



Financial Advisers (Disclosure) Amendment Regulations 2014

Jerry Mateparae, Governor-General

Order in Council

At Wellington this 3rd day of November 2014

Present:

His Excellency the Governor-General in Council

Pursuant to sections 22 to 25 and 154 of the Financial Advisers Act 2008, His Excellency the Governor-General makes the following regulations, acting—

- (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 154(4) and (5) of that Act.

Contents

	Page
1 Title	2
2 Commencement	2
3 Principal regulations	2
4 Regulation 3 amended (Interpretation)	2
5 New regulation 3A inserted (Transitional, savings, and related provisions)	2
3A Transitional, savings, and related provisions	2

6	Regulation 8 amended (Disclosure by QFEs)	3
7	Regulation 10 amended (Conditions of exemptions in regulation 9)	3
8	New Schedule 1AA inserted	3
9	Schedule 1 amended	3
10	Schedule 2 amended	4
11	Schedule 3 amended	5
	Schedule	6
	New Schedule 1AA inserted	

Regulations

- 1 Title**
 These regulations are the Financial Advisers (Disclosure) Amendment Regulations 2014.
- 2 Commencement**
 These regulations come into force on 1 December 2014.
- 3 Principal regulations**
 These regulations amend the Financial Advisers (Disclosure) Regulations 2010 (the **principal regulations**).
- 4 Regulation 3 amended (Interpretation)**
 - (1) In regulation 3(1), revoke the definition of **reserve scheme**.
 - (2) In regulation 3(2), after “the Act”, insert “or (as the case requires) the Financial Markets Conduct Act 2013” in each place.
- 5 New regulation 3A inserted (Transitional, savings, and related provisions)**
 After regulation 3, insert:

“3A Transitional, savings, and related provisions
 The transitional, savings, and related provisions set out in Schedule 1AA have effect according to their terms.”

6 Regulation 8 amended (Disclosure by QFEs)

In regulation 8(2)(d), delete “or, if the QFE is not a member of an approved dispute resolution scheme, the reserve scheme”.

7 Regulation 10 amended (Conditions of exemptions in regulation 9)

In regulation 10(1)(b), delete “or the reserve scheme, as the case may be”.

8 New Schedule 1AA inserted

Before Schedule 1, insert the Schedule 1AA set out in the Schedule of these regulations.

9 Schedule 1 amended

(1) In Schedule 1, under the heading “**How can I help you?**”, replace “*securities*” with “*financial products*”.

(2) In Schedule 1, under the heading “**How can I help you?**”, before “When I do this, I will be able to [give you advice/provide a service] about—”, insert:

“*[Include the following 2 paragraphs only if you are permitted by section 17(1)(a) of the Act to provide a personalised discretionary investment management service (DIMS).]*

“I am permitted under the Financial Advisers Act 2008 to offer a personalised discretionary investment management service (DIMS). Under a personalised DIMS, I make decisions about how to invest your money in financial products on your behalf, based on an investment strategy that is designed to take account of your particular financial situation and goals. I [charge/do not charge] fees for this service. You will hold the financial products [in your own name/through a custodian].

“Investing through a personalised DIMS has risks. Under this service you give up [control/some control] over investment decisions, and rely on my decisions. The value of your financial products invested in through a personalised DIMS could go down as well as up. It is possible you will not achieve the returns you expect and will not receive all your investment back. Different personalised investment strategies have different levels of risks relating to the financial products being invested in and their management.”

- (3) In Schedule 1, under the heading “**What should you do if something goes wrong?**”, delete “*or, if not a member of the approved dispute resolution scheme, name of the reserve scheme*”.

10 Schedule 2 amended

- (1) In Schedule 2, after paragraph 1, insert:
- “1A If the authorised financial adviser provides a financial adviser service that is a personalised DIMS, a description of how the service works, being a description that includes the following information:
- “(a) a summary of the significant features of the service; and
 - “(b) a description of how the financial products that are acquired under the service will be held, including for each custodian by whom any financial products will be or are held on behalf of the client under the service, that custodian’s name and contact details and whether that custodian is an associated person of the financial adviser (with **associated person** having, in accordance with regulation 3(2) and section 6(1) of the Financial Markets Conduct Act 2013, the meaning set out in section 12(1) of that Act); and
 - “(c) a statement as to how to grant and terminate the investment authority; and
 - “(d) a statement as to whether or not the client may give instructions to exercise rights over the client’s financial products (for example, a right to vote at meetings of product holders) and, if so, a statement about how those instructions may be given; and
 - “(e) a statement as to whether or not the client may give instructions relating to the financial products in the client’s portfolio (for example, an instruction to dispose of some shares) and, if so, a statement about how those instructions may be given; and
 - “(f) a statement as to whether or not the client has a right to be consulted on, or to countermand, the provider’s decisions and, if so, a description of the right and a statement about how the right may be exercised; and

