

**Reprint
as at 1 December 2014**



**Financial Markets Conduct
(Phase 1) Regulations 2014**

(LI 2014/50)

Financial Markets Conduct (Phase 1) Regulations 2014: revoked, on 1 December 2014, by regulation 281 of the Financial Markets Conduct Regulations 2014 (LI 2014/326).

Jerry Mateparae, Governor-General

Order in Council

At Wellington this 24th day of February 2014

Present:

His Excellency the Governor-General in Council

Pursuant to subpart 1 of Part 9 of the Financial Markets Conduct Act 2013, 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 in accordance with sections 547(2), 549, and 550 of that Act, makes the following regulations.

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.

Contents

	Page
1 Title	5
2 Commencement	5
Part 1	
Preliminary provisions	
3 Overview	5
4 Application	6
5 Interpretation	6
6 General provision relating to warning statements	7
7 Status of examples	7
8 Circumstance where different redemption date prevents debt securities from being of same class	7
9 Derivative definition prescribed times	7
Part 2	
Fair dealing	
10 Financial service does not include providing credit	8
Part 3	
Disclosure of offers of financial products	
11 Provisions relating to exclusions and other Schedule 1 of Act matters	8
12 Transitional Securities Act 1978 exemptions	8
13 Application of Schedule 1 requirements to transitional Securities Act 1978 exemptions	9
Part 4	
Licensing and other regulation of market services	
<i>Exemptions from DIMS licensing requirement</i>	
14 Exemptions from DIMS licensing requirement	9
<i>Prescribed intermediary services</i>	
15 Prescribed intermediary services	10
16 Meaning of crowd funding service and peer-to-peer lending service	10
<i>Additional eligibility criteria</i>	
17 Additional eligibility criteria for crowd funding service	11
18 Additional eligibility criteria for peer-to-peer lending service	13
19 Eligibility criteria for authorised bodies	15

	<i>Procedural matters</i>	
20	FMA must have regard to compliance history of relevant parties	15
21	FMA must consult Reserve Bank in relation to banks, deposit takers, and insurers	16
	<i>Conditions of licences</i>	
22	General reporting condition	16
23	Condition for independent trustees to report serious problems	18
24	Condition for DIMS providers and prescribed intermediary service providers to keep documents and to give documents on request	18
25	Condition for DIMS providers to disclose if service is wholesale	19
26	Condition for intermediaries to notify FMA of suspected contraventions of Part 2 of Act or of investment cap	19
27	Condition for provider of crowd funding service to make warning statement available	20
28	Condition for provider of crowd funding service to obtain investor confirmation	21
29	Conditions are Part 6 services provisions	22
	<i>Additional conditions that FMA may impose on licences</i>	
30	General FMA conditions	22
31	Other FMA conditions for DIMS	23
32	Other FMA conditions for derivatives issuer	23
33	Other FMA conditions for crowd funding service or peer-to-peer lending service	24
	<i>Disclosure obligations for prescribed intermediary services</i>	
34	Disclosure obligations apply to prescribed intermediary services	25
35	Timing of disclosure for prescribed intermediary services	25
36	Disclosure statement for crowd funding service or peer-to-peer lending service	25
37	Disclosure statement must be worded and presented in clear, concise, and effective manner	27
38	Disclosure statement may refer to facility's Internet site	27
39	Prescribed intermediary service providers must provide transaction information to investors	28
40	How transaction information is made available	28

