

Financial Markets Conduct (Tor FX Pty Limited) Exemption Notice 2024

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 (Tor FX Pty Limited) Exemption Notice 2024.

2 Commencement

This notice comes into force on 31 October 2024.

3 Revocation

This notice is revoked on 30 October 2029.

4 Application

The exemptions granted by this notice apply to the following accounting periods of TorFX—

- (a) the accounting period that ended 30 June 2024; and
- (b) subsequent accounting periods, up to and including the accounting period ending 30 June 2029.

5 Interpretation

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

Act means the Financial Markets Conduct Act 2013

ASIC means the Australian Securities and Investments Commission

Australia means Commonwealth of Australia

Australian auditor means an accountant who is qualified under the law of Australia to give an opinion as to whether financial statements comply with Australian equivalents to International Financial Reporting Standards

Australian GAAP means the Australian equivalents to the International Financial Reporting Standards

International Financial Reporting Standards means—

- (a) International Financial Reporting Standards, International Accounting Standards, and Standing Interpretations Committee interpretations that have been adopted by the International Accounting Standards Board in accordance with the constitution of the International Financial Reporting Standards Foundation; and
- (b) final interpretations by the International Financial Reporting Standards Interpretations Committee approved by the International Accounting Standards Board in accordance with that constitution.

IOSCO means the International Organization of Securities Commissions

Regulations means the Financial Markets Conduct Regulations 2014

TorFX means Tor FX Pty Limited, a company incorporated in Australia and registered as an overseas ASIC company in New Zealand under the Companies Act 1993 (company number 8836991).

- (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 (as applicable).

6 Exemptions

TorFX is exempt from the following requirements of the Act and the Regulations—

- (a) sections 455(1)(c), 461D and 461G of the Act; and
- (b) section 460 of the Act to the extent that it requires TorFX to ensure that its financial statements comply with generally accepted accounting practice; and
- (c) section 461B of the Act; and
- (d) regulation 248(1) of the Regulations to the extent that it requires TorFX to obtain an assurance engagement with a qualified auditor; and
- (e) regulation 248(1A) of the Regulations to the extent that it requires the assurance engagement to be done in accordance with applicable auditing and assurance standards; and
- (f) regulation 249 of the Regulations to the extent that it requires a qualified auditor's opinion; and
- (g) clause 29(a) of Schedule 6 to the Regulations to the extent that it requires the register entry for an offer of derivatives by TorFX to contain financial statements that comply with generally accepted accounting practice that have been audited by a qualified auditor.

7 Conditions

- (1) The exemptions in clause 6 are subject to further conditions that—
 - (a) TorFX must continue to hold an Australian Financial Services Licence issued by ASIC; and

- (b) ASIC must continue to be a member of the IOSCO and full signatories to the IOSCO Multilateral Memorandum of Understanding Concerning Consultation and Co-operation and the Exchange of Information.
- (2) The exemptions in clauses 6(a) and (b) are subject to the conditions that—
- (a) in relation to the financial statements that are required to be prepared under section 460 of the Act, TorFX must comply with the law and regulatory requirements of, or permitted by, Australia that relate to the preparation, content, and audit of those financial statements and, in particular, TorFX must ensure that—
 - (i) those financial statements comply with Australian GAAP;
 - (ii) those financial statements are audited by an Australian auditor; and
 - (iii) an audit report is prepared by the Australian auditor in respect of that audit;
 - (b) TorFX must ensure that there are kept, at all times, accounting records that will enable TorFX to ensure that the financial statements prepared under section 460 of the Act comply with clause 7(2)(a)(i); and
 - (c) if the Australian auditor's report referred to in clause 7(2)(a)(iii) was qualified or referred to a fundamental matter in any respect, TorFX must, within seven working days after the report is signed, provide a copy of the report, and a copy of the financial statements to which it relates, to—
 - (i) the FMA; and
 - (ii) the External Reporting Board; and
 - (d) the financial statements of TorFX that are delivered to the Registrar for lodgement under section 461H of the Act must be accompanied by written notification to the Registrar that TorFX is relying on this notice in respect of the accounting period to which the financial statements relate.
- (3) The exemption in clause 6(c) is subject to the conditions that—
- (a) TorFX does not incur any tax liability in New Zealand in any of the accounting periods to which this notice applies; and
 - (b) there are no changes to the established business model and operating structure within which TorFX operates during any of the accounting periods to which this notice applies, which could give rise to a tax liability in New Zealand; and
 - (c) for the accounting period ending 30 June 2024, the financial statements prepared under clause 7(2)(a) and delivered to the Registrar for lodgement under section 461H of the Act, must be accompanied by an addendum which contains —
 - (i) a statement to the effect that—
 - A TorFX's financial statements would normally need to include financial statements for its New Zealand business, prepared as if that business were conducted by a company formed and registered in New Zealand and audited by a qualified auditor, and that TorFX is relying on the Financial Markets Conduct (Tor FX Pty Limited) Exemption Notice 2024, which exempts it from this requirement; and
 - B TorFX is an Australian company and does not incur tax liability in New Zealand during the relevant accounting period; and

