

Reprint
as at 15 March 2021



Financial Advisers (Definitions, Voluntary Authorisation, Prescribed Entities, and Exemptions) Regulations 2011 (SR 2011/50)

Financial Advisers (Definitions, Voluntary Authorisation, Prescribed Entities, and Exemptions) Regulations 2011: revoked, on 15 March 2021, by section 97(2)(b) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Anand Satyanand, Governor-General

Order in Council

At Wellington this 21st day of March 2011

Present:

His Excellency the Governor-General in Council

Pursuant to section 154(1)(a), (d), (e), (h), and (l) 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 made after consulting the Securities Commission in accordance with section 154(4) of that Act and being satisfied of the matters specified in section 154(5) of that Act, makes the following regulations.

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Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.
Note 4 at the end of this reprint provides a list of the amendments incorporated.

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

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Regulations

1 Title

These regulations are the Financial Advisers (Definitions, Voluntary Authorisation, Prescribed Entities, and Exemptions) Regulations 2011.

2 Commencement

These regulations come into force on 1 April 2011.

3 Interpretation

- (1) In these regulations, unless the context otherwise requires, **Act** means the Financial Advisers Act 2008.

- (2) Unless the context otherwise requires, any term or expression that is defined in the Act and used, but not defined, in these regulations has the meaning given by the Act.

Regulation 3(1): replaced, on 10 June 2013, by regulation 4 of the Financial Advisers (Definitions, Voluntary Authorisation, Prescribed Entities, and Exemptions) Amendment Regulations 2013 (SR 2013/241).

Definitions

4 Meaning of cash or term portfolio investment entity

- (1) For the purposes of the Act, **cash or term portfolio investment entity** means—

- (a) a PIE call fund unit (a unit in a cash portfolio investment entity); or
- (b) a PIE term fund unit (a unit in a term portfolio investment entity).

- (2) In this regulation,—

PIE call fund unit means a specified unit in respect of which—

- (a) the unit holder has a right to withdraw the unit price or value of the units in full at any time, subject only to the following rights and requirements to the extent that they are described in the terms of issue for the PIE call fund units:
 - (i) the right of the specified issuer to suspend withdrawals if the withdrawal would prejudice the interests of unit holders in the PIE call fund as a whole or would threaten the relevant specified PIE's eligibility as a multi-rate PIE as defined in section YA 1 of the Income Tax Act 2007:
 - (ii) the right of the specified issuer to use some or all of the unit price or value to meet any amounts that are owing by the unit holder to the specified bank:
 - (iii) the right of the specified issuer, on a demand for withdrawal of the unit price or value, to pay less than the unit price or value in full because of any default or impairment of debt securities of the specified bank in which the specified PIE invests:
 - (iv) a requirement to maintain a minimum account balance:
 - (v) the right of the specified issuer to withhold payment if the consideration for the units has not been received or cleared:
 - (vi) a requirement to withdraw a minimum amount:
 - (vii) the right of the specified issuer, or the trustee of the PIE call fund, to be indemnified for expenses, costs, and liabilities incurred in acting as the specified issuer or trustee of the PIE call fund, to the extent that they relate to, or are attributable to, the relevant units:

- (viii) the right of the specified issuer to deduct from the unit price amounts due, or to become due, on account of tax; and
- (b) no fee or other amount is payable as a result of the specified unit not having been held by the unit holder for a particular period of time

PIE term fund unit means a specified unit that has—

- (a) a fixed term; and
- (b) a fixed principal amount; and
- (c) a potential penalty if the unit price or value is withdrawn before the expiry of the fixed term

registered bank has the same meaning as in section 2(1) of the Reserve Bank of New Zealand Act 1989

registered bank parent means a registered bank that is the holding company of a specified issuer (within the meaning of section 5 of the Companies Act 1993)

specified bank means,—

- (a) if the specified issuer is a registered bank,—
 - (i) the registered bank; or
 - (ii) a related company of the registered bank that is also a registered bank; or
- (b) if the specified issuer is not a registered bank,—
 - (i) the specified issuer's registered bank parent; or
 - (ii) a related company of the specified issuer's registered bank parent that is also a registered bank

specified issuer means an issuer, in respect of 1 or more specified PIEs, that—

- (a) is a registered bank that, in the ordinary course of its business, continuously offers specified units; or
- (b) is a subsidiary of its registered bank parent that—
 - (i) is controlled by its registered bank parent within the meaning of section 7 of the Companies Act 1993; and
 - (ii) in the ordinary course of its business, continuously offers specified units

specified PIE means a unit trust or group investment fund—

- (a) that is a multi-rate PIE as defined in section YA 1 of the Income Tax Act 2007; and
- (b) in respect of which all of the money received from the public by way of subscriptions for specified units is invested in bank term deposits, debt securities that are bank notice products, call building society shares, or call debt securities issued by a specified bank

specified unit means a unit in a specified PIE or in a fund of a specified PIE.