<i>Client agreement requirements apply to prescribed intermediary services</i>		
41	Client agreement requirements apply to prescribed intermediary services	29
<i>Client agreements</i>		
42	Time for entering into client agreement for prescribed intermediary services	29
43	Terms implied into client agreements	29
44	Client agreements for DIMS must provide for certain matters	30
45	Client agreements for crowd funding service must provide for certain matters	31
46	Client agreements for peer-to-peer lending service must provide for certain matters	31
47	Client agreements may use different terminology	32
Part 5		
Financial reporting		
48	Entities that are FMC reporting entities as a result of exclusions	32
49	Prescribed circumstances for definition of recipient of money from conduit issuer	32
Part 6		
Enforcement, liability, and appeals		
50	Financial service does not include providing credit in definition of restricted communication	33
51	Infringement offence fees	33
52	Infringement notice and reminder notice	33
Part 7		
Transitional provisions		
53	Transitional provisions	33
Schedule 1		
Provisions relating to exclusions and other Schedule 1 matters		
Schedule 2		
Infringement fees		
Schedule 3		
Infringement notice		

Schedule 4	54
Reminder notice	
Schedule 5	58
Transitional provisions	

Regulations

- 1 Title**
These regulations are the Financial Markets Conduct (Phase 1) Regulations 2014.
- 2 Commencement**
These regulations come into force on 1 April 2014.

Part 1 Preliminary provisions

- 3 Overview**
In these regulations,—
 - (a) this Part provides for preliminary matters, including prescribing certain matters relating to interpretation for the purposes of Part 1 of the Act:
 - (b) Part 2 declares, for the purposes of Part 2 of the Act (Fair dealing), that the service of providing credit under a credit contract is not a financial service:
 - (c) Part 3 and Schedule 1 provide for the early application of disclosure exclusions by way of transitional exemptions under the Securities Act 1978:
 - (d) Part 4 prescribes—
 - (i) intermediary services, licensing criteria, conditions, and other matters to facilitate the issue of licences for market services under Part 6 of the Act; and
 - (ii) other requirements applying to licensees:
 - (e) Part 5 provides for entities that rely on the small offer exclusion to be FMC reporting entities for the purposes of Part 7 of the Act (Financial reporting):
 - (f) Part 6 provides for enforcement matters under Part 8 of the Act to the extent that the Act is in force:

- (g) Part 7 concerns transitional matters.

4 Application

Schedule 5 contains transitional provisions that affect the application of the Act and certain other enactments (*see* regulation 53).

5 Interpretation

- (1) In these regulations, unless the context otherwise requires,—
- Act** means the Financial Markets Conduct Act 2013
- address**, of a person (A), means the address (including an electronic address) specified by A for the relevant purpose or, if another correct address of A is known to the sender, that address
- credit contract** has the same meaning as in section 4 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008
- crowd funding service** has the meaning set out in regulation 16
- facility**, in relation to a crowd funding service or a peer-to-peer lending service, means the facility referred to in regulation 16
- investor money**, in relation to a crowd funding service or a peer-to-peer lending service, means money to which the following apply:
- (a) the money is received under that service; and
 - (b) the money is received from, or on account of, an investor by a person (A) (and not on A's own account)
- NBDT**—
- (a) has the same meaning as in section 5 of the Non-bank Deposit Takers Act 2013; and
 - (b) includes a deposit taker within the meaning of section 157C of the Reserve Bank of New Zealand Act 1989
- peer-to-peer lending service** has the meaning set out in regulation 16.
- (2) Section 13(1) of the Act applies (with all necessary modifications) to a reference in these regulations to a statement or other information that is false, misleading, deceptive, or confusing.

6 General provision relating to warning statements

If a provision of these regulations requires a warning statement to be provided, a warning statement provided for this purpose is not invalid just because it contains minor differences from the requirements prescribed by these regulations if the differences are necessary because—

- (a) particular information required by these regulations is inapplicable to the particular offer or service; or
- (b) additional or modified information relating to the offer, the financial products, or service needs to be included to ensure that the statement is not false, misleading, or confusing.

7 Status of examples

- (1) An example used in these regulations is only illustrative of the provisions to which it relates. It does not limit those provisions.
- (2) If an example and a provision to which it relates are inconsistent, the provision prevails.

8 Circumstance where different redemption date prevents debt securities from being of same class

For the purposes of section 6(3) of the Act, a prescribed circumstance is where the different redemption date will result in the debt securities being issued for a different duration.

