



## Financial Advisers (Custodians of FMCA Financial Products) Amendment Regulations 2015

Jerry Mateparae, Governor-General

### Order in Council

At Wellington this 16th day of November 2015

Present:

His Excellency the Governor-General in Council

Pursuant to section 154 of the Financial Advisers Act 2008, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council and on the recommendation of the Minister of Commerce and Consumer Affairs made after consulting the Financial Markets Authority, makes the following regulations.

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## Regulations

### 1 Title

These regulations are the Financial Advisers (Custodians of FMCA Financial Products) Amendment Regulations 2015.

### 2 Commencement

These regulations come into force on 17 December 2015.

### 3 Principal regulations

These regulations amend the Financial Advisers (Custodians of FMCA Financial Products) Regulations 2014 (the **principal regulations**).

### 4 Regulation 3 amended (Interpretation)

In regulation 3, definition of **FMCA custodial service**, paragraph (b), replace “an FMCA financial product” with “client money or client property”.

### 5 Regulation 9 amended (Custodian must obtain assurance engagement)

(1) Replace regulation 9(1) with:

(1) A custodian must obtain, within 4 months after the relevant date, an assurance engagement with a qualified auditor done in accordance with applicable auditing and assurance standards.

(2) After regulation 9(2), insert:

(3) In this regulation and regulation 10, **relevant date**, in relation to a custodian, means—

(a) the custodian’s balance date; or

(b) a date in each calendar year that is—

(i) determined by the custodian; and

(ii) notified to the FMA in writing within 10 working days after the determination is made.

(4) The following apply for the purposes of the date under subclause (3)(b):

(a) in the case of a date that is adopted as the first relevant date, the date must be within the first 12 months of this regulation applying to the custodian in respect of a client; and

(b) the custodian may change the date if—

(i) the period between any 2 dates does not exceed 15 months; and

(ii) the change is notified to the FMA in writing within 10 working days after the custodian decides to make the change; and

- (c) if the custodian adopts a date in accordance with paragraph (a) or changes the date in accordance with paragraph (b), it need not have a date in a particular calendar year.

**6 Regulation 10 amended (Requirements of assurance engagement and report)**

- (1) In regulation 10(1)(a), replace “accounting period” with “most recently completed relevant period”.
- (2) In regulation 10(1)(b), replace “the accounting period” with “that relevant period”.
- (3) After regulation 10(2), insert:
- (3) In this regulation, **relevant period**, in relation to a custodian, means a 12-month period ending on the relevant date of the custodian, and if, as a result of the date on which it became a custodian or a change of the relevant date of the custodian, the period ending on that date is longer or shorter than 12 months, that longer or shorter period is a relevant period.

**7 Regulation 11 amended (Application of sections 77P to 77T of Act and these regulations to wholesale clients)**

After regulation 11(2)(c), insert:

- (d) entities that are under the control of a person referred to in any of paragraphs (a) to (c) (where **control** has the same meaning as in clause 48 of Schedule 1 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 17 December 2015, amend the Financial Advisers (Custodians of FMCA Financial Products) Regulations 2014 (the **principal regulations**). Those regulations impose obligations on persons who carry on a business of providing or offering to provide FMCA custodial services to a client.

*Regulation 4* amends regulation 3 of the principal regulations with the effect that the definition of FMCA custodial service does not include a service to the extent that client money or client property is held solely for completing a transaction or securing an obligation, or both.

*Regulations 5 and 6* amend regulations 9 and 10 of the principal regulations to give a custodian more flexibility with respect to the time at which it must obtain an assurance engagement with a qualified auditor.

*Regulation 7* amends regulation 11 of the principal regulations, which provides for broker obligations in sections 77P to 77T of the Financial Advisers Act 2008 to apply to FMCA custodial services provided to wholesale clients (as defined in that Act) unless all of the clients fall within certain categories of wholesale investor under the Financial Markets Conduct Act 2013. These regulations extend the provision relating to wholesale investors to include entities controlled by wholesale investors.

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 19 November 2015.

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