

## Financial Markets Conduct (Obsidian Contributory Mortgage Scheme) 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 (Obsidian Contributory Mortgage Scheme) Exemption Notice 2019.

#### 2 Commencement

This notice comes into force on 22 October 2019.

#### 3 Revocation

This notice is revoked on the close of 21 October 2024.

#### 4 Interpretation

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

**Act** means the Financial Markets Conduct Act 2013

**NZ IFRS 7** means the New Zealand Equivalent to International Financial Reporting Standard 7 Financial Instruments: Disclosures.

**NZ IFRS 9** means the New Zealand Equivalent to International Financial Reporting Standard 9 Financial Instruments.

**Loan Disclosure** means a loan specific disclosure statement that contains the information referred to in clause 6(2)(a)

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**loan portfolio** means, at any time, all of the loans selected by the Member for investment within the Scheme at that time

**Manager** means Obsidian Group Limited

**Member** means an investor in the Scheme

**Regulations** means the Financial Markets Conduct Regulations 2014

**Scheme** means the Obsidian Contributory Mortgage Scheme

**Scheme Financial Statements** means financial statements prepared under section 461A(3)(a) for the Scheme

**Separate Loan Fund** means each individual loan under the Scheme which constitutes a separate fund under section 461A of the Act.

- (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 given to it by the Act or the Regulations.

## 5 Exemptions

- (1) The Manager in respect of the Scheme is exempted from—
- (a) clauses 4(1), 9(1), 10, 11(1), 12(3) to 12(5), 16(1)(d), 16(1)(e), 22(2)(g), 26 to 30, and 35(4) to 35(8) of Schedule 5 to the Regulations; and
  - (b) clauses 49 and 50 of Schedule 5 to the Regulations; and
  - (c) clause 51(1)(a) of Schedule 5 to the Regulations in respect of any loan which is a major transaction in relation to the Scheme; and
  - (d) clauses 59, 60, and 61 of Schedule 5 to the Regulations; and
  - (e) section 461A(3)(b) of the Act to the extent that the section requires the Manager to prepare financial statements for each Separate Loan Fund.

## 6 Conditions of exemption

### (1) Product Disclosure Statement

The exemptions in clause 5(1)(a) are subject to the conditions that—

- (a) in the PDS, the KIS must contain a statement in the following form under the subheading 'What is this?' in place of the statement ordinarily required by clause 4(1) of Schedule 5 to the Regulations:

"This is an offer of interests in Obsidian Contributory Mortgage Scheme (the Scheme). Your money will be invested by Obsidian Group Limited (the Manager) in loans secured by mortgages, which you choose to be in your portfolio.

The Manager selects the loans you can choose from to include in your portfolio. The Manager also manages and administers the loans in your portfolio, and takes fees. The types of loans and fees are described in this document. By investing in this Scheme you are relying on the investment decisions of the Manager in selecting the loans you can choose from and in determining the interest rates paid on those loans. You will not be provided with information to independently assess the creditworthiness of particular borrowers - the Manager makes this assessment. There is a risk that you may lose some or all of the money you invest."; and

- (b) in the PDS, the KIS must also contain under the subheading 'What is this?' a

statement in the following form:

**"WARNING**

The law normally requires people who offer financial products to give certain specified information to investors before they invest. This requires those offering financial products to have disclosed information that is important for investors to make an informed decision.

The usual disclosure rules do not apply to this offer because there is an exemption for offers of investments in the Scheme. Information about each loan will be set out in a Loan Specific Disclosure Statement (**Loan Disclosure**) provided to you by the Manager. As a result of the exemption, you will need to read both the Loan Disclosure and this Product Disclosure Statement (**PDS**) to understand the overall risks and fees that will apply to your loan portfolio. You should also refer to the table provided to you along with the PDS to see the types of loans that have been made by the Scheme recently.

You will also not be able to easily compare an investment in the Scheme with other managed investment schemes.

Additionally, the exemption allows the Manager to only prepare audited financial statements at the Scheme level, and not to have to also prepare individual audited financial statements for each separate loan. The Scheme financial statements include information about all loans in the Scheme collectively, but with some consideration of individual loans (as required by the conditions to the exemption). Not all information in the financial statements will be relevant to your individual portfolio and there will be limited information about individual loans. As a result, you will need to read the financial statements in conjunction with your relevant loan disclosure documents and personalised quarterly reports to understand the overall position in relation to your individual portfolio.