9 Derivative definition prescribed times

- (1) For the purposes of section 8(4)(a)(ii) of the Act, the prescribed time is,—
 - (a) for a foreign exchange agreement, 3 working days; and
 - (b) in any other case, 1 working day.
- (2) In this regulation, **working day**, in relation to a derivative,—
 - (a) has the same meaning as in section 29 of the Interpretation Act 1999; but
 - (b) if a payment or delivery under the derivative is made or received in an overseas jurisdiction, does not include a day that, under the law of that jurisdiction, is a public holiday or a bank holiday in that jurisdiction.

Part 2

Fair dealing

10 Financial service does not include providing credit

For the purposes of paragraph (c) of the definition of financial service in section 6(1) of the Act, the service of providing credit under a credit contract is declared not to be a financial service for the purposes of any provision of Part 2 of the Act.

Part 3

Disclosure of offers of financial products

11 Provisions relating to exclusions and other Schedule 1 of Act matters

The provisions in Schedule 1 of these regulations have effect for the purposes of prescribing—

- (a) limited disclosure and other requirements for the purposes of clause 26 of Schedule 1 of the Act; and
- (b) other matters for the purposes of Schedule 1 of the Act.

12 Transitional Securities Act 1978 exemptions

(1) The following clauses of Schedule 1 of the Act are prescribed for the purposes of clause 59(1) of Schedule 4 of the Act:

- (a) clause 6 (prescribed intermediary services):
- (b) clause 8 (employee share purchase schemes):
- (c) clause 9 (persons under control) (but *see* subclause (2)(a)):
- (d) clause 10 (dividend reinvestment plans):
- (e) clause 12 (small offers):
- (f) clause 15 (transfer of controlling interest):
- (g) clause 19 (quoted financial products):
- (h) clause 21 (registered banks) (but *see* subclause (2)(b)).

(2) An exemption in clause 59(1) of Schedule 4 of the Act relating to—

- (a) clause 9 of Schedule 1 of the Act applies only if an offer of financial products to person A (as defined in that clause) would not require disclosure as a result of clause 8 of Schedule 1 of the Act (as applied under subclause (1)):

- (b) clause 21 of Schedule 1 of the Act applies only to an offer of a financial product of the kind referred to in clause 21(a), (c), or (d) of Schedule 1 of the Act.

13 Application of Schedule 1 requirements to transitional Securities Act 1978 exemptions

The limited disclosure and other requirements prescribed under Schedule 1 of these regulations in relation to a clause specified in regulation 12(1) (the **relevant clause**) apply to an offer made in reliance upon the relevant clause by virtue of clause 59(1) of Schedule 4 of the Act with all necessary modifications (*see* clause 59(2) of Schedule 4 of the Act).

**Part 4
Licensing and other regulation of market
services**

Exemptions from DIMS licensing requirement

14 Exemptions from DIMS licensing requirement

- (1) For the purposes of section 389(2)(c) of the Act, the following are exempt services:
 - (a) a service provided by a trustee corporation in the ordinary course of providing—
 - (i) legal or financial services relating to the preparation or drafting of a will; or
 - (ii) estate management and administration services (and associated legal, financial, and other services carried out under the relevant enactment governing the trustee corporation):
 - (b) a service provided by a statutory officer, a Crown organisation (other than Public Trust), or the Reserve Bank in—
 - (i) discharging any duties or exercising any powers of the statutory officer, the Crown organisation, or the Reserve Bank under any enactment; or
 - (ii) doing anything that is incidental to the discharge of the functions of the statutory officer, the Crown organisation, or the Reserve Bank under any enactment:

- (c) a service relating to category 2 products only that is provided—
 - (i) by a non-profit organisation in the course of providing a money management service for budgeting assistance purposes; and
 - (ii) without charge or for a charge set at a level to recover no more than the costs of providing the service.
- (2) In this regulation, **Crown organisation**, **non-profit organisation**, **statutory officer**, and **trustee corporation** have the same meanings as in section 5 of the Financial Advisers Act 2008.

