

Financial Markets Conduct (Squirrel Investment Funds) Exemption Notice 2021

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 (to which is appended a statement of reasons of the Financial Markets Authority).

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Notice

1 Title

This notice is the Financial Markets Conduct (Squirrel Investment Funds) Exemption Notice 2021.

2 Commencement

This notice comes into force on 6 August 2021.

3 Revocation

This notice is revoked on the close of 5 August 2026.

4 Interpretation

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

individual asset has the same meaning as in clause 1 of Schedule 4 of the Regulations

loan means a loan made by Squirrel Trustee as lender through the Platform that Squirrel Trustee holds on trust for (in whole or in part) a Wholesale Fund

Manager means Implemented Investment Solutions Limited

Platform means the peer-to-peer lending platform operated by Squirrel

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

register entry means, in relation to a Retail Fund, the register entry for the offer of managed investment products in the Retail Fund

Regulations means the Financial Markets Conduct Regulations 2014

related underlying fund has the same meaning as in regulation 5 of the Regulations

Retail Fund means a fund established under the Retail Scheme

Retail Scheme means the Squirrel Investment Funds, being a managed investment scheme established by a deed dated 7 May 2021 between the Manager and Public Trust as amended from time to time

risk rating means in relation to the Retail Fund, the risk rating allocated to the loan by the Manager

secured loan means a loan in respect of which a charge over the borrower's assets secures payment or performance of the borrower's obligations under the loan

secured asset means, in relation to a secured loan, the principal property (by value) that is the subject of the security interest that secures payment or performance of the obligations under the secured loan

Squirrel means Squirrel Money Limited

Squirrel Trustee means Squirrel P2P Trustees Limited

value means value calculated in accordance with generally accepted accounting practice

unsecured loan means a loan that is not secured by the borrower's assets

Wholesale Fund means a fund established under the Wholesale Scheme

Wholesale Scheme means the Squirrel Wholesale Investment Funds, being a managed investment scheme established by a deed dated 4 August 2021 between the Manager and Public Trust as amended from time to time.

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- (2) Any term or expression that is defined in the Act or Regulations and used, but not defined, in this notice has the same meaning as in the Act or Regulations.

5 Exemptions in relation to register entry and fund updates

- (1) The Manager is exempted, in relation to a Retail Fund, from the provisions in sub-clause (2) to the extent that—
- (a) an individual asset of a related underlying fund of the Retail Fund is a 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 of a Retail Fund, the register entry or fund update must name or identify the individual asset that is a loan in which a Retail Fund has an interest through its investment in a related underlying fund by stating—
- (a) for each secured loan, which of the following the Manager reasonably considers best describes the secured asset:
 - (i) residential property; or
 - (ii) commercial property; or
 - (iii) rural property; or
 - (iv) other assets; or
 - (b) for each unsecured loan, a statement that the loan is unsecured; and
 - (c) for each secured loan, the primary geographical region where the secured asset is located; and
 - (d) for each loan, the risk rating of the loan or other risk based category as allocated by the Manager.
- (2) The exemptions in clause 5 are subject to the further condition that the register entry and any fund update must include the following additional information in respect of each related underlying fund which the Retail Fund has an interest in:
- (a) details regarding the composition of each related underlying fund's assets, expressed as a percentage of the value of the related underlying fund's total assets, according to the following asset types (as applicable):
 - (i) secured loans for which the secured asset is residential property;
 - (ii) secured loans for which the secured asset is commercial property;
 - (iii) secured loans for which the secured asset is rural property;
 - (iv) secured loans for which the secured asset is any other asset;
 - (v) unsecured loans;

- (vi) cash and cash equivalents, and New Zealand fixed interest assets, with registered banks; and
 - (vii) all other assets (if any); and
 - (b) a clear, concise, and effective statement by the Manager describing the criteria used for determining which of the secured loans fall within each asset type in accordance with the categories specified in clause 6(1)(a)(i) to (iv) above;
 - (c) a clear, concise, and effective statement by the Manager describing the categories of other assets specified in clause 6(1)(a)(iv) above;
 - (d) the total number of loans in which the Retail Fund has an interest through its investment in a related underlying fund; and
 - (e) the 10 highest-value individual assets of the Retail Fund (which for the avoidance of doubt is the Retail Fund's 10 largest loan exposures) expressed as a percentage of the value of the Retail Fund;
- (3) The exemptions in clause 5 are subject to the further condition that any fund update must include the following additional information in respect of each related underlying fund which the Retail Fund has an interest in:
- (a) for the risk rating or other risk categorisation allocated by the Manager:
 - (i) a breakdown of the percentage of loans by risk rating or other risk based categorisation as allocated by the Manager; and
 - (ii) a clear, concise and effective statement by the Manager stating that investors can find more information about the risk rating or other risk based categorisation in the 'Other Material Information' section of the register entry of the Retail Fund;
 - (b) the composition of loans with the following terms expressed as a percentage of the value of the Retail Fund's total assets:
 - (i) one year or less;
 - (ii) more than one year and less than, or equal to, five years;
 - (iii) more than five years and less than, or equal to, ten years; or
 - (iv) more than ten years.
- (4) The exemptions in clause 5 are subject to the further condition that the register entry and fund update must include the following additional information about the composition of loans with no risk rating or other risk-based categorisation allocated by Squirrel which the Retail Fund has an interest in through its investment in a related underlying fund:
- (a) a description of the factors used by the Manager in considering whether to invest the assets of a related underlying fund in this type of loan;
 - (b) the number of such loans which were impaired loans over the prior 12-month period;
 - (c) the value of the impaired loans in (b) above; and
 - (d) the value of the impaired loans in (b) above expressed as a percentage of the net asset value of the Retail Fund.