Investment in the Scheme will not be suitable for all retail investors. We suggest you ask questions and read all documents carefully."; and

- (c) in the PDS, the KIS must contain under the subheading '**Key drivers of returns**', a brief summary of what the manager considers to be—
  - (i) the current and future aspects of the Scheme that have, or may have, the most impact on the financial performance of a Member's loan portfolio; and
  - (ii) the key strategies and plans for those aspects of the Scheme; and
- (d) in the PDS, the KIS must contain under the subheading '**Key risks of this investment**' a statement in the following form in place of the statement ordinarily required by clause 11(1) of Schedule 5 to the Regulations:

"Investments in managed investment schemes are risky. You should consider whether the degree of uncertainty associated with investing in individual loans and their returns is suitable for you. Because each Member chooses the loans to include in their portfolio, the degree of uncertainty regarding returns will vary from Member to Member. The interest rate charged on a loan should reflect the particular risks of the loan. The Manager considers the most significant risk factors that could affect the value of a Member's loan portfolio are: *[brief summary of the circumstances that must be disclosed under clause 32 (risks) that the Manager considers most significantly increase the risk to the value of the financial products]*. The Loan Disclosure for each loan includes risk information about the particular

loan. But you will not be provided with information to independently assess the creditworthiness of particular borrowers - the Manager makes this assessment."; and

- (e) in the PDS, in the section headed '**What [name of scheme] invests in**' under the subheading '**Key features of the scheme**' a statement in the following form in place of the statement ordinarily required by clause 16(1)(e) of Schedule 5 to the Regulations:

"a brief description of the current and future aspects of the scheme that have, or may have, the most impact on the financial performance of a Member's loan portfolio."

(2) **Loan Disclosures and register information**

The exemptions in clauses 5(1)(a) and 5(1)(b) are subject to the further conditions that—

- (a) Loan Disclosure must be given to a Member before an application is made by that Member to include a particular loan in their loan portfolio and must include the following information:

- (i) directly under the heading 'Loan Disclosure Statement' a statement in the following form:

"This Loan Disclosure Statement (**Loan Disclosure**) gives you important information about this investment and should be read in conjunction with the Product Disclosure Statement (**PDS**) for the Obsidian Contributory Mortgage Scheme (**Scheme**). The PDS and other useful information about the offer can be found on [www.business.govt.nz/disclose](http://www.business.govt.nz/disclose). Obsidian Group Limited, the issuer and Manager of the Scheme, has prepared this document in accordance with an exemption granted to it under the Financial Markets Conduct Act 2013.

By investing in this Scheme you are relying on the investment decisions of the Manager in selecting the loans you can choose from and in determining the interest rates paid on those loans. However, you should carefully consider the information in this document in deciding whether to include this particular loan in your portfolio. If there is something you don't understand then ask questions.

You can also seek advice from a financial adviser to help you make an investment decision.":

- (ii) a unique identifying number for the Loan Disclosure:
- (iii) the date of the Loan Disclosure:
- (iv) the name of the borrower:
- (v) the total amount of the loan:
- (vi) the term of the loan:
- (vii) the rate of interest payable on the loan (net of fees):
- (viii) other details of the loan which the Manager considers relevant to the Member's assessment of the loan and the Member's decision whether to include it in their portfolio, including whether the loan is interest only,

whether the interest rate is fixed or floating, details of how and when the interest rate may be reset, and details of any special terms that apply to the loan:

- (ix) the value of property to be mortgaged to secure the performance of the loan (less the maximum amount of any prior ranking security interest over that property):
- (x) the loan to value ratio for the loan, being the ratio of the amount referred to in paragraph (v) to the amount referred to in paragraph (ix), expressed as a percentage:
- (xi) the address of the property to be mortgaged to secure the performance of the loan and a description of that property (residential, commercial, development etc):
- (xii) the certificate of title number for property to be mortgaged to secure the performance of the loan and a statement that a copy of the certificate of title is available on request:
- (xiii) details of the mortgage securing the performance of the loan, including whether it is a first ranking security interest and, if not, details of any prior ranking security interests:
- (xiv) a copy of the registered valuation for the property to be mortgaged to secure the performance of the loan:
- (xv) a summary of any guarantees or other security supporting the repayment of the loan:
- (xvi) a statement to the effect that the Manager is satisfied with the creditworthiness of the borrower in relation to the loan, having taken into account those of the following matters that the Manager considers relevant:
  - A the borrower's income and expenses:
  - B the borrower's past credit history:
  - C the liabilities and realisable assets of the borrower:
  - D the loan to value ratio:
- (xvii) a statement that credit checks have been completed on the borrower and whether those checks give the Manager any cause for concern about the borrower, and also stating that a copy of the credit checks are available on request:
- (xviii) a summary of what assurance a member can take from a credit check:
- (xix) a summary of any other risks considered by the Manager to be specific to the loan or borrower or any other material information in relation to the loan or borrower including whether any of the matters referred to in paragraph (xvi) have not been taken into account in assessing the borrower's creditworthiness:
- (xx) details of fees and expenses charged or to be charged by any person in respect of the loan, separately identifying the fees and expenses charged or to be charged by the Manager and its associated persons:

- (xxi) any further information which the Manager reasonably considers as necessary or desirable to explain the relevance of any information required to be disclosed in accordance with this clause 6(2)(a); and
- (b) if an application or direction to include a loan in a Member's loan portfolio is included in the same document as the Loan Disclosure for that loan, the application or direction may only be included after the matters required to be disclosed in accordance with clause 6(2)(a); and
- (c) within 20 working days after the last day of each quarter of each calendar year the Manager must include in the register entry for the offer under "Other material information", and publish on the Manager's website, a document with a table setting out the following information in respect of loans made by the Scheme in that quarter:
  - (i) the loan identifier, being the unique identifying number for the Loan Disclosure referred to in clause 6(2)(a)(ii) above;
  - (ii) principal amount of the loan;
  - (iii) term of the loan;
  - (iv) the interest rate payable on the loan (or in the case of a floating rate loan, the initial rate payable) and whether the rate is fixed or floating;
  - (v) type of borrower, for example whether the borrower is an individual, a company, a partnership, or trust etc;
  - (vi) a description of the property mortgaged to secure the performance of the loan (residential, commercial, development etc) and the district it is located;
  - (vii) type of mortgage (first or second ranking etc) and guarantees or other security supporting the repayment of the loan;
  - (viii) loan to value ratio (calculated in accordance with clause 6(2)(a)(x) above); and
- (d) the most recent quarterly table referred to in clause 6(2)(c) is provided to investors along with the PDS for offers in relation to the Scheme; and
- (e) the Manager maintains on its website, the quarterly table referred to in clause 6(2)(c) for each quarter in at least the last three calendar years (or until the Scheme has been in operation for more than three years, for every quarter of its operation).

**(3) Personalised Quarterly Reports**

The exemptions in clauses 5(1)(a) and 5(1)(b) are subject to the further conditions that—

- (a) the Manager provides to each Member a personalised quarterly report within 20 working days after the last day of each quarter of each disclosure year by—
  - (i) making it available to the Member through an electronic facility (but only if the Member has agreed to this method); or
  - (ii) giving it to the Member or delivering or sending to the Member's last known address; and
- (b) the personalised quarterly report must include the following information in relation to a Member:

- (i) the total amount of Loans in the Member's loan portfolio as at the first and last day of the quarter as at which the personalised quarterly report is prepared:
- (ii) the annualised return (net of fees and expenses) on the Member's loan portfolio over the 12 month period ending on the last day of the quarter at which the personalised quarterly report is prepared:
- (iii) the rate of return representing the investment objective for the Scheme (as set out in the Scheme's statement of investment policy and objectives) for the 12 month period ending on the last day of the quarter at which the personalised quarterly report is prepared:
- (iv) each loan in the Member's loan portfolio and in respect of each loan—
  - A the funds invested for the Member over the 12 month period ending on the last day of the quarter at which the personalised quarterly report is prepared; and
  - B an income schedule showing the interest received over the 12 month period ending on the last day of the quarter at which the personalised quarterly report is prepared; and
  - C details about any overdue payments or defaults over the 12 month period ending on the last day of the quarter at which the personalised quarterly report is prepared; and
  - D the actual fees deducted over the 12 month period ending on the last day of the quarter at which the personalised quarterly report is prepared; and
- (v) in respect of the Member's cash account—
  - A the total amount in the Member's cash account as at the first and last day of the quarter at which the personalised quarterly report is prepared; and
  - B any interest credited over the 12 month period ending on the last day of the quarter at which the personalised quarterly report is prepared; and
  - C any fees deducted over the 12 month period ending on the last day of the quarter at which the personalised quarterly report is prepared.

(4) **Scheme Annual Report**

The exemptions in clause 5(1)(d) are subject to the condition that the Scheme annual report required by Regulation 62 must include, under the subheading '**Financial condition and performance of the Scheme**', the following information in relation to the accounting period to which the annual report relates:

- (a) details about all overdue payments and defaults in respect of loans which are Scheme assets:
- (b) the annualised return (net of fees and expenses) on the Scheme's total loan portfolio:
- (c) the rate of return representing the investment objective for the Scheme (as set out in the Scheme's statement of investment policy and objectives).