Prescribed intermediary services

15 Prescribed intermediary services

The following services are prescribed intermediary services:

- (a) a crowd funding service;
- (b) a peer-to-peer lending service.

16 Meaning of crowd funding service and peer-to-peer lending service

(1) In these regulations,—

- (a) a person (A) provides a **crowd funding service** if—
 - (i) A provides a facility by means of which offers of shares in a company are made; and
 - (ii) the principal purpose of the facility is to facilitate the matching of companies who wish to raise funds with many investors who are seeking to invest relatively small amounts;
- (b) a person (A) provides a **peer-to-peer lending service** if—
 - (i) A provides a facility by means of which offers of debt securities are made; and
 - (ii) the principal purpose of the facility is to facilitate the matching of lenders with borrowers who are seeking loans for personal, charitable, or small business purposes.

- (2) A crowd funding service or a peer-to-peer lending service also includes—
- (a) any broking services that are provided in the course of providing the service referred to in subclause (1)(a) or (b) (as the case may be);
 - (b) any service of operating an ancillary financial product market for trading financial products that have been offered on the facility referred to in subclause (1)(a) or (b) (as the case may be).
- (3) If a facility referred to in—
- (a) subclause (1)(a)(i) allows offers of financial products other than shares in a company, the crowd funding service does not include providing the facility to the extent that it relates to offers of those other financial products;
 - (b) subclause (1)(b)(i) allows offers of financial products other than debt securities, the peer-to-peer lending service does not include providing the facility to the extent that it relates to offers of those other financial products.
- (4) For the purposes of this regulation,—
- debt security** does not include—
- (a) an option to acquire, by way of issue, a debt security; or
 - (b) a financial product that will be converted, or is or may become convertible, into another financial product
- share** does not include a financial product that will be converted, or is or may become convertible, into another financial product.

Additional eligibility criteria

17 Additional eligibility criteria for crowd funding service

- (1) The eligibility criteria for a crowd funding service under section 396(a) of the Act are as follows:
- (a) the provider has fair, orderly, and transparent systems and procedures for providing the service;
 - (b) the service is designed primarily for offers by persons other than the provider and its associated persons;
 - (c) the provider has an adequate policy for identifying and managing the risk of fraud by issuers using the service (the **anti-fraud policy**) that, at a minimum,—

- (i) checks, against publicly available and readily accessible information, the identity of the issuer and information provided by the issuer relating to the identity and character of its directors and senior managers; and
- (ii) excludes an issuer from using the service if the provider—
 - (A) is not satisfied as to the identity of the issuer or of the issuer’s directors and senior managers; or
 - (B) has reason to believe that any of the issuer’s directors or senior managers are not of good character; or
 - (C) has reason to believe that the issuer is not likely to comply with the obligations imposed on it under the service:
- (d) the provider has adequate disclosure arrangements to give investors, or to enable investors to readily obtain, timely and understandable information to assist investors to decide whether to acquire the shares (for example, through initial disclosure, or question and answer forums, or other information that is made available) (*see* subclause (2)):
- (e) the provider has an adequate policy (a **fair dealing policy**) for excluding an issuer from using the service if the provider has information (for example, from checks or assessments it carries out (if any)) that gives it reason to believe that the issuer, in relation to any dealing in shares using the service, has—
 - (i) engaged in conduct that is misleading or deceptive or likely to mislead or deceive; or
 - (ii) made a false or misleading representation in contravention of section 22 of the Act; or
 - (iii) made an unsubstantiated representation in contravention of section 23 of the Act:
- (f) the provider has adequate systems and procedures for implementing the anti-fraud policy and the fair dealing policy:

- (g) the provider has adequate systems and procedures for ensuring that each issuer does not raise more than \$2 million in any 12-month period under the service:
 - (h) the provider has adequate systems and procedures for handling conflicts between the commercial interests of the provider (or of its associated persons) and the need for the provider to have fair, orderly, and transparent systems and procedures for providing the service:
 - (i) if a broking service is to be provided by the provider in the course of providing the service, the provider is, or will be, registered under the Financial Service Providers (Registration and Dispute Resolution) Act 2008 for the broking service on and from commencing to provide the broking service.
- (2) In considering whether disclosure arrangements are adequate, the FMA must have regard to—
- (a) the limits (if any) on the amount that retail investors may invest under the service; and
 - (b) the amount that issuers may raise under the service.