- (ii) a quantitative value together with a narrative description that explains the basis for the value of each of the following items for TorFX's New Zealand business, each determined in accordance with the Australian GAAP:
 - A total revenue; and
 - B total expenses; and
 - C total assets; and
 - D total liabilities; and
 - (iii) a statement from the Australian auditor to the effect that—
 - A the financial information in the addendum is consistent with the financial information with the financial records provided by TorFX; and
 - B the financial information in the addendum has not been audited by the Australian auditor; and
 - (d) for the subsequent accounting periods, up to and including the accounting period ending 30 June 2029, the financial statements that are prepared under clause 7(2)(a) and delivered to the Registrar for lodgement under section 461H of the Act, must contain, in the notes to those financial statements, which will be audited by an Australian auditor —
 - (i) a statement to the effect that—
 - A TorFX's financial statements would normally need to include financial statements for its New Zealand business, prepared as if that business were conducted by a company formed and registered in New Zealand and audited by a qualified auditor, and that TorFX is relying on the Financial Markets Conduct (Tor FX Pty Limited) Exemption Notice 2024, which exempts it from this requirement; and
 - B TorFX is an Australian company and does not incur tax liability in New Zealand during the relevant accounting period; and
 - (ii) a quantitative value together with a narrative description that explains the basis for the value of each of the following items for TorFX's New Zealand business, each determined in accordance with the Australian GAAP:
 - A total revenue; and
 - B total expenses; and
 - C total assets; and
 - D total liabilities.
- (4) The exemptions in clause 6(d), (e) and (f) are subject to the conditions that—
- (a) TorFX, in relation to the assurance engagement required under regulation 248(1) of the Regulations, must obtain an assurance engagement with an Australian auditor; and
 - (b) the assurance engagement must be done in accordance with the auditing and assurance standards that apply to the assurance engagement carried out by the Australian auditor; and
 - (c) the assurance report must include an opinion by the Australian auditor on TorFX's processes, procedures and controls, as stated in regulation 249(1) of the Regulations; and

- (d) in preparing the assurance report, the Australian auditor must test the control objectives as stated in regulation 249(2) of the Regulations in relation to their effectiveness in New Zealand in respect of TorFX; and
 - (e) the assurance report must include a statement confirming that such tests have been carried out; and
 - (f) the assurance report must identify the control objectives in regulation 249(2) of the Regulations that apply only to New Zealand licensed derivatives issuers and for which there is no equivalent obligation for TorFX in Australia.
- (5) The exemption in clause 6(g) is subject to the condition that the register entry for any regulated offer of derivatives by TorFX must contain—
- (a) a copy of TorFX's most recently completed financial statements before the date of the PDS for the offer that comply with Australian GAAP and have been audited by an Australian auditor; and
 - (b) a copy of the Australian auditor's report on those financial statements; and
 - (c) a statement to the effect that—
 - (i) New Zealand law normally requires the financial statements on the register to comply with New Zealand's generally accepted accounting practice; and
 - (ii) in this case, TorFX's financial statements comply with Australian GAAP; and
 - (iii) compliance with Australian GAAP, in this case, is allowed under the Financial Markets Conduct (Tor FX Pty Limited) Exemption Notice 2024.

Dated at Wellington this 25th day of October 2024.



John Horner
Director of Markets, Investors and Reporting
Financial Markets Authority

Statement of Reasons

This notice comes into force on 31 October 2024 and is revoked on 30 October 2029.