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 must lodge with the Registrar,—

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- (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 Retail Fund (which for the avoidance of doubt is the Retail Fund's 10 largest loan exposures) 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).

Dated at Wellington this 5 day of August 2021



Sarah Vrede
Director of Capital Markets
Financial Markets Authority

Statement of Reasons

This notice comes into force on 6 August 2021. The notice is revoked on 5 August 2026. The notice exempts Implemented Investment Solutions Limited (IIS), as the manager of a fund established under the Squirrel Investment Funds, being a managed investment scheme established by deed dated 7 May 2021 between IIS and Public Trust as amended from time to time (a **Retail Fund**) from clauses 53(1)(c)(viii), 53(1)(j)(i), 54(1)(a)(i) and (d) and 70(1)(a)(i) of Schedule 4 of the Financial Markets Conduct Regulations 2014 (**Regulations**).

Under those provisions IIS, as the manager of a registered scheme that is a managed fund (i.e. a Retail Fund), would be 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.

IIS intends to invest the Wholesale Funds in loans available through the Platform from time to time. A Retail Fund will invest all of its assets into units in one or more of the Wholesale Funds.

Clause 70(2)(b) of Schedule 4 of the Regulations states that if any part of the specified fund is invested in a related underlying fund, the individual assets of that related underlying fund are to be treated as if they were individual assets directly held by the specified fund. Since each Wholesale Fund and Retail Fund are managed by IIS, a Wholesale Fund is a related underlying fund of a Retail Fund.

According to clause 53(8)(b) of Schedule 4 of the Regulations, clauses 70(2) and (3) of Schedule 4 of the Regulations apply with all necessary modifications for the purposes of clause 53(1)(j)(i) of that Schedule.

Even though loans will be advanced to borrowers using the investment funds of Wholesale Funds, the 'name of the individual asset' of a Retail Fund would need to reference the name of the borrower under each loan, in order for that Retail Fund to comply with clauses 53(1)(c)(viii), 53(1)(j)(i), 54(1)(a)(i) and (d) and 70(1)(a)(i) of Schedule 4 of the Regulations.

This notice exempts IIS, in respect of the Retail Fund, from the requirement to provide the name of the borrower, subject to the conditions set out in clauses 6 and 7 in the notice. The conditions require IIS to provide alternative information with respect to loans made by the Wholesale Funds (the **alternative disclosures**) as follows:

- The term and secured asset for the loan;
- Information about the composition of the Wholesale Funds which a Retail Fund has an interest in;
- Information about the Retail Fund's composition including the indirect interests in loans;
- Information as to how many loans the Retail Fund has an indirect interest in through its investment in a Wholesale Fund and the 10 highest-value individual assets of the Retail Fund which for the avoidance of doubt would be the Retail Fund's 10 largest loan exposures;
- The geographical region where the secured assets to which the loans relate are located;
- Risk rating information for each of the loans indirectly invested in by the Retail Fund, and a breakdown of the percentage of loans according to each risk rating;
- If no risk rating information is available, then information about the number and value of impaired loans and the factors considered before investing.

While this notice exempts IIS from providing the name of the borrower, there is no exemption from the requirement to disclose all material information. Therefore, IIS 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 the conditions because—

- It is unlikely that an investor in a Retail Fund would be able to obtain useful information about a loan asset from the names of borrowers because such information is unlikely to be publicly available. In addition, a borrower's name is not information which would likely help a Retail Fund investor to monitor the investment practices of IIS or Squirrel, or to help an investor assess whether those practices are consistent with the Retail Fund's investment philosophy as set out in its SIPO:
- The alternative disclosures will better assist investors with establishing the nature and risk exposure of the Retail Fund investments:
- If the names of borrowers were publicly disclosed it may constrain the ability of Squirrel to attract borrowers. As such, the alternative disclosures above will likely better promote confident and informed participation of businesses, investors, and consumers in the financial markets.

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, and 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:
- the exemptions are not broader than reasonably necessary to address the matters that gave rise to them because the exemptions only exempt IIS from the requirement to name borrowers conditional on the provision of alternative and more relevant information.

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