18 Additional eligibility criteria for peer-to-peer lending service

The eligibility criteria for a peer-to-peer lending service under section 396(a) of the Act are as follows:

- (a) the provider has fair, orderly, and transparent systems and procedures for providing the service:
- (b) the service is designed primarily for offers by persons other than the provider and its associated persons:
- (c) the provider has adequate systems and procedures for—
 - (i) checking the identity of each issuer of debt securities, and of each director and senior manager of the issuer, before the issuer is authorised to offer debt securities using the service; and
 - (ii) assessing, before debt securities are offered using the service, the risk of investors not being repaid in full or not receiving the interest or other returns that will be offered (for example, assessing the creditworthiness of the issuer, any guarantees, and any charge or other security to secure

- the performance of obligations under the securities); and
- (iii) disclosing information about that checking and assessment to investors:
 - (d) the provider has an adequate policy (a **fair dealing policy**) for excluding an issuer from using the service if the provider has information (for example, from checks or assessments it carries out (if any)) that gives it reason to believe that the issuer, in relation to any dealing in debt securities using the service, has—
 - (i) engaged in conduct that is misleading or deceptive or likely to mislead or deceive; or
 - (ii) made a false or misleading representation in contravention of section 22 of the Act; or
 - (iii) made an unsubstantiated representation in contravention of section 23 of the Act:
 - (e) the provider has adequate systems and procedures for implementing the fair dealing policy:
 - (f) to the extent that the provider, under the service, carries out the activities referred to in regulation 46(d) and (e), the provider has adequate arrangements for ensuring the orderly administration of the debt securities in the event that it ceases to operate the service:
 - (g) the provider has adequate systems and procedures for ensuring that each issuer does not raise more than \$2 million in any 12-month period under the service:
 - (h) the provider has adequate systems and procedures for handling conflicts between the commercial interests of the provider (or of its associated persons) and the need for the provider to have fair, orderly, and transparent systems and procedures for providing the service:
 - (i) if a broking service is to be provided by the applicant in the course of providing the service, the applicant is, or will be, registered under the Financial Service Providers (Registration and Dispute Resolution) Act 2008 for the broking service on and from commencing to provide the broking service.

19 Eligibility criteria for authorised bodies

- (1) The eligibility criteria for a related body corporate under section 400(1)(e) of the Act are that the key personnel of the related body corporate are fit and proper persons to hold their respective positions.
- (2) In this regulation and regulation 22, **key personnel**, in relation to a body corporate (**A**), means—
 - (a) the executive directors of A; and
 - (b) those senior managers of A who will perform duties in connection with providing a market service covered by the licence.

Procedural matters

20 FMA must have regard to compliance history of relevant parties

- (1) The FMA must, before making a decision in relation to the matters in section 396(c) and (d) of the Act, have regard to any conviction, order made, or successful disciplinary action taken under a relevant proceeding or action against any person that the FMA considers to be a relevant party.
- (2) Subclause (1) applies only to the extent that the FMA is aware of the relevant proceeding or action.
- (3) In this regulation,—
 - (a) a person (**R**) is a **relevant party** in relation to an applicant (**A**) if—
 - (i) A is a body corporate and R has the power, directly or indirectly, to exercise, or control the exercise of, the rights to vote attaching to 25% or more of the voting products of A; or
 - (ii) A and R are acting jointly or in concert; or
 - (iii) A acts, or is accustomed to act, in accordance with the wishes of R; or
 - (iv) R is able, directly or indirectly, to exert a substantial degree of influence over the activities of A; or
 - (v) R is a director or senior manager of A or of a relevant party of A under subparagraphs (i) to (iv):

- (b) **relevant proceeding or action** means civil or criminal proceedings, regulatory action, or disciplinary action (whether in New Zealand or overseas) that the FMA considers is relevant to the carrying out of the service to which an application for a licence relates.