- “(g) a statement to the effect that the client agreement governs the service and that a client must enter into a client agreement at the same time as or before the investment authority is granted; and
 - “(h) a description of the consequences of a termination of the client agreement, including whether any financial products held by a custodian on behalf of the client under the service will be transferred to the client, will continue to be held by the custodian, or will be sold.”
- (2) In Schedule 2, after paragraph 6, insert:
- “7 If the authorised financial adviser provides a financial adviser service that is a personalised DIMS, the following information (which relates to where the client can find more information):
- “(a) a reference to the client agreement; and
 - “(b) a description of the type of information relating to the provider or the service that is required to be, or otherwise will be, made available to clients (whether in disclosure required by any of paragraphs 1 to 6, reports, on request to the provider, or otherwise); and
 - “(c) an explanation of—
 - “(i) how information will be made available; and
 - “(ii) how a request for information should be made; and
 - “(d) a specification whether any charge may be made for the information that is requested and the amount of the charge.”

11 Schedule 3 amended

In Schedule 3, under the heading “**What should you do if something goes wrong?**”, delete “*or, if not a member of the approved dispute resolution scheme, name of the reserve scheme*”.

Schedule r 8

New Schedule 1AA inserted

Schedule 1AA r 3A

**Transitional, savings, and
related provisions**

**Financial Advisers (Disclosure) Amendment
Regulations 2014**

**Existing DIMS providers can be exempt from
new disclosure requirements until 1 December 2015**

- (1) This clause applies to a person (A) who—
 - (a) at the close of 30 November 2014 was permitted by sections 17(1)(a) and 18 to 20 of the Act to provide a financial adviser service that is a discretionary investment management service (even if not a personalised DIMS); and
 - (b) is therefore also a person to whom the Financial Markets Conduct Regulations 2014, Schedule 1, clause 5 (existing DIMS providers not subject to licensing until either 31 May 2015 or 1 December 2015) applies.
- (2) However, this clause ceases to apply to A on and after 1 June 2015 unless A has on or before 31 May 2015 given the FMA an up-to-date version of the adviser business statement (if any) required by the terms and conditions (if any) of the FMA's current authorisation (if any) under section 55 of the Act in respect of the provision of the service.
- (3) A need not (even for a personalised DIMS first provided to the client concerned after 30 November 2014) comply before 1 December 2015 with—
 - (a) the amendments to Schedule 1 made on 1 December 2014 by the Financial Advisers (Disclosure) Amendment Regulations 2014; and
 - (b) paragraphs 1A and 7 of Schedule 2.
- (4) **Comply** includes ensure previous disclosure is not out of date under section 29 of the Act.

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 1 December 2014, are made under the Financial Advisers Act 2008 (the **Act**). They amend the Financial Advisers (Disclosure) Regulations 2010 (the **principal regulations**). The amendments—

- impose obligations on authorised financial advisers to make disclosures in relation to a personalised DIMS (discretionary investment management service);
 - ensure an existing DIMS provider (if, before 1 June 2015, the provider meets the specified condition) is exempt, before 1 December 2015, from the new primary disclosure obligations and the new secondary disclosure obligations;
 - remove references to the reserve scheme (that is, the government-established reserve dispute resolution scheme) formerly part of the financial service providers registration regime under the Financial Service Providers (Registration and Dispute Resolution) Act 2008. The removal is consequential on the reserve scheme's abolition on 1 July 2014 by the Financial Service Providers (Registration and Dispute Resolution) Amendment Act 2014;
 - replace a reference to securities with a reference to financial products, to align the principal regulations better with the terminology of the Financial Markets Conduct Act 2013.
-

**Financial Advisers (Disclosure) Amendment
Regulations 2014**

2014/331

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 4 November 2014.

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