information against that list including the 'name of the individual asset', in each quarterly fund update (**Fund Update**) and the information required to be lodged with the Registrar for updating the offer register in accordance with the Regulations (**Offer Register Update Information**); and
- a complete list of the individual assets of the fund and certain information against that list including the 'name of the asset', in each Fund Update and the Offer Register Update Information.

For assets such as Mortgage Loans, the 'name of the individual asset' would need to reference the name of the borrower under the respective Mortgage Loan. The exemptions allow, subject to the conditions, FMO to not provide the 'name of the individual asset', and therefore not disclose the name of the borrower, when providing information on each Mortgage Loan in the Fund Updates and the Offer Register Update Information.

The Financial Markets Authority (**FMA**), after satisfying itself as to the matters set out in section 557 of the Act, considers that it is appropriate to grant the exemptions because—

- the requirement to disclose a managed fund's portfolio holdings is to increase the ability of investors to monitor the investment practices of fund managers and to assess the investor's level of exposure to risk. However, the disclosure of the name of a borrower under a Mortgage Loan would not provide meaningful information that would assist an investor to assess CMIT GIF's investments:
- the names of individual borrowers under the Mortgage Loans is personal information that is protected by the Privacy Act 1993 (**Privacy Act**). Disclosure of the names of the individual borrowers in the Fund Updates and the Offer Register Update Information may put the Manager in breach of its obligations under the Privacy Act:
- the conditions of the exemption require that for any Mortgage Loan, instead of disclosing the 'name of the individual asset', each Fund Update and the Offer Register Update Information must contain the registered mortgage number, a description of the principal property secured by the mortgage as either residential, commercial or rural, and the geographical region that the principal secured property is located:
- the conditions of the exemption also require the Fund Updates and the Offer Register Update Information to include additional information such as the composition of CMIT GIF's assets according to specified asset types, the composition of the Mortgage Loans according to geographical region, details regarding the value of impaired Mortgage Loans (if any) and the composition of those impaired Mortgage Loans expressed as a percentage according to each geographical region and specified asset type, to help investors assess CMIT GIF's investments:
- the alternative information that is to be provided will be more useful to investors in assessing and understanding the nature of CMIT GIF's investments and the investor's exposure to risk. As such, the FMA is satisfied that the granting of the exemptions is desirable in order to promote one or more of the purposes of the Act, specifically to promote the confident and informed participation of businesses, investors, and consumers in the financial markets and to

provide for timely, accurate and understandable information to be provided to persons to make decisions relating to the financial products:

- the exemptions only provide relief from the requirement to provide information regarding the 'name of the individual asset' for Mortgage Loans which is not considered meaningful, and imposes conditions which require the provision of alternative and more relevant information on the Mortgage Loans in the Fund Updates and the Offer Register Update Information. In these circumstances, the FMA considers that the exemptions are not broader than reasonably necessary to address the matters that give rise to the exemptions.