21 FMA must consult Reserve Bank in relation to banks, deposit takers, and insurers

The FMA must, before making a decision under section 396 of the Act, consult the Reserve Bank if the applicant, or a proposed authorised body, is a registered bank, an NBDT, or a licensed insurer.

Conditions of licences

22 General reporting condition

- (1) A market services licence is subject to a condition that, if any of the following occur, the licensee or an authorised body must, as soon as practicable, send a report containing details of the matter to the FMA:
- (a) the licensee or an authorised body becomes aware or has reasonable grounds to believe that—
 - (i) the licensee or an authorised body is, or it is likely that the licensee or authorised body will become, subject to an insolvency event; or
 - (ii) a director or senior manager of the licensee, or any of the key personnel of an authorised body, is adjudicated bankrupt or it is likely that that person will be adjudicated bankrupt (whether in New Zealand or overseas); or
 - (b) the licensee or an authorised body becomes aware that a relevant proceeding or action has been commenced or taken against any of the following:
 - (i) the licensee;
 - (ii) an authorised body;
 - (iii) a director or senior manager of the licensee;
 - (iv) any of the key personnel of an authorised body; or
 - (c) a director or senior manager of the licensee, or any of the key personnel of an authorised body,—

- (i) resigns, is removed, or otherwise ceases to hold the office or position:
 - (ii) is appointed, employed, or engaged; or
 - (d) an auditor of the licensee or an authorised body—
 - (i) resigns or otherwise ceases to hold the office:
 - (ii) is appointed (other than by way of reappointment); or
 - (e) the licensee or an authorised body proposes to change its name or its legal structure (for example, by virtue of an amalgamation); or
 - (f) the licensee or an authorised body proposes to enter into a major transaction (within the meaning of section 129 of the Companies Act 1993 applied to a licensee or an authorised body whether or not it is a company); or
 - (g) the licensee or an authorised body becomes aware that a transaction or an arrangement has been entered into, or it is likely that a transaction or arrangement will be entered into, that will result or has resulted in a person obtaining or losing control of the licensee or the authorised body.
- (2) In subclause (1)(b), **relevant proceeding or action**, in relation to a licence,—
 - (a) means a civil or criminal proceeding, regulatory action, or disciplinary action (whether in New Zealand or overseas) in relation to the contravention of any enactment, overseas law, or professional code of conduct, that regulates the supply of any financial service, any dealing in financial products, or the management of a body corporate; and
 - (b) includes a criminal proceeding—
 - (i) for a crime involving dishonesty (within the meaning of section 2(1) of the Crimes Act 1961); or
 - (ii) in an overseas jurisdiction for a crime that, if committed in New Zealand, would be a crime involving dishonesty within the meaning of that Act; but
 - (c) does not include any proceeding commenced, or action taken, by the FMA.

- (3) In subclause (1)(g), **control** has the same meaning as in clause 48 of Schedule 1 of the Act.

23 Condition for independent trustees to report serious problems

- (1) A market services licence for an independent trustee of a restricted scheme is subject to a condition that, if the licensee has reasonable grounds to believe that a serious problem has arisen in relation to a managed investment product in the scheme, the licensee must, as soon as practicable,—
- (a) report the serious problem to the FMA; and
 - (b) disclose to the FMA all information relevant to the serious problem that is in the possession or control of the independent trustee and was obtained in the course of, or in connection with, the performance of the functions of that trustee.
- (2) In subclause (1), **serious problem** has the same meaning as in section 199(2) of the Act.

