

Financial Markets Conduct (Fliway Group Limited) 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 that Act, gives the following notice.

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Notice

1 Title

This notice is the Financial Markets Conduct (Fliway Group Limited) Exemption Notice 2018.

2 Commencement

This notice comes into force on 23 August 2018.

3 Revocation

This notice is revoked on the close of 1 June 2019.

4 Interpretation

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

Act means the Financial Markets Conduct Act 2013

Fliway means Fliway Group Limited

Fliway FY18 Financial Statements means the consolidated group financial statements for Fliway as at and for the financial year ending on 30 June 2018

Regulations means the Financial Markets Conduct Regulations 2014

Yang Kee NZ means Yang Kee Group (New Zealand) Pty Limited

Yang Kee NZ FY18 Financial Statements means the consolidated group financial statements for Yang Kee NZ as at and for the financial year ending on 31 December 2018.

- (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 section 461D of the Act

Fliway is exempted from section 461D of the Act in respect of the Fliway FY18 Financial Statements.

6 Exemption from section 461H(1) of the Act

Fliway is exempted from section 461H(1) of the Act to the extent that that section requires a copy of an auditor's report on the Fliway FY18 Financial Statements to be delivered to the Registrar for lodgement.

7 Conditions of exemptions in clauses 5 and 6

The exemptions in clauses 5 and 6 are subject to the conditions that:

- (a) for the period from 23 August 2018 to 31 December 2018, Fliway remains a wholly-owned subsidiary of Yang Kee NZ;
- (b) Yang Kee NZ must prepare the Yang Kee NZ FY18 Financial Statements as required by section 202 of the Companies Act 1993;
- (c) Fliway and its subsidiaries as at 4 January 2018 form part of the consolidated group to which the Yang Kee NZ FY18 Financial Statements relate;
- (d) the Yang Kee NZ FY18 Financial Statements are audited by a qualified auditor;
- (e) the Yang Kee NZ FY18 Financial Statements, together with the auditor's report on those statements, are delivered to the Registrar for registration as required by section 207E of the Companies Act 1993;
- (f) the Fliway FY18 Financial Statements are reviewed by a qualified auditor in accordance with the New Zealand Standard on Review Engagements 2410; and
- (g) the Fliway FY18 Financial Statements are delivered to the Registrar for lodgement under section 461H of the Act and accompanied by:–
 - (i) a copy of the auditor's review report on the Fliway FY18 Financial Statements prepared in accordance with paragraph (f) of this notice; and
 - (ii) written notification to the Registrar that Fliway is relying on this notice in respect of the accounting period to which the Fliway FY18 Financial Statements relate.

Dated at Wellington this 20th day of August 2018.



Garth Stanish
Director of Capital Markets
Financial Markets Authority

Statement of reasons

This notice comes into force on 23 August 2018 and is revoked on 1 June 2019.

The notice exempts Fliway Group Limited (**Fliway**) from sections 461D and 461H(1) of the Financial Markets Conduct Act (the **Act**) to the extent that they require Fliway to:

- ensure that its consolidated group financial statements as at and for the year ending 30 June 2018 (the **Fliway FY18 Financial Statements**) are audited by a qualified auditor; and
- ensure that a copy of an auditor's report accompanies the Fliway FY18 Financial Statements when they are delivered to the Registrar for lodgement.

Fliway was delisted from the NZX Main Board on 4 January 2018 following a successful takeover offer from Yang Kee Group (New Zealand) Pty Limited (**Yang Kee NZ**). Despite no longer being a listed issuer, the Act treats Fliway as continuing to be an FMC Reporting Entity in relation to the entire accounting period in which it was delisted from the NZX Main Board (i.e. in relation to the Fliway FY18 Financial Statements). Unless an exemption is granted, Fliway will be required to have the Fliway FY18 Financial Statements audited by a qualified auditor as if it was still an FMC Reporting Entity.

The Financial Markets Authority, after satisfying itself as to the matters set out in section 557 of the Act, considers it appropriate to grant the exemption because —

- the exemptions only relate to the requirement to have the Fliway FY18 Financial Statements audited and for a copy of that audit report to be lodged with the Registrar. The exemptions are on the condition that a qualified auditor instead reviews the Fliway FY18 Financial Statements in accordance with NZ SRE 2410 and for a copy of that review report to be lodged with the Registrar. In all other respects, Fliway will comply with its financial reporting obligations under Part 7 of the Act:
- as a listed issuer it was appropriate for Fliway to be subject to a higher level of public accountability and financial reporting standards. However, as a wholly-owned subsidiary the audience for Fliway's financial statements has changed. The primary audience for the Fliway FY18 Financial Statements is now Yang Kee NZ and the financiers of Yang Kee Group. Neither Yang Kee NZ nor the financiers of Yang Kee Group require the Fliway FY18 Financial Statements to be audited:
- Fliway's previous shareholders were provided with comprehensive information at the time of the takeover offer to allow them to fully evaluate the merits of the offer. That information included an independent report prepared by KordaMentha on the merits of the proposed takeover offer which detailed, amongst other things, Fliway's financial performance, financial position and share price performance. In these circumstances, the FMA considers it is unlikely that the Fliway FY18 Financial Statements would be of direct relevance to Fliway's previous shareholders:
- as a wholly owned subsidiary of Yang Kee NZ, Fliway's financial information (from 4 January 2018) will be included in Yang Kee NZ's consolidated group financial statements for the financial year ending 31 December 2018. As a large company, and pursuant to conditions of the exemption, Yang Kee NZ's FY18 financial statements must be audited by a qualified auditor. This means that Fliway's financial information from 4 January 2018 to 31 December 2018 will be subject to auditor oversight as part of the audit of Yang Kee NZ's FY18 financial statements:
- after the financial year ending 30 June 2018 Fliway will no longer be treated as an FMC Reporting Entity for the purposes of the Act. Accordingly, the requirement for this exemption is a one-off:
- the cost and internal management time required to have the Fliway FY18 Financial

Statements audited would be disproportionate to the benefits involved in circumstances where Fliway is no longer a listed issuer and the primary audience of those statements has changed. For these reasons, the FMA is satisfied that the exemption is desirable in order to promote the purposes of the Act, specifically, to avoid unnecessary compliance costs.

The FMA is further satisfied that the exemption is not broader than is reasonably necessary to address the matters that give rise to it, given that the exemption applies only to the Fliway FY18 Financial Statements and does not apply to any other provisions under Part 7 of the Act.