This notice exempts Tor FX Pty Limited (**TorFX**), an Australian incorporated company that holds an Australian Financial Services Licence, and in New Zealand a financial advice provider licence and a derivatives issuer licence under the Financial Markets Conduct Act 2013 (the **Act**), from the following provisions of the Act and the Financial Markets Conduct Regulations 2014 (the **Regulations**) from—

- section 455(1)(c) of the Act, to the extent that an FMC reporting entity must keep accounting records that will enable it to ensure that financial statements comply with generally accepted accounting practice (**NZ GAAP**);
- section 460 of the Act, to the extent that it requires financial statements that comply with NZ GAAP;
- section 461B of the Act, which requires overseas FMC reporting entities to prepare and lodge financial statements that include financial statements for its New Zealand business;
- sections 461D and 461G of the Act;
- regulation 248(1) of the Regulations, to the extent that it requires TorFX to obtain an assurance engagement with a qualified auditor;
- regulation 248(1A) of the Regulations to the extent that it requires the assurance engagement to be done in accordance with applicable auditing and assurance standards in New Zealand;
- regulation 249 of the Regulations to the extent that it requires a qualified auditor's opinion on the derivatives issuer's processes, procedures and controls; and
- clause 29(a) of Schedule 6 to the Regulations to the extent that the register entry is required to contain financial statements that comply with NZ GAAP that have been audited by a qualified auditor.

The exemptions are subject to a number of conditions including that TorFX prepare financial statements that comply with the financial reporting requirements in Australia that relate to the preparation, content and audit, of those financial statements.

The main effects of the exemptions are—

- the financial statements that are prepared will comply with Australian equivalents to International Financial Reporting Standards (**Australian GAAP**) rather than NZ GAAP, and will be audited by an auditor registered under the laws of Australia to perform the audit (**Australian auditor**);
- the notes to TorFX's financial statements will provide key financial information about TorFX's New Zealand business, rather than TorFX preparing separate financial statements for its New Zealand business prepared as if that business were conducted by a company formed and registered in New Zealand;
- the register entry for an offer of derivatives by TorFX will contain TorFX's most recently completed financial statements that comply with Australian GAAP and will have been audited by an Australian auditor;
- TorFX will obtain an assurance engagement with an Australian auditor in accordance with the auditing and assurance standards that apply to the assurance engagement in Australia, including an opinion by the Australian auditor on TorFX's processes, procedures and controls, as stated in regulation 249(1) of the Regulations and tests the control objectives as stated in

regulation 249(2) of the Regulations in relation to their effectiveness in New Zealand in respect of TorFX.

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—

- the FMA is satisfied that the financial reporting and assurance requirements, and the nature and extent of regulatory oversight, for TorFX and its reasonable assurance engagement with an Australian auditor are at least equivalent to those that exist in New Zealand. As such, TorFX's investors will have access to broadly similar information to the information that they would otherwise receive:
- there was no objection from Inland Revenue in relation to TorFX no longer preparing New Zealand business financial statements under the Act and there are no other known users of these financial statements as TorFX does not have tax liability in New Zealand. To the extent that there are any users of TorFX's New Zealand business financial statements, key financial information about TorFX's New Zealand business will be included within the notes to TorFX's financial statements:
- the Australian Securities and Investments Commission (**ASIC**) is a signatory to the International Organisation of Securities Commissions' Multilateral Memorandum of Understanding Concerning Consultation and Cooperation and the Exchange of Information. This means that the FMA will be able to obtain cooperation from ASIC if any compliance concerns arise in relation to TorFX's financial reporting, audit and assurance engagement requirements:
- the costs associated with each of the following would outweigh any benefit to investors—
 - preparing separate financial statements that comply with NZ GAAP, together with an audit of those statements by a New Zealand licensed auditor, when investors have access to broadly similar information in the audited financial statements of TorFX that are prepared in accordance with the laws of Australia;
 - preparing New Zealand business financial statements; and
 - engaging a qualified auditor to provide a separate assurance engagement in respect of certain derivatives investor money obligations.
- the granting of the exemptions is desirable in order to promote the purposes of the Act, specifically the purposes of avoiding unnecessary compliance costs and promoting innovation and flexibility in the financial markets:
- the FMA is further satisfied that the extent of the exemptions are not broader than is reasonably necessary to address the matters that give rise to the exemptions given that the financial statements will be subject to Australian GAAP and audit oversight that is broadly equivalent to the New Zealand requirements, the assurance engagement will still be carried out, and TorFX is exempt only from the requirement to prepare New Zealand business financial statements on the condition it has no tax liability in New Zealand.