24 Condition for DIMS providers and prescribed intermediary service providers to keep documents and to give documents on request

- (1) A market services licence for a provider of a discretionary investment management service, a crowd funding service, or a peer-to-peer lending service is subject to a condition that the provider must, in respect of any document required by or for the purposes of the Act or these regulations in connection with the service,—
- (a) keep a copy of the document for a period of at least 7 years after the date on which the document comes into the possession of the provider; and
 - (b) provide, on request and on payment of the relevant fee, to an investor a copy of, or an extract from, a document that is relevant to the investor (and the copy or extract must be provided in accordance with subclause (3) within 10 working days after receiving the request).
- (2) The condition in subclause (1) applies to a document only if the document is given, made, or provided by or to the provider.

- (3) The document must be provided by giving it to the investor or delivering or sending it to the investor's address.
- (4) In this regulation,—
 - (a) a document is **relevant** to an investor if the investor has or had a right to access or obtain a copy of the document under the Act, regulations made under the Act, a governing document, or the terms of the offer of a financial product or a discretionary investment management service:
 - (b) **relevant fee** means a reasonable printing and administration fee set by the provider.

25 Condition for DIMS providers to disclose if service is wholesale

- (1) A market services licence for a provider of a discretionary investment management service that is not a retail service is subject to a condition that the provider must not acquire or dispose of a financial product under the service for an investor, or accept an investment authority from an investor, unless a warning statement has been provided to the investor before the investor grants an investment authority to the provider.
- (2) A warning statement must be provided by giving it to the investor or delivering or sending it to the investor's address.
- (3) The warning statement must—
 - (a) contain a statement to the effect that—
 - (i) the service is not a retail service;
 - (ii) the service is not covered by the licence (and, accordingly, the protections and requirements of the Financial Markets Conduct Act 2013 may not apply); and
 - (b) if it is included in another document, be in a prominent position in that document.

26 Condition for intermediaries to notify FMA of suspected contraventions of Part 2 of Act or of investment cap

- (1) A market services licence for a provider of a crowd funding service or a peer-to-peer lending service is subject to a condition that the provider must notify the FMA, in accordance with subclauses (2) and (3), if the provider knows or suspects that

an issuer that uses the service has committed, is committing, or is likely to commit—

- (a) a significant contravention of Part 2 of the Act (which relates to fair dealing) in connection with the use of the service; or
 - (b) a contravention of the \$2 million aggregate limit referred to in clause 4 of Schedule 1.
- (2) The provider must give the notice immediately after knowing or suspecting the person has committed, is committing, or is likely to commit the contravention.
- (3) The notice must include—
- (a) the issuer’s name and contact details; and
 - (b) the obligation to which the known or suspected contravention relates; and
 - (c) the facts supporting the provider’s view relating to the known or suspected contravention; and
 - (d) any supporting evidence for that view.

27 Condition for provider of crowd funding service to make warning statement available

- (1) A market services licence for a provider of a crowd funding service is subject to a condition that the provider must,—
- (a) if the facility is available through an Internet site, ensure that a warning statement is prominently displayed—
 - (i) on the home page of the site; and
 - (ii) to an investor, on a page on the site, immediately before the investor uses the site to apply for, or otherwise acquire, financial products; and
 - (b) in all cases, ensure that a warning statement is prominently displayed in all application forms for acquiring financial products using the service.
- (2) The warning statement must be in the following form:
- “Warning statement about crowd funding**
“Equity crowd funding is risky.

*Issuers using this facility include new or rapidly growing ventures. Investment in these types of businesses is very speculative and carries high risks.

*Omit these sentences if the facility is confined to issuers for whom the sentences would be inapplicable.

“You may lose your entire investment, and must be in a position to bear this risk without undue hardship.

“New Zealand law normally requires people who offer financial products to give information to investors before they invest. This requires those offering financial products to have disclosed information that is important for investors to make an informed decision.