(5) **Scheme Financial Statements**

The exemption in clause 5(1)(e) is subject to the conditions that —

- (a) Scheme Financial Statements are prepared; and
- (b) Scheme Financial Statements include a warning statement in the following form:

“The Manager of the Obsidian Contributory Mortgage Scheme (**Scheme**) has an exemption that allows it to only prepare audited financial statements at the Scheme level, and not to have to also prepare individual audited financial statements for each separate loan. The Scheme financial statements include information about all loans in the Scheme collectively, but with some consideration of individual loans (as required by the conditions to the exemption). Not all information in these financial statements will be relevant to your individual portfolio and there will be limited information about individual loans. As a result, you will need to read these financial statements in conjunction with your relevant loan disclosure documents and personalised quarterly reports to understand the overall position in relation to your individual portfolio”

- (c) Scheme Financial Statements include consideration of each Separate Loan Fund and related mortgages pursuant to NZ IFRS 7 and NZ IFRS 9; and
- (d) when considering each Separate Loan Fund and related mortgages for the purposes of paragraph (c) above, materiality is considered in the context of the Separate Loan Fund.

**7 Existing notice revoked**

The Financial Markets Conduct (Obsidian Contributory Mortgage Scheme) Exemption Notice 2018 is revoked on the commencement of this notice.

Dated at Auckland this 18<sup>th</sup> day of October 2019.

  
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Nick Kynoch

General Counsel and acting co-director of Capital Markets  
Financial Markets Authority

**Statement of Reasons**

This notice comes into force on 22 October 2019 and is revoked on 21 October 2024. This notice exempts Obsidian Group Limited (the **Manager**) from the following provisions of the Financial Markets Conduct Regulations 2014 (the **Regulations**) and the Financial Markets Conduct Act 2013 (the **Act**) in respect of the Obsidian Contributory Mortgage Scheme (the **Scheme**):



- (a) clauses 4(1), 9(1), 10, 11(1), 12(3) to 12(5), 16(1)(d), 16(1)(e), 22(2)(g), 26 to 30, 35(4) to (8) of Schedule 5 to the Regulations:
- (b) clauses 49 and 50 of Schedule 5 to the Regulations:
- (c) clause 51(1)(a) of Schedule 5 to the Regulations in respect of any loan which is a major transaction in relation to the Scheme:
- (d) clauses 59, 60 and 61 of Schedule 5 to the Regulations.
- (e) section 461A(3)(b) of the Act to the extent that the section requires the Manager to prepare financial statements for each individual loan under the Scheme which constitutes a separate fund (**Separate Loan Fund**) under section 431A of the Act.

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

*Offer disclosure, ongoing disclosure, and register information*

- the Regulations applicable to 'other managed investment schemes' are not a good fit for the Scheme and would prevent the Manager from providing investors with timely, accurate, and understandable information in relation to the Scheme to assist them to make decisions in relation to the Scheme. Each investor has a self-selected loan portfolio, so the exemptions and related conditions allow and require disclosure of information which is relevant at the individual investor level (as opposed to at the Scheme level). Where appropriate, Scheme level information is also required. The conditions also include required risk statements in relation to the non-standard disclosure for the Scheme; and
- it is not practical (and in some instances not possible) to include in the PDS and register entry for offers relating to the Scheme, certain financial and other information that would ordinarily be required in the PDS and register entries. The exemptions and related conditions instead allow and require loan summary information to be lodged on a quarterly basis and personalised quarterly reporting to be provided to investors; and
- in these circumstances the granting of the exemptions in relation to offer disclosure, ongoing disclosure and register information, on the conditions set out in the notice, is desirable in order to promote one or more of the purposes of the Act, specifically by providing for timely, accurate and understandable information to be provided to investors to assist them with making investment decisions in relation to the Scheme, and by promoting innovation and flexibility in the financial markets; and
- these exemptions are not broader than is reasonably necessary to address the matters that give rise to the exemptions because the exemptions only apply to provisions that are either not meaningful or relevant in the circumstances, and the related conditions impose broadly equivalent requirements that are meaningful and relevant; and

*Financial Reporting*

- the preparation of audited financial statements which comply with generally accepted accounting practice for every Separate Loan Fund would impose a disproportionate financial reporting requirement on the Scheme. Additionally, any financial statements prepared for Separate Loan Funds would repeat a large amount of information already provided in financial statements prepared at the Scheme level; and

- the exemption allows the preparation of financial statements to be done at the Scheme level only, but imposes conditions that ensure that relevant information regarding Separate Loan Funds are included. This allows the Scheme to prepare a single set of financial statements each financial year and avoid unnecessary compliance costs, but ensures that investors receive timely, accurate and understandable information; and
- the financial reporting exemption is not broader than is reasonably necessary to address the matters that give rise to the exemption because, while it exempts the Manager from needing to prepare audited financial statements for each Separate Loan Fund, the conditions require certain matters to be considered at the Separate Loan Fund level in the Scheme Financial Statements. The exemption also only applies to separate funds that comprise an individual loan secured by a mortgage, and not to separate funds more generally.