- (3) Unless the context otherwise requires, any term or expression that is defined in the Financial Markets Conduct Act 2013 or the regulations made under that Act and used, but not defined, in this regulation has the same meaning as in that Act or those regulations.

Regulation 4(2): amended, on 30 June 2016, by regulation 4(1) of the Financial Advisers (Definitions, Voluntary Authorisation, Prescribed Entities, and Exemptions) Amendment Regulations 2016 (LI 2016/116).

Regulation 4(2) **PIE call fund unit** paragraph (a): amended, on 1 December 2016, by regulation 4(2) of the Financial Advisers (Definitions, Voluntary Authorisation, Prescribed Entities, and Exemptions) Amendment Regulations 2016 (LI 2016/116).

Regulation 4(2) **PIE call fund unit** paragraph (a): amended, on 1 April 2014, by regulation 4 of the Financial Advisers (Definitions, Voluntary Authorisation, Prescribed Entities, and Exemptions) Amendment Regulations 2014 (LI 2014/109).

Regulation 4(2) **registered bank**: inserted, on 30 June 2016, by regulation 4(3) of the Financial Advisers (Definitions, Voluntary Authorisation, Prescribed Entities, and Exemptions) Amendment Regulations 2016 (LI 2016/116).

Regulation 4(2) **registered bank parent**: replaced, on 30 June 2016, by regulation 4(3) of the Financial Advisers (Definitions, Voluntary Authorisation, Prescribed Entities, and Exemptions) Amendment Regulations 2016 (LI 2016/116).

Regulation 4(2) **specified bank**: replaced, on 30 June 2016, by regulation 4(3) of the Financial Advisers (Definitions, Voluntary Authorisation, Prescribed Entities, and Exemptions) Amendment Regulations 2016 (LI 2016/116).

Regulation 4(2) **specified issuer**: replaced, on 30 June 2016, by regulation 4(3) of the Financial Advisers (Definitions, Voluntary Authorisation, Prescribed Entities, and Exemptions) Amendment Regulations 2016 (LI 2016/116).

Regulation 4(2) **specified PIE** paragraph (b): amended, on 1 July 2011, by regulation 4 of the Financial Advisers (Definitions, Voluntary Authorisation, Prescribed Entities, and Exemptions) Amendment Regulations 2011 (SR 2011/212).

Regulation 4(3): replaced, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

5 Meaning of investment-linked contract of insurance

- (1) For the purposes of the Act, **investment-linked contract of insurance** means any contract of insurance other than—

- (a) a pure risk contract of insurance; or
- (b) a life insurance policy (within the meaning of section 2(1) of the Securities Act 1978) issued before 1 January 2009.

- (2) In subclause (1), **pure risk contract of insurance** has the meaning set out in section 9(3) of the Financial Markets Conduct Act 2013.

- (3) *[Revoked]*

Regulation 5(2): replaced, on 1 December 2014, by regulation 4(1) of the Financial Advisers (Definitions, Voluntary Authorisation, Prescribed Entities, and Exemptions) Amendment Regulations (No 2) 2014 (LI 2014/330).

Regulation 5(3): revoked, on 1 December 2014, by regulation 4(2) of the Financial Advisers (Definitions, Voluntary Authorisation, Prescribed Entities, and Exemptions) Amendment Regulations (No 2) 2014 (LI 2014/330).

