

Financial Markets Conduct (NZ Mortgage Income Trust (No 2 Fund) Group Investment Fund) Exemption Notice 2016

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 the Act gives the following notice.

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Notice

1 Title

This notice is the Financial Markets Conduct (NZ Mortgage Income Trust (No 2 Fund) Group Investment Fund) Exemption Notice 2016.

2 Commencement

This notice comes into force on 24 November 2016.

3 Revocation

This notice is revoked on the close of 23 November 2021.

4 Interpretation

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

Act means the Financial Market Conduct Act 2013

additional secured properties means in relation to a mortgage loan, any property other than the secured property that is subject to a first ranking mortgage in favour of FM Custodians Limited to secure repayment of the mortgage loan

geographical region means each of the following:

- (a) Auckland;
- (b) Bay of Plenty;

- (c) Canterbury;
- (d) Gisborne;
- (e) Hawkes 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.

LVR means the loan to value ratio of a mortgage loan which is determined at the time the loan is approved by comparing the principal amount of the mortgage loan with the aggregate of the Manager's valuation of the secured property and the Manager's valuation of any additional secured properties relating to that mortgage loan

Manager means Fund Managers Otago Limited, in its capacity as manager of the NZMIT NO 2 GIF

mortgage loan means a loan advanced by NZMIT NO 2 GIF to a person (including an entity) and secured by a registered first ranking mortgage over secured property and (if applicable) secured by a registered first ranking mortgage over any additional secured properties

NZMIT NO 2 GIF means NZ Mortgage Income Trust (No 2 Fund) Group Investment Fund being a managed investment scheme established by deed dated 18 October 2007 between the Manager and Trustees Executors Limited as subsequently amended and re-stated by deed dated 18 November 2016

NZMIT NO 2 GIF offer means the regulated offer by the Manager of units in NZMIT NO 2 GIF in accordance with the NZMIT NO 2 GIF PDS and NZMIT NO 2 GIF register entry

registered mortgage number means, in relation to a mortgage loan, the mortgage number issued by Land Information New Zealand on registration of the mortgage over the secured property

Regulations means the Financial Markets Conduct Regulations 2014

secured property means in relation to a mortgage loan, the principal property (by value) that is subject to a first ranking mortgage in favour of FM Custodians Limited to secure repayment of the mortgage loan.

- (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.

5 Exemption from clauses 53(1)(c)(viii) and 53(1)(j) of Schedule 4 of the Regulations in relation to the register entry

The Manager is exempt in relation to the NZMIT NO 2 GIF offer, from clauses 53(1)(c)(viii) and 53(1)(j) of Schedule 4 of the Regulations.

6 Conditions of exemption in clause 5

- (1) The exemptions in clause 5 are subject to the condition that the NZMIT NO 2 GIF register entry must contain—
 - (a) a list of the 10 highest-value individual assets of the NZMIT NO 2 GIF identified in accordance with clause 70(2) of Schedule 4 of the Regulations and, against that list, the information about each individual asset required by clause 6(2); and
 - (b) a complete list of individual assets of the NZMIT NO 2 GIF as at a stated date (which is not earlier than 40 working days before the date of the NZMIT NO 2 GIF PDS and, against that list, the information about each individual asset required by clause 6(3).
- (2) The list of the 10 highest-value individual assets must contain the following information about each individual asset:
 - (a) if the individual asset is a mortgage loan,—
 - (i) the registered mortgage number;
 - (ii) a description of the secured property as residential, commercial or rural;
 - (iii) the geographical region that the secured property is located; and
 - (b) if the individual asset is not a mortgage loan, the name of the individual asset; and
 - (c) the country of the individual asset; and
 - (d) the type of the individual asset according to one of the categories specified in clause 1(4) of Schedule 4 of the Regulations (however, if clause 1(5) of Schedule 4 of the Regulations applies, the type of the individual asset is an interest in a fund of a particular asset type or an interest in a diversified fund); and
 - (e) if the individual asset is a debt security, the credit rating of the debt security that the Manager reasonably considers to be reliable or, if there is no reliable credit rating of the of the security, the credit rating of the issuer that the Manager reasonably considers to be reliable (or the classification “unrated” if neither the debt security nor the issuer has a reliable credit rating); and
 - (f) the value of the individual asset as a percentage of the net asset value of the NZMIT NO 2 GIF.
- (3) The complete list of individual assets must contain the following information about each individual asset:
 - (a) if the individual asset is a mortgage loan,—
 - (i) the registered mortgage number;
 - (ii) a description of the secured property as residential, commercial or rural;
 - (iii) the geographical region that the secured property is located; and
 - (b) if the individual asset is not a mortgage loan, the name of the asset; and
 - (c) the value of the asset as a percentage of the NZMIT NO 2 GIF’s net asset value; and

