

Financial Markets Conduct (Harbour Investment Funds) Exemption Notice 2019

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 (Harbour Investment Funds) Exemption Notice 2019.

2 Commencement

This notice comes into force on 1 April 2019.

3 Revocation

This notice is revoked on the close of 31 March 2024.

4 Interpretation

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

Act means the Financial Markets Conduct Act 2013.

aggregate asset means the total holdings of peer-to-peer loans advanced by a fund through a licensed peer to peer lending service.

fund means a fund in the scheme.

individual asset has the same meaning as in clause 1 of Schedule 4 of the Regulations.

licensed peer-to-peer lending service means a person who holds a market services licence that covers a peer-to-peer lending service as defined in regulation 185 of the Regulations.

manager means Harbour Asset Management Limited.

peer-to-peer loan means a loan advanced through a licensed peer-to-peer lending service

Regulations means the Financial Markets Conduct Regulations 2014.

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scheme means the Harbour Investment Funds, a registered scheme under the Act (scheme number SCH10815).

- (2) Any term or expression that is defined in the Act and used, but not defined, in this notice has the same meaning given to it by the Act.

5 Exemptions in relation to register entry and fund updates

The manager is exempted, in relation to the scheme, from the following provisions, to the extent that the provisions require information about an individual asset that is a peer-to-peer loan:

- (a) Clause 53(1)(c)(viii) of Schedule 4 of the Regulations:
- (b) Clause 53(1)(j) of Schedule 4 of the Regulations:
- (c) Clause 54(1)(a)(i) and 54(1)(d) of Schedule 4 of the Regulations:
- (d) Clause 70(1)(a) of Schedule 4 of the Regulations.

6 Conditions of exemption in clause 5

- (1) The exemptions in clause 5 are subject to the conditions that:
- (a) if an aggregate asset is one of the 10 highest-value individual assets of the fund, the list that is otherwise required by clauses 53(1)(c)(viii) and 70(1)(a) must include the aggregate asset and the following information about that aggregate asset:
 - (i) the name of the licensed peer-to-peer lending service:
 - (ii) the country of the licensed peer-to-peer lending service:
 - (iii) the type of asset according to one of the categories specified in clause 1(4) of Schedule 4 of the Regulations:
 - (iv) the value of the aggregate asset as a percentage of the net asset value of the fund.
 - (b) the complete list of individual assets that is otherwise required by clause 53(1)(j) must include each aggregate asset and the following information about each aggregate asset:
 - (i) the name of the licensed peer-to-peer lending service:
 - (ii) the value of the aggregate asset as a percentage of the net asset value of the fund.
- (2) The exemptions in clause 5 are subject to the further condition that the register entry must include the following additional information about the composition of each aggregate asset:
- (a) total number of peer-to-peer loans advanced through the licensed peer-to-peer lending service:
 - (b) the 10 largest peer-to-peer loans as a percentage of the value of the aggregate asset:
 - (c) the proportion of peer-to-peer loans that are secured and unsecured:
 - (d) a breakdown of the number of peer-to-peer loans by risk rating or other risk based categorisation as allocated by the licensed peer-to-peer lending service (if any):
 - (e) details of where investors may find more information about the risk rating or other risk based categorisation, including the default rates of each rating or other risk based categorisation:

- (f) if no risk rating or other risk based categorisation is allocated by the licensed peer-to-peer lending service:
 - (i) a description of the factors used by the manager in considering whether to invest in the peer-to-peer loans;
 - (ii) the number of impaired peer-to-peer loans advanced through the licensed peer-to-peer lending service over the prior 12-month period.
- (3) The exemptions in clause 5 are subject to the further conditions that:
 - (a) if an aggregate asset is in the list of Top 10 investments, the fund update must include the information required by subclause (2) regarding the aggregate asset directly below the Top 10 investments list;
 - (b) the fund update must include the statement “The assets referred to as “NZ Fixed Interest” include loans advanced through a licensed peer-to-peer lending service. Additional information about these assets available on the Disclose Register” directly below the pie graphs required by clauses 68 and 69 of Schedule 4 of the Regulations.
- (4) For the purposes of the provisions set out in clause 5, each aggregate asset is to be treated as a single individual asset of a fund.