“The usual rules do not apply to offers by issuers using this facility. As a result, you may not be given all the information usually required. You will also have fewer other legal protections for this investment.

“Ask questions, read all information given carefully, and seek independent financial advice before committing yourself.”

28 Condition for provider of crowd funding service to obtain investor confirmation

- (1) A market services licence for a provider of a crowd funding service is subject to a condition that the provider must obtain from each investor, in accordance with subclauses (2) and (3), a confirmation to the following effect:

“I confirm that I have seen the warning statement about crowd funding and—

- “• I understand that equity crowd funding is risky and I may lose my entire investment; and
- “• I confirm that I could bear that loss without suffering undue hardship; and
- “• I understand that the usual legal protections do not apply to this investment; and
- “• I understand that I may not be given the same information as is usually required by New Zealand law for investments.”

- (2) The confirmation must be obtained in writing in a separate document or, if it is obtained by electronic means, through a

process by which it is obtained separately from the agreement to use the service.

- (3) The confirmation must be obtained by the provider before the investor is authorised to use the service.

29 Conditions are Part 6 services provisions

The conditions imposed under regulations 22 to 28 are Part 6 services provisions that give rise to civil liability under section 449(4) of the Act.

Additional conditions that FMA may impose on licences

30 General FMA conditions

- (1) The FMA may impose on a market services licence 1 or more of the following conditions:
- (a) conditions concerning the insurance of a licensee, an authorised body, or any director, employee, or agent of a licensee or an authorised body against claims made against any of them in respect of anything done or omitted by them in connection with a market service and for any costs associated with those claims, including—
 - (i) requiring a licensee or an authorised body to hold professional indemnity insurance:
 - (ii) requiring that insurance be held only with insurers approved by the FMA:
 - (iii) specifying the minimum terms and conditions that an insurance policy must satisfy for the purposes of subparagraph (i):
 - (b) conditions requiring the licensee or an authorised body to periodically report information to the FMA concerning the nature, scale, and operation of the service (including statistical information about numbers of transactions entered into and amounts involved):
 - (c) conditions under section 400(1) of the Act to authorise 1 or more named related bodies corporate of the licensee to provide a market service covered by the licence:
 - (d) conditions for the purposes of section 400(2) of the Act.

- (2) *See also* section 403(3) of the Act (which allows the FMA to impose conditions that, for example, impose limits or restrictions on the services that are covered by the licence).

31 Other FMA conditions for DIMS

The FMA may impose on a market services licence for a provider of a discretionary investment management service 1 or more of the following conditions:

- (a) conditions regulating the provision of financial advice referred to in section 392(1)(b) of the Act:
- (b) conditions that—
 - (i) permit the custodian of investor money and investor property to be an associated person of the DIMS licensee (other than by virtue of the custodianship); and
 - (ii) impose limitations on that permission (for example, limiting the permission to a specified period); and
 - (iii) specify requirements that must be observed relating to that permission for the purposes of section 445(2)(b)(ii) of the Act, including requirements that relate to the systems or procedures that must be maintained to identify, disclose, or manage any risks associated with the custodian being an associated person of the DIMS licensee.

32 Other FMA conditions for derivatives issuer

- (1) The FMA may impose on a market services licence for a derivatives issuer conditions that do 1 or more of the following:
- (a) require the licensee or an authorised body to maintain a minimum level of capital that the FMA considers is adequate:
 - (b) regulate the form of that capital (for example, the financial instruments that may be taken into account in calculating capital):
 - (c) require the licensee or an authorised body to maintain a capital ratio (including providing for the capital ratio to be set at a specified minimum level):

- (d) require the licensee or an authorised body to maintain minimum amounts of liquid assets relative to liabilities that the FMA considers is adequate:
 - (e) specify the assets that qualify as liquid assets, and requirements concerning matching maturity of assets and liabilities, for the purposes of paragraph (d):
 - (f) impose other requirements to better ensure that a licensee or an authorised body maintains prudent cash flows and