6 Meaning of land investment product

- (1) For the purposes of the Act, **land investment product** means any scheme that incorporates all of the following features:
- (a) the scheme involves a person (**A**) subscribing for an interest in, or a right in respect of, land; and
 - (b) A subscribes to the scheme by providing money to the scheme promoter, or to any associated person of the scheme promoter; and
 - (c) as a result of that subscription, A obtains, or may obtain, an interest or right in land; and
 - (d) the scheme is designed or intended to provide a financial return or other benefit to A (whether or not a return or benefit is actually provided); and
 - (e) the amount of any return or benefit depends on—
 - (i) the use to which the scheme promoter puts A's money; or
 - (ii) the use to which the scheme promoter puts the money of other persons subscribing to the scheme; or
 - (iii) a guarantee, or other right, to be paid a return by the scheme promoter under the scheme; and
 - (f) A has no day-to-day control over the use or management of the interest in the land; and
 - (g) the scheme is not otherwise a category 1 product.
- (2) In subclause (1), a person is an **associated person** of a scheme promoter if that person and the scheme promoter are—
- (a) associated persons within the meaning of section 12(1) of the Financial Markets Conduct Act 2013 (whether or not that Act otherwise applies to those persons); or
 - (b) related bodies corporate within the meaning of section 12(2) of the Financial Markets Conduct Act 2013 (whether or not that Act otherwise applies to those bodies corporate); or
 - (c) persons who are partners to whom the Limited Partnerships Act 2008 applies; or
 - (d) parties to an agreement, arrangement, or understanding (whether express or implied), whether or not legally enforceable, under which the person acts for, with, or for the benefit of (whether directly or indirectly) the scheme promoter.
- (3) In this regulation,—
- money** includes money's worth
- scheme** means any agreement, arrangement, or understanding (whether express or implied), whether or not legally enforceable, and irrespective of substance or form

scheme promoter means—

- (a) a person who is instrumental in the formulation of the land investment product; and
- (b) where a body corporate is a scheme promoter, every person who is a director of that body corporate.

Regulation 6(2)(a): replaced, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

Regulation 6(2)(b): replaced, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

7 FSCU share is category 2 product

[Revoked]

Regulation 7: revoked, on 1 December 2014, by section 150 of the Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70).

7AA Certain non-call credit union products are category 2 products

- (1) For the purposes of paragraph (k) of the definition of category 2 product in section 5 of the Act, each of the following is a category 2 product:

- (a) a credit union fixed term deposit product;
- (b) a credit union savings account product.

- (2) In subclause (1),—

credit union fixed term deposit product means a share referred to in section 107 of the Friendly Societies and Credit Unions Act 1982, and issued by a credit union, under which—

- (a) the member has a right to demand repayment of the value of the share in full at any time; and
- (b) the credit union has an obligation to repay the value of the share in full in accordance with section 107(4) of the Friendly Societies and Credit Unions Act 1982; and
- (c) a fixed rate of dividend or interest is payable if the principal sum is held by the credit union for a fixed period of time of up to 5 years (but the rate of dividend or interest payable may alter as a result of a demand being made before that fixed period ends); and
- (d) no fee or other amount is payable as a result of the principal sum not having been held by the credit union for a particular period of time

credit union savings account product means a share referred to in section 107 of the Friendly Societies and Credit Unions Act 1982, and issued by a credit union under a savings account, under which—

- (a) the member has a right to demand repayment of the value of the share in full at any time; and

- (b) the credit union has an obligation to repay the value of the share in full in accordance with section 107(4) of the Friendly Societies and Credit Unions Act 1982; and
- (c) the rate of dividend or interest payable or any other benefit provided does not alter as a result of the demand being made; and
- (d) a fee or other amount may be payable as a result of the principal sum not having been held by the credit union for a particular period of time; and
- (e) the fee or other amount referred to in paragraph (d) does not exceed \$50.

Regulation 7AA: inserted, on 10 June 2013, by regulation 5 of the Financial Advisers (Definitions, Voluntary Authorisation, Prescribed Entities, and Exemptions) Amendment Regulations 2013 (SR 2013/241).

7A Public Trust term deposit is category 2 product

For the purposes of paragraph (k) of the definition of category 2 product in section 5 of the Act, a fixed term deposit product offered by Public Trust is a category 2 product.

Regulation 7A: inserted, on 1 July 2011, by regulation 6 of the Financial Advisers (Definitions, Voluntary Authorisation, Prescribed Entities, and Exemptions) Amendment Regulations 2011 (SR 2011/212).