7 Further conditions of exemptions in clause 5

The exemptions in clause 5 are subject to the further condition that the manager 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 Top 10 investments of the fund pursuant to clause 6, 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 pursuant to clause 6, as at 31 March or 30 September (whichever is more recent).

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Statement of Reasons

This notice comes into force on 1 April 2019 and is revoked on 31 March 2024.

The notice exempts Harbour Asset Management Limited (**Harbour**), the manager of the Harbour Investment Funds (**Scheme**) from clauses 53(1)(c)(viii), 53(1)(j), 54(1)(a)(i), 54(1)(d) and 70(1)(a)(i) of Schedule 4 of the Financial Markets Conduct Regulations 2014 (**Regulations**).

Harbour is permitted by its Statement of Investment Policy and Objectives to invest up to 30% of the assets of the Harbour Income Fund in loans. Harbour plans to obtain such exposure to loans through investments in loans through licensed peer-to-peer lending services (**peer-to-peer loans**). Under the Regulations, managed funds are required to provide the following information:

- 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 both the register entry for the offer and each quarterly fund update; and
- a complete list of the individual assets of the fund and certain information against that list including the name of the asset and the value of the asset as a percentage of the net asset value of the fund.

For peer-to-peer loans, each loan is an individual asset that would need to be included in the complete list of individual assets. Also, the 'name of the individual asset' would need to reference the name of the borrower under the respective loan. The exemptions allow, subject to the conditions, that Harbour provides information about an aggregate asset made up of all loans advanced through a licensed peer-to-peer lending service, rather than listing all peer-to-peer loans individually and that Harbour names the licensed peer-to-peer lending service as the name of the asset. The conditions also require that Harbour provide additional information about the composition of the aggregate asset through each licensed peer-to-peer lending service, including number of loans invested in, risk rating or other risk-based categorisation of the loans, proportion of secured and unsecured.

The Financial Markets Authority (**FMA**), after satisfying itself as to the matters set out in section 557 of the Financial Markets Conduct Act 2013 (**Act**), considers it appropriate to grant these exemptions because:

- the requirement to list all loans as individual assets may decrease the usability of the complete list of holdings and it would be difficult for investors to assess the risk of each individual loan based on the information that is required to be disclosed by the Regulations:
- Harbour is unlikely to know the identity of underlying borrowers under the peer-to-peer loans. Where the immediate borrower is a nominee, listing individual loans by reference to that nominee and on a loan-by-loan basis would not be providing investors with meaningful information:
- even if Harbour knew the names of individual borrowers under the peer-to-peer loans, there would be little benefit (if any) from having that information disclosed due to the absence of relevant publicly available information on most borrowers. In addition, for privacy reasons, it would not be desirable to identify individual borrowers in the register entry for the Scheme or in fund updates:
- the conditions of the exemption require that, instead of individually listing all peer-to-peer loans, the register entry and each fund update must include an aggregate asset for each licensed peer-to-peer lending service in the complete list of assets and, if any aggregate asset is one of the 10 highest-value individual assets, in the list of 10 highest-value individual assets.

- the conditions also require that a breakdown of the each aggregate asset is provided as additional information. This information will include, among other things, the number of loans invested in, the risk grade or other categorization of those loans and the proportion of loans that is secured or unsecured:
- 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 peer-to-peer loans which is considered not meaningful, and from the requirement to list all peer-to-peer loans individually, but imposes conditions which require the provision of alternative and more relevant information on the peer-to-peer loans in the register entry and fund updates. 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.

Dated at *Auckland* this *28th* day of *March* 2019.



Nick Kynoch
General Counsel
Financial Markets Authority