



Financial Service Providers (Exemptions) Amendment Regulations 2020

Patsy Reddy, Governor-General

Order in Council

At Wellington this 14th day of December 2020

Present:

The Right Hon Jacinda Ardern presiding in Council

These regulations are made under section 44(1)(ab) of the Financial Service Providers (Registration and Dispute Resolution) Act 2008—

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the recommendation of the Minister of Commerce and Consumer Affairs made in accordance with section 44(1A) of that Act.

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Regulations

1 Title

These regulations are the Financial Service Providers (Exemptions) Amendment Regulations 2020.

2 Commencement

These regulations come into force on 15 March 2021.

3 Principal regulations

These regulations amend the Financial Service Providers (Exemptions) Regulations 2010 (the **principal regulations**).

4 Regulation 3 amended (Interpretation)

In regulation 3, definition of **relevant service**, replace “section 5” with “section 5(1)”.

5 Regulation 4 revoked (Exemption for directors of promoters)

Revoke regulation 4.

6 New regulations 4A and 4B inserted

Before regulation 5, insert:

4A Exemption for overseas providers that do not promote services in New Zealand

A person (**P**) is exempt from the application of the Act in respect of a relevant service if—

- (a) P has no place of business in New Zealand; and
- (b) P does not distribute any communications to the public in New Zealand or any section of the public in New Zealand for the purpose of promoting the supply of the service to persons in New Zealand; and
- (c) P is not required to hold, or be authorised under, a licence to provide the service; and
- (d) P is not required to be registered under the Act in relation to the service by or under any other Act; and
- (e) P is not required to be a member of an approved dispute resolution scheme in relation to the service by or under any other Act; and

- (f) in the case of a service referred to in section 390 of the Financial Markets Conduct Act 2013, P does not hold, and is not authorised under, a licence that covers the service.

4B Exemption for Australian offeror for services relating to offer under mutual recognition regime

- (1) An Australian offeror is exempt from the application of the Act in respect of a relevant service provided in relation to financial products that are offered under a recognised offer.
- (2) In this regulation, **Australian offeror**, **financial products**, and **recognised offer** have the same meanings as in regulation 256 of the Financial Markets Conduct Regulations 2014.

7 Regulation 6 revoked (Exemption for sole adviser practice)

Revoke regulation 6.

8 Regulation 12 replaced (Exemption for individual members of angel organisations)

Replace regulation 12 with:

12 Exemption for members of angel organisations

- (1) A person (A) who is a member of an angel organisation is exempt from the application of the Act in respect of financial advice services provided to—
- (a) any other member of the angel organisation; or
 - (b) any member of any other angel organisation.
- (2) However, the exemption applies only if—
- (a) the angel organisation of which A is a member is registered; and
 - (b) A is named on a list of members kept by that angel organisation and (if reasonably requested) provided to the Registrar; and
 - (c) all of the members of the angel organisation referred to in subclause (1)(a) or (b) (as the case may be) to whom the service is provided are wholesale clients (within the meaning of clause 4 of Schedule 5 of the Financial Markets Conduct Act 2013).

Michael Webster,
Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations, which come into force on 15 March 2021, amend the Financial Service Providers (Exemptions) Regulations 2010 (the **principal regulations**).

The principal regulations provide various exemptions from the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (the **FSP Act**). The FSP Act applies to persons who are in the business of providing a financial service. Those persons are required to register under the FSP Act.

The main change made by these regulations is to add the following exemptions:

- an exemption for financial service providers who have no place of business in New Zealand and who do not promote their services to persons in New Zealand. The exemption does not apply if the provider is required to be registered by an Act other than the FSP Act;
- an exemption for Australian offerors in respect of offers made under the arrangements between Australia and New Zealand for the mutual recognition of securities offerings. Those arrangements allow certain offers made in New Zealand to comply with Australian law rather than New Zealand law.

The regulations also include changes to exemptions as a consequence of the Financial Services Legislation Amendment Act 2019. That Act, among other things, introduces a new regime for financial advice services under the Financial Markets Conduct Act 2013. The changes include—

- revoking an exemption for entities that provide financial adviser or broking services where there is only 1 adviser. The exemption is not required under the new regime. That regime requires providers of those services (and financial advisers) to be registered under the FSP Act;
- continuing an exemption for a member of an angel organisation in respect of financial advice services provided to other members of angel organisations. Angel organisations are organisations directed at facilitating the provision of capital from investor members to innovative or start-up businesses. The exemption has been amended so that it applies only if all members of the angel organisation to whom the advice is provided are wholesale clients.

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 17 December 2020.

These regulations are administered by the Ministry of Business, Innovation, and Employment.