7B Bank notice product is category 2 product

- (1) For the purposes of paragraph (k) of the definition of category 2 product in section 5 of the Act, a bank notice product is a category 2 product.
- (2) In subclause (1), **bank notice product** means a debt security issued by a registered bank in New Zealand or a specified unit (as defined in regulation 4) under which—
 - (a) the security holder has the right to demand, at any time, repayment in full of the principal sum or withdrawal in full of the unit price or value of the units; and
 - (b) the issuer has an obligation to pay the amount demanded not later than any period (specified in the terms of issue) after the demand being made; and
 - (c) *[Revoked]*
 - (d) no fee or other amount is payable as a result of the amount demanded not having been held by the issuer for a particular period of time.
- (3) Paragraphs (a) to (d) of subclause (2) may, in the case of a specified unit, be subject to the rights and requirements set out in paragraph (a)(i) to (viii) of the definition of PIE call fund unit in regulation 4(2) to the extent that they are described in the terms of issue for the specified units.
- (4) *[Revoked]*

Regulation 7B: inserted, on 1 July 2011, by regulation 6 of the Financial Advisers (Definitions, Voluntary Authorisation, Prescribed Entities, and Exemptions) Amendment Regulations 2011 (SR 2011/212).

Regulation 7B(2)(c): revoked, on 1 April 2014, by regulation 5 of the Financial Advisers (Definitions, Voluntary Authorisation, Prescribed Entities, and Exemptions) Amendment Regulations 2014 (LI 2014/109).

Regulation 7B(3): amended, on 1 December 2016, by regulation 5(1) of the Financial Advisers (Definitions, Voluntary Authorisation, Prescribed Entities, and Exemptions) Amendment Regulations 2016 (LI 2016/116).

Regulation 7B(3): amended, on 1 December 2014, by regulation 5 of the Financial Advisers (Definitions, Voluntary Authorisation, Prescribed Entities, and Exemptions) Amendment Regulations (No 2) 2014 (LI 2014/330).

Regulation 7B(4): revoked, on 30 June 2016, by regulation 5(2) of the Financial Advisers (Definitions, Voluntary Authorisation, Prescribed Entities, and Exemptions) Amendment Regulations 2016 (LI 2016/116).

7C Certain building society fixed term redeemable shares are category 2 products

For the purposes of paragraph (k) of the definition of category 2 product in section 5 of the Act, a share issued by a building society that is a registered bank is a category 2 product if—

- (a) it is redeemable in cash at the end of a fixed term or on the liquidation of the building society; and
- (b) it bears a rate of dividend set on the issue of the share; and
- (c) on liquidation of the building society, the former holder ranks ahead of all other classes of shareholders for the consideration payable on redemption.

Regulation 7C: inserted, on 1 July 2011, by regulation 6 of the Financial Advisers (Definitions, Voluntary Authorisation, Prescribed Entities, and Exemptions) Amendment Regulations 2011 (SR 2011/212).

Voluntary authorisation

8 Authorisation in relation to category 2 product

Cases specified for the purposes of section 55(1)(d) of the Act are cases in which a financial adviser applies for authorisation under sections 52 and 53 of the Act in relation to financial adviser services provided in respect of any category 2 product.

Prescribed entities

9 Overseas banks prescribed entities for purposes of section 77P(1)(b) of Act

- (1) Overseas banks are prescribed entities for the purposes of section 77P(1)(b) of the Act.
- (2) In this regulation,—

overseas bank means a bank that is—

- (a) an overseas person; and
- (b) subject to regulatory controls that are substantially the same as those applying in New Zealand in relation to—
 - (i) the composition of the board of directors or other controlling body of the bank; and
 - (ii) the disclosure requirements relating to the bank's financial position; and
 - (iii) the requirements relating to the capital adequacy of the bank; and
 - (iv) the requirements relating to the taking of deposits

overseas person means—

- (a) a body corporate incorporated outside New Zealand; or
- (b) an unincorporated body that has its head office or principal place of business outside New Zealand.

Exemptions

10 Exemption for National Provident Fund and Annuitas Management Limited

- (1) The board of trustees of the National Provident Fund is exempt from the application of the Act.
- (2) Annuitas Management Limited is exempt from the application of the Act in respect of any financial adviser services it provides—
 - (a) to the board of trustees of the National Provident Fund, to the Government Superannuation Fund Authority, or to any other Crown organisation; or
 - (b) on behalf of any person referred to in paragraph (a) (unless that person is not itself exempt from the application of the Act in respect of those services).