- (d) if applicable, a security identification number, ticker symbol, or exchange code used to identify the asset.
- (4) The exemptions in clause 5 are subject to the further condition that the NZMIT NO 2 GIF register entry contains a statement, below the list referred to in clause 6(1)(a), of the total value of the 10 highest-value individual assets referred to in clause 6(1)(a) as a percentage of the net asset value of the NZMIT NO 2 GIF.
- (5) The exemptions in clause 5 are subject to the further condition that—
 - (a) updated information about the list of the 10 highest-value individual assets of NZMIT NO 2 GIF referred to in clause 6(1)(a) and the statement referred to in clause 6(3) must be lodged with the Registrar as at the relevant date of each NZMIT NO 2 GIF fund update, at the same time as or before each NZMIT NO 2 GIF fund update is lodged with the Registrar; and
 - (b) updated information about the complete list of individual assets of NZMIT NO 2 GIF referred to in clause 6(1)(b) as at 31 March or 30 September (whichever is more recent) must be lodged with the Registrar within 40 working days after 31 March or 30 September in each year.
- (6) The exemptions in clause 5 are subject to the further condition that any document on the NZMIT NO 2 GIF register entry containing either of the lists referred to in clause 6(1) must also contain the additional information set out in the Schedule.
- (7) Clause 70(2) and (3) of Schedule 4 of the Regulations applies with all necessary modifications for the purposes of clause 6(3).
- (8) The two lists required by clause 6(1) may be contained within either one or two documents on each of the NZMIT NO 2 GIF register entry.

7 Exemption from clause 70(1)(a)(i) of Schedule 4 of the Regulations in relation to the fund update

The Manager is exempt, in relation to the NZMIT NO 2 GIF offer, from clause 70(1)(a)(i) of Schedule 4 of the Regulations.

8 Conditions of exemption in clause 7

- (1) The exemption in clause 7 is subject to the condition that against the list of the 10 highest-value individual assets of the NZMIT NO 2 GIF required to be included in each NZMIT NO 2 GIF fund update in accordance with clause 70(1) of Schedule 4 of the Regulations, the following additional information about each individual asset must be included:
 - (a) if the individual asset is a mortgage loan:—
 - (i) the registered mortgage number;
 - (ii) a description of the secured property as residential, commercial or rural;
 - (iii) the geographical region that the secured property is located; and
 - (b) if the individual asset is not a mortgage loan, the name of the individual asset.
- (2) The exemption in clause 7 is subject to the further condition that each NZMIT NO 2 GIF fund update includes the additional information set out in the Schedule immediately after the information required by clause 8(1).

Schedule

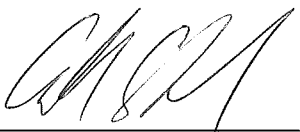
Additional information required in register entry and fund update

The additional information required to be included in the NZMIT NO 2 GIF register entry, and each NZMIT NO 2 GIF fund update is—

- (a) the composition of the NZMIT NO 2 GIF's assets expressed as a percentage according to the following asset types:
 - (i) mortgage loans for which the secured property is residential property;
 - (ii) mortgage loans for which the secured property is commercial property;
 - (iii) mortgage loans for which the secured property is rural property;
 - (iv) cash deposits with registered banks; and
- (b) the composition of the mortgage loans expressed as a percentage according to each geographical region and within each geographical region details of the proportion of asset types in accordance with the categories in subclause (a)(i), (ii) and (iii) above; and
- (c) details regarding the value of impaired mortgage loans (if any) and the composition of those impaired mortgage loans expressed a percentage according to each geographical region and each asset type in accordance with the categories in subclause (a) above; and
- (d) a clear, concise and effective statement by the Manager describing the criteria used in relation to NZMIT NO 2 GIF to determine which of its mortgage loans fall within each asset type in accordance with the categories in subclause (a)(i), (ii) and (iii) above; and
- (e) a table in the following form (or with any changes necessary to ensure the information is not false, misleading, deceptive, or confusing) setting out the maximum LVR for each type of mortgage loan as at the date of advance of that loan—

