



Financial Markets Conduct (Managed Funds—Loan Disclosure Requirements) Exemption Notice 2019

Pursuant to sections 556 and 572 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 (Managed Funds—Loan Disclosure Requirements) Exemption Notice 2019.

2 Commencement

This notice comes into force on 1 August 2019.

3 Revocation

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

4 Interpretation

- (1) In this notice, unless the context otherwise requires,—
Act means the Financial Markets Conduct Act 2013

geographical region means each of the following within the meaning of the Local Government Act 2002:

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

impaired loan means a loan that is impaired as determined in accordance with generally accepted accounting practice

property means an estate or interest in real property in New Zealand

register entry means, in relation to a specified scheme, a register entry for the offer of managed investment products in the scheme

Regulations means the Financial Markets Conduct Regulations 2014

secured loan means a loan—

- (a) that has been advanced in respect of a managed fund or that has been assigned or novated to a managed fund or its custodian by the original lender; and
- (b) in respect of which a charge over property that is a first ranking registered mortgage secures payment or performance of the obligations under the loan

secured property means, in relation to a secured loan, the principal property (by value) that is the subject of the first ranking registered mortgage that secures payment or performance of the obligations under the loan

specified scheme—

- (a) means a managed fund with assets that include secured loans, whether exclusively or together with other assets; and

- (b) includes a managed fund that invests in a related underlying fund that is a managed fund of the type described in paragraph (a).
- (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.
- (3) Regulation 9 of the Regulations applies, with all necessary modifications, to the table required to be provided under clause 6(2)(e).

5 Exemptions in relation to register entry and fund updates

- (1) Every manager of a specified scheme is exempted from the provisions in sub-clause (2) to the extent that—
 - (a) an individual asset of a fund of the specified scheme is a secured loan; and
 - (b) the provisions require information to include the name of the borrower for the purpose of naming or identifying that individual asset.
- (2) The provisions are—
 - (a) clause 53(1)(c)(viii) of Schedule 4 of the Regulations;
 - (b) clause 53(1)(j)(i) of Schedule 4 of the Regulations;
 - (c) clause 54(1)(a)(i) and (d) of Schedule 4 of the Regulations;
 - (d) clause 70(1)(a)(i) of Schedule 4 of the Regulations.

6 Conditions of exemptions relating to register entry and fund updates

- (1) The exemptions in clause 5 are subject to the condition that, in each place where the Regulations require the register entry or a fund update to name or identify an individual asset that is a secured loan, the register entry or fund update must name or identify the individual asset that is a secured loan by stating—
 - (a) which of the following the manager reasonably considers describes the secured property:
 - (i) residential property; or
 - (ii) commercial property; or
 - (iii) rural property; and
 - (b) the geographical region in which the secured property is located.

Example

Loan secured over commercial property in Tasman.

- (2) The exemptions in clause 5 are subject to the further condition that the register entry and the fund update must include the following additional information:
 - (a) the composition of the specified scheme's assets, expressed as a percentage of the value (calculated in accordance with generally accepted

accounting practice) of total assets, according to the following asset types:

- (i) secured loans for which the secured property is residential property; and
 - (ii) secured loans for which the secured property is commercial property; and
 - (iii) secured loans for which the secured property is rural property; and
 - (iv) cash and cash equivalents, and New Zealand fixed interest assets, with registered banks; and
 - (v) all other assets (if any); and
- (b) details regarding the composition of secured loans as follows:
- (i) for each geographical region, the value (calculated in accordance with generally accepted accounting practice) of the secured loans for the region expressed as a percentage of total secured loans; and
 - (ii) within each geographical region, details of the proportion of secured loans for each category specified in paragraph (a)(i), (ii), and (iii) expressed as a percentage of total secured loans; and
- (c) details regarding the value (calculated in accordance with generally accepted accounting practice) of any impaired loans as follows:
- (i) for each geographical region, the value of the impaired loans for the region expressed as a percentage of total secured loans; and
 - (ii) within each geographical region, details of the proportion of impaired loans for each category specified in paragraph (a)(i), (ii), and (iii) expressed as a percentage of total secured loans; and
- (d) a clear, concise, and effective statement by the manager describing the criteria used by the specified scheme for determining which of its secured loans fall within each asset type in accordance with the categories specified in paragraph (a)(i), (ii), and (iii); and
- (e) a table setting out the maximum LVR for each type of secured loan as at the date on which the loan is approved or the date of the first advance of that loan (as specified in the scheme's governing document or SIPO or in accordance with generally accepted market practice).
- (3) The table under subclause (2)(e) must be in the following format:

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 [*]% LVR	Fee simple land and buildings: up to [*]% LVR	Fee simple land and buildings: up to [*]% LVR
Leasehold: up to [*]% LVR	Leasehold: up to [*]% LVR	Leasehold: up to [*]% LVR

NOK

Loans secured (or principally secured) by mortgage over residential property

Vacant land: up to [*]% LVR

Loans secured (or principally secured) by mortgage over commercial property

Vacant land: up to [*]% LVR

Loans secured (or principally secured) by mortgage over rural property

Vacant land: up to [*]% LVR

Note: LVR means loan-to-value ratio. LVR shows the amount of a loan as a percentage of the value of the property that secures the loan. The lower the LVR, the lower the amount of the loan relative to the value of the secured property.

**Specify maximum LVR*

(4) However, the table may include additional information to the information set out in subclause (3) if—

- (a) the additional information is material information that is likely to be useful to investors; and
- (b) the manager reasonably considers that the additional information relates to lending limits imposed by the scheme's governing document or SIPO.

(5) In this clause, unless the context otherwise requires,—

additional secured properties means, in relation to a secured loan, any property, other than the secured property, that is the subject of the first ranking registered mortgage that secures payment or performance of the obligations under the loan

LVR means the loan-to-value ratio of a secured loan—

- (a) determined on a date by dividing the principal amount of the secured loan by the aggregate of the manager's valuation of the secured property and the manager's valuation of any additional secured properties relating to that loan; and
- (b) expressed as a percentage.

7 Further conditions of exemptions relating to information to be lodged with Registrar for updating register

The exemptions in clause 5 are subject to the further conditions that the manager of the specified scheme 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 the 10 highest-value individual assets of the fund under clause 6(1), 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 under clause 6(1), as at 31 March or 30 September (whichever is more recent).

8 Revocations

The following notices are revoked:

- (a) Financial Markets Conduct (First Mortgage Trust Group Investment Fund and First Mortgage PIE Trust) Exemption Notice 2015:
- (b) Financial Markets Conduct (NZ Mortgage Income Trust (No 2 Fund) Group Investment Fund) Exemption Notice 2016:
- (c) Financial Markets Conduct (Midlands Mortgage Trust Group Investment Fund) Exemption Notice 2016.

Dated at Auckland this 24th day of July 2019.



General Counsel.

Statement of reasons

This notice comes into force on 1 August 2019 and is revoked on the close of 31 July 2024.

Every manager of a registered scheme that is a managed fund is required to provide the following information:

- a list of the 10 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:
- a complete list of the individual assets of the fund and certain information against that list, including the name of the asset, in the register entry for the offer. This information must also be updated within 40 working days after 31 March and 30 September in each year.

See clauses 53(1)(c)(viii) and (j)(i), 54(1)(a)(i) and (d), and 70(1)(a)(i) of Schedule 4 of the Financial Markets Conduct Regulations 2014 (the **Regulations**).

For assets such as loans secured by first ranking registered mortgages over property, the name of the individual asset would need to reference the name of the borrower under that loan.

This notice exempts the managers of managed funds that invest in these assets from the requirement to provide the name of the borrower. Instead, under the conditions of the exemption, the manager must include the following alternative information:

- a description of the principal property secured by the mortgage as either residential, commercial, or rural and the geographical region in which the principal secured property is located:
- the composition of the fund's assets expressed as a percentage according to specified asset types, the composition of the loans according to geographical region, details regarding the value of impaired loans (if any), and the composition of those impaired loans expressed as a percentage according to each geo-

graphical region and each specified asset type, together with details of the maximum loan-to-value ratio for each type of loan.

While this notice exempts managers from providing the name of the borrower, there is no exemption from the requirement to disclose all material information. Therefore, the manager must still disclose any circumstances relating to the borrower that are material (eg, the borrower is a discharged bankrupt).

The Financial Markets Authority (the **FMA**), after satisfying itself as to the matters set out in section 557 of the Financial Markets Conduct Act 2013 (the **Act**), considers it appropriate to grant the exemptions, subject to conditions, and to revoke the existing exemption notices because—

- disclosing the name of an individual borrower would require fund managers to amend their documentation and business processes to seek the borrower's consent to disclosure, which would have a compliance cost. However, disclosure of the individual borrower's name would generally not provide investors with the most meaningful information about the assets of a managed fund, as it is unlikely that an investor would be able to assess the credit risk of a borrower if there is little or no publicly available information on that borrower:
- the alternative information that is required to be provided in place of the name of the individual borrower as a condition of the exemptions will better assist investors to assess and understand the nature of the fund'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 the purposes of the Act, specifically to promote the confident and informed participation of businesses, investors, and consumers in the financial markets, to provide for timely, accurate, and understandable information to be provided to persons to assist those persons to make decisions relating to the financial products, and to avoid unnecessary compliance costs:
- as the exemptions will apply only to managers of managed funds that invest in loan assets secured by first ranking registered mortgages, and will exempt those managers only from the requirement to name individual borrowers, the exemptions proposed are not broader than is reasonably necessary to address the matters that gave rise to them.

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*:

This notice is administered by the Financial Markets Authority.