

Reprint
as at 15 March 2021



**Financial Advisers (Custodian Assurance Engagement
Relief—COVID-19) Exemption Notice 2020**
(LI 2020/70)

Financial Advisers (Custodian Assurance Engagement Relief—COVID-19) Exemption Notice 2020: revoked, on 15 March 2021, by section 97(3)(f) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Pursuant to sections 148 and 148A of the Financial Advisers Act 2008, the Financial Markets Authority, being satisfied of the matters set out in section 148(2)(a) of that Act, gives the following notice.

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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.

This notice is administered by the Financial Markets Authority.

Notice

1 Title

This notice is the Financial Advisers (Custodian Assurance Engagement Relief—COVID-19) Exemption Notice 2020.

2 Commencement

This notice comes into force on 29 April 2020.

3 Revocation

This notice is revoked on the close of 29 April 2022.

4 Interpretation

- (1) In this notice, unless the context otherwise requires,—

Act means the Financial Advisers Act 2008

Regulations means the Financial Advisers (Custodians of FMCA Financial Products) Regulations 2014

relevant date has the meaning set out in regulation 9(3) of the Regulations

relevant period has the meaning set out in regulation 10(3) of the Regulations.

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

5 Exemption for custodians from time frame requirements for assurance engagements

- (1) A custodian (A) is exempted from regulation 9(1) of the Regulations to the extent that it requires A to comply within 4 months after a relevant date if A believes, on reasonable grounds, that it is not reasonably practicable for it to comply within that period because of the outbreak of COVID-19.
- (2) The exemption in this clause applies in relation to relevant periods that end on or after 31 December 2019 but before 1 August 2020.

6 Conditions of exemption in clause 5

- (1) The exemption in clause 5 is subject to the conditions that the custodian—
- (a) complies with regulation 9(1) of the Regulations within 6 months after the relevant date; and
 - (b) gives to the FMA, within 4 months after the relevant date, a written notice that states that the custodian is relying on the exemption in clause 5.
- (2) If subclause (1) would otherwise require a notice to be given to the FMA on or before 30 April 2020, the notice must instead be given on or before 15 May 2020.

**7 Financial Advisers (Overseas Custodians—Assurance Engagement)
Exemption Notice 2018 amended**

- (1) This clause amends the Financial Advisers (Overseas Custodians—Assurance Engagement) Exemption Notice 2018.
- (2) After clause 7, insert:

8 Time frame extended because of outbreak of COVID-19

- (1) This clause applies if a custodian who is exempted under clause 5 believes, on reasonable grounds, that it is not reasonably practicable for it to comply with clause 6 within 4 months after the end of the exempt period because of the outbreak of COVID-19.
- (2) The period for compliance in clause 6 is extended to 6 months after the end of the exempt period if the custodian gives to the FMA, within 4 months after the end of the exempt period, a written notice that states that the custodian is relying on this clause.
- (3) If subclause (2) would otherwise require the notice to be given to the FMA on or before 30 April 2020, the notice must instead be given on or before 15 May 2020.
- (4) This clause applies in relation to exempt periods that end on or after 31 December 2019 but before 1 August 2020.

**8 Financial Advisers (Non-NZX Brokers—Client Money) Exemption Notice
2017 amended**

- (1) This clause amends the Financial Advisers (Non-NZX Brokers—Client Money) Exemption Notice 2017.
- (2) After clause 7, insert:

8 Time frame extended because of outbreak of COVID-19

- (1) This clause applies if a non-NZX broker who is exempted under clause 5 believes, on reasonable grounds, that it is not reasonably practicable for it to comply with the obligation in clause 7(1)(g) to obtain a report from a qualified auditor within 4 months after the relevant date because of the outbreak of COVID-19.
- (2) The period for compliance with that obligation is extended to 6 months after the relevant date if the non-NZX broker gives to the FMA, within 4 months after the relevant date, a written notice that states that the non-NZX broker is relying on this clause.
- (3) If subclause (2) would otherwise require the notice to be given to the FMA on or before 30 April 2020, the notice must instead be given on or before 15 May 2020.
- (4) This clause applies in relation to relevant periods that end on or after 31 December 2019 but before 1 July 2020.

Dated at Wellington this 23rd day of April 2020.

Sarah Vrede,
Director of Capital Markets.

Statement of reasons

This notice, which comes into force on 29 April 2020, exempts custodians from the duty under the Financial Advisers (Custodians of FMCA Financial Products) Regulations 2014 (the **Regulations**) to obtain an assurance engagement.

The exemption applies to the extent that the duty requires compliance within 4 months after the custodian's relevant date. The exemption applies if the custodian believes, on reasonable grounds, that it is not reasonably practicable for it to comply within that time frame because of the outbreak of COVID-19. The exemption is subject to conditions that the custodian—

- complies within an extended period of 2 months; and
- notifies the Financial Markets Authority (the **FMA**) that it is relying on the exemption.

This notice also amends the Financial Advisers (Overseas Custodians—Assurance Engagement) Exemption Notice 2018 and the Financial Advisers (Non-NZX Brokers—Client Money) Exemption Notice 2017 (the **class notices**). To similar effect, the amendments extend the time frame for complying with a condition by 2 months if the market participant believes, on reasonable grounds, that it is not reasonably practicable for it to comply within that time frame because of the outbreak of COVID-19.

The FMA, after satisfying itself as to the matters set out in section 148(2)(a) of the Financial Advisers Act 2008, considers it appropriate to grant the exemption, and amend the class notices, because—

- compliance with the requirement for an assurance engagement under the Regulations and the class notices within current required time frames has or is likely to become practically difficult for some custodians and brokers as a consequence of the outbreak of COVID-19; and
- in these circumstances, they will require additional time to comply with their obligations; and
- taking a flexible approach and granting extended time for compliance will allow them (and their auditors) to meet the requirements under the Regulations and the class notices in a safe, efficient, and orderly manner and without unnecessary compliance costs; and
- this will also help ensure their processes, procedures, and controls are appropriately and effectively audited; and

- as such, the FMA is satisfied that costs of compliance with the relevant obligations within the original time frame would be unreasonable and would not be justified by the benefit of compliance.

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*: 28 April 2020.

Reprints notes

1 *General*

This is a reprint of the Financial Advisers (Custodian Assurance Engagement Relief—COVID-19) Exemption Notice 2020 that incorporates all the amendments to that notice as at the date of the last amendment to it.

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(3)(f)