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 80% LVR	Fee simple land and buildings: up to 66.7% LVR	Fee simple land and buildings: up to 60% LVR
Leasehold: up to 50% LVR	Leasehold: up to 50% LVR	Leasehold: up to 50% LVR
Vacant land with power, water, sewage and associated services ("Services") completed: up to 70% LVR	Vacant land with power, water, sewage and associated services ("Services") completed: up to 60% LVR	
Land which does not have Services: up to 50% LVR	Land which does not have Services: up to 50% LVR	Land which does not have Services: up to 50% LVR

Dated at Wellington this 23rd day of November 2016.



Garth Stanish
Director of Capital Markets
Financial Markets Authority

Statement of reasons

This notice comes into force on 24 November 2016 and is revoked on 23 November 2021.

This notice exempts Fund Managers Otago Limited (**FMO**) from clause 53(1)(c)(viii), clause 53(1)(j) and clause 70(1)(a)(i) of Schedule 4 of the Financial Markets Conduct Regulations 2014 (**Regulations**) in relation to the regulated offer of managed investment products in NZ Mortgage Income Trust Group Investment Fund (**NZMIT NO 2 GIF**).

NZMIT NO 2 GIF is a managed fund that invests in loans secured by registered first mortgages over property (**Mortgage Loans**), as well as deposits with registered banks. As the manager of a managed fund, FMO is required to provide the following information about NZMIT NO 2 GIF:

- 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 (**Register Entry**) and each quarterly fund update (**Fund Update**) in accordance with the Regulations; and
- a complete list of the individual assets of the fund and certain information against that list including the 'name of the asset', in the respective Register Entry.

For assets such as Mortgage Loans, the 'name of the individual asset' would need to reference the name of the borrower under the respective Mortgage Loan. The exemptions allow, subject to the conditions, FMO to not provide the 'name of the individual asset', and therefore not disclose the name of the borrower, when providing information on each Mortgage Loan in the Register Entries or Fund Updates.

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 that it is appropriate to grant the exemptions because—

- the requirement to disclose a managed fund's portfolio holdings is intended to increase the ability of investors to monitor the investment practices of fund managers and to assess the investor's level of exposure to risk. However, the disclosure of the name of a borrower under a Mortgage Loan would not provide meaningful information that would assist an investor to assess NZMIT NO 2 GIF's investments:
- where borrowers are real persons, the names of individual borrowers under the Mortgage Loans is personal information that is protected by the Privacy Act 1993 (**Privacy Act**). Disclosure of the names of such individual borrowers in the Register Entry or Fund Update may put the Manager in breach of its obligations under the Privacy Act:
- the conditions of the exemption require that for any Mortgage Loan, instead of disclosing the 'name of the individual asset', the Register Entry or Fund Update must contain the registered mortgage number, a description of the principal property secured by the mortgage as either residential, commercial or rural, and the geographical region that the principal secured property is located:
- the conditions of the exemption also require the Register Entry or Fund Update to include additional information such as the composition of NZMIT NO 2 GIF's assets according to specified asset types, the composition of the Mortgage Loans according to geographical region, details regarding the value of impaired Mortgage Loans (if any) and the composition of those impaired Mortgage Loans expressed as a percentage according to each geographical region and specified asset type, to help investors assess NZMIT NO 2 GIF's investments:

- The alternative information that is to be provided will be more useful to investors in assessing and understanding the nature of NZMIT NO 2 GIF'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 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 Mortgage Loans which is considered not meaningful, and imposes conditions which require the provision of alternative and more relevant information on the Mortgage Loans in the Register Entries 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.