11 Exemption for financial adviser services in relation to workplace financial product for related entity employees

- (1) A body corporate is exempt from the application of the Act in respect of a relevant service provided to an employee of—
 - (a) a related entity; or
 - (b) a limited partnership if the body corporate and the general partner are related bodies corporate.
- (2) For the purposes of subclause (1), **relevant service** (which is defined in section 5 of the Act) is limited to a service provided in connection with a financial product made available through an employee's workplace.

- (3) In this regulation, a body corporate is **related** to an entity or another body corporate if it is related to it within the meaning of section 12(2) of the Financial Markets Conduct Act 2013, where, if subclause (1)(a) applies, a reference to “another body corporate” is taken to be a reference to “an entity”.
- (4) In this regulation, **entity** has the meaning given in section 6(1) of the Financial Markets Conduct Act 2013.

Regulation 11: replaced, on 1 December 2014, by regulation 6 of the Financial Advisers (Definitions, Voluntary Authorisation, Prescribed Entities, and Exemptions) Amendment Regulations (No 2) 2014 (LI 2014/330).

12 Exemption for retirement village operators

- (1) An operator of a retirement village is exempt from the application of the Act in respect of a service if—
- (a) the retirement village is registered under the Retirement Villages Act 2003; and
 - (b) the service is provided in the ordinary course of business of an operator of a retirement village; and
 - (c) the service relates to acquiring or disposing of an occupation right agreement for that retirement village.
- (2) In this regulation, **occupation right agreement**, **operator**, and **retirement village** have the meanings set out in the Retirement Villages Act 2003.

Regulation 12: added, on 1 July 2011, by regulation 7 of the Financial Advisers (Definitions, Voluntary Authorisation, Prescribed Entities, and Exemptions) Amendment Regulations 2011 (SR 2011/212).

13 Broker obligations for handling money and property do not apply to money or property regulated under Financial Markets Conduct Regulations 2014

- (1) A derivatives issuer is exempt from the application of sections 77P to 77T of the Act in respect of a service to the extent that the client money or client property to which the service relates is derivatives investor money or derivatives investor property.
- (2) In this regulation,—
- derivatives investor money** has the meaning set out in regulation 239(1) to (3) of the Financial Markets Conduct Regulations 2014
- derivatives investor property** has the meaning set out in regulation 239(4) and (5) of the Financial Markets Conduct Regulations 2014
- derivatives issuer** has the meaning set out in section 6(1) of the Financial Markets Conduct Act 2013.

Regulation 13: inserted, on 17 December 2015, by regulation 4 of the Financial Advisers (Definitions, Voluntary Authorisation, Prescribed Entities, and Exemptions) Amendment Regulations 2015 (LI 2015/278).

14 Custodian requirements do not apply if money or property held solely for completing transaction or securing obligation

Section 44 of the Act does not apply to client money or client property if it is held solely for completing a transaction, securing an obligation, or both.

Regulation 14: inserted, on 17 December 2015, by regulation 4 of the Financial Advisers (Definitions, Voluntary Authorisation, Prescribed Entities, and Exemptions) Amendment Regulations 2015 (LI 2015/278).

Rebecca Kitteridge,
Clerk of the Executive Council.

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*: 24 March 2011.

Reprints notes

1 *General*

This is a reprint of the Financial Advisers (Definitions, Voluntary Authorisation, Prescribed Entities, and Exemptions) Regulations 2011 that incorporates all the amendments to those regulations as at the date of the last amendment to them.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Financial Services Legislation Amendment Act 2019 (2019 No 8): section 97(2)(b)

Financial Advisers (Definitions, Voluntary Authorisation, Prescribed Entities, and Exemptions) Amendment Regulations 2016 (LI 2016/116)

Financial Advisers (Definitions, Voluntary Authorisation, Prescribed Entities, and Exemptions) Amendment Regulations 2015 (LI 2015/278)

Financial Advisers (Definitions, Voluntary Authorisation, Prescribed Entities, and Exemptions) Amendment Regulations (No 2) 2014 (LI 2014/330)

Financial Advisers (Definitions, Voluntary Authorisation, Prescribed Entities, and Exemptions) Amendment Regulations 2014 (LI 2014/109)

Financial Markets (Repeals and Amendments) Act 2013 (2013 No 70): section 150

Financial Advisers (Definitions, Voluntary Authorisation, Prescribed Entities, and Exemptions) Amendment Regulations 2013 (SR 2013/241)

Financial Advisers (Definitions, Voluntary Authorisation, Prescribed Entities, and Exemptions) Amendment Regulations 2011 (SR 2011/212)