

Financial Markets Conduct (Todd Family Office Limited Financial Reporting) Exemption Notice 2024

This exemption is granted by the Financial Markets Authority under section 556 of the Financial Markets Conduct Act 2013 after being satisfied of the matters set out in section 557 of that Act.

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Notice

1 Title

This notice is the Financial Markets Conduct (Todd Family Office Limited Financial Reporting) Exemption Notice 2024.

2 Commencement

This notice comes into force on 16 April 2024.

3 Revocation

This notice is revoked on the close of 15 April 2029.

4 Application

An exemption granted by this notice applies to the following accounting periods of TFO:

- (a) an accounting period of TFO that commenced before the exemption is granted (including an accounting period that ended before the exemption is granted) if the exemption is granted before the financial statements or group financial statements for that period would be required to be delivered to the Registrar for lodgement under section 461H of the Act; and
- (b) subsequent accounting periods.

5 Interpretation

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

Act means the Financial Markets Conduct Act 2013

control has the meaning given to that term in clause 48 of Schedule 1 of the Act

DIMS Licence means the market services licence granted to TFO on 17 April 2015

DIMS means a discretionary investment management service provided by TFO under TFO's DIMS Licence

eligible staff member means:

- (a) an employee of TFO approved by the TFO board to participate in the staff long term incentive scheme, for so long as that employee remains an employee of TFO and
- (b) includes a person who has previously been a person of the kind referred to in (a) but only for a period of 60 days after the date the person ceased being an employee of TFO

FAP Licence means the market services licence granted to TFO on 27 April 2021

Regulations means the Financial Markets Conduct Regulations 2014

staff long term incentive scheme means a scheme which substantially conforms to the invitation only scheme offered as at 12 December 2018 by TFO to no more than fifteen TFO board approved senior TFO employees

Todd family member means:

- (a) any person who is a descendant (natural or adopted) of Charles Todd, late of Wellington, Merchant who died on 21 August 1942 and his wife Mary Todd, as if the Status of Children Act 1969 had not been passed; or
- (b) the trustees of any trust (acting in their capacity as trustees of that trust) if a settlor or beneficiary of that trust is a person described in paragraph (a) (including any trust settled for charitable purposes); or
- (c) a company or limited partnership which is controlled by a person described in paragraph (a) or by trustees of a trust described in paragraph (b) (acting in their capacity as trustees of that trust); or
- (d) at the request of a person described in paragraph (a), any person who is a spouse, long term partner or step child of that person; and
- (e) includes a person who has previously been a person of the kind referred to in (a)-(d) but only for a period of 60 days after the date the person ceased to be a person of the kind referred to in (a)-(d) (as applicable)

TFO means Todd Family Office Limited.

- (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.

6 Exemption

TFO is exempted from section 461H(1) of the Act.

7 Conditions of exemption

The exemption in clause 6 is subject to the conditions that—

- (a) in respect of any accounting period in which TFO provides a DIMS, TFO only provides DIMS to Todd family members, TFO or eligible staff members; and
- (b) in respect of any accounting period in which TFO provides a DIMS, TFO meets the FMC reporting entity criteria set out in section 451 of the Act only as a result of holding a DIMS Licence and for no other reason (TFO holding a FAP Licence shall be disregarded for the purpose of this condition); and

- (c) TFO must ensure that, within four months after its balance date, a copy of the financial statements of TFO for that accounting period, together with a copy of the auditor's report on those financial statements, is made available to Todd family members and eligible staff members through an electronic facility maintained by TFO;
- (d) TFO must submit to the FMA a copy of the financial statements of TFO for any accounting period requested by the FMA, together with a copy of the auditor's report on those financial statements, as soon as reasonably practicable after receiving the request from the FMA; and
- (e) in respect of DIMS provided to eligible staff members, the DIMS is only provided in relation to the employee's entitlement resulting from the TFO staff long term incentive scheme.

Dated at Wellington this 12 day of April 2024.



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

Statement of reasons

This notice comes into force on 16 April 2024 and is revoked on the close of 15 April 2029.

The notice exempts Todd Family Office Limited (**TFO**) from compliance with section 461H(1) of the Financial Markets Conduct Act 2013 (the **Act**). The effect of the exemption is to remove the requirement for TFO (as a FMC reporting entity) to lodge its audited financial statements, and the associated auditor's report, with the Registrar. The exemption is subject to a condition that requires TFO to ensure a copy of its audited financial statements and auditor's report are available to clients of the TFO discretionary investment management service (**DIMS**) through an electronic facility (such as an internet site) maintained by TFO. In addition, the exemption is only available to TFO if all TFO's DIMS clients are Todd family members, associated entities of Todd family members, TFO itself or are senior employees of TFO selected by the TFO board to participate in the TFO staff long term incentive scheme (collectively, **Todd Clients**) and it is a FMC reporting entity only because it holds a market services licence for DIMS pursuant to the Act (**DIMS Licence**).

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 exemption because the conditions of the exemption and the conditions imposed on TFO's DIMS Licence by regulation 193 of the Financial Markets Conduct Regulations 2014 (which require TFO to provide any document required for the purposes of the Act to an investor on request), mean that all Todd Clients who receive DIMS from TFO will be entitled to obtain all of the information they would have been entitled to obtain had the information been provided to the Registrar in accordance with section 461H(1) of the Act, while maintaining the privacy of their personal financial information.

As such, the FMA is satisfied that granting the exemption is desirable in order to promote the purposes of the Act, specifically because:

- it provides for timely and accurate information to be provided to Todd Clients to assist those investors to make decisions relating to TFO's provision of DIMS;
- it promotes the confident and informed participation of those investors which might otherwise be undermined by the public disclosure of their personal financial information;
- the conditions of the exemption also require TFO to provide its audited financial statements and auditor's report to the FMA upon request by the FMA. This promotes the purpose of the Act to ensure effective monitoring of financial services; and
- it promotes innovation and flexibility in the financial markets by allowing Todd Clients to have the access to the financial statements that they otherwise would if the financial statements were lodged with the Registrar, while recognising their right to privacy.

The FMA is further satisfied that the extent of the exemption is not broader than is reasonably necessary to address the matters that give rise to the exemption because the conditions ensure that TFO will not have the benefit of the exemption if it provides DIMS to any investor who is not a Todd Client or if it meets the criteria for FMC reporting entity (except as a result of holding a licence to provide a financial advice service) for any reason other than holding a DIMS Licence, and as such the exemption does no more than maintain the privacy of Todd Clients' personal financial information. TFO will, in all other respects, need to comply with Part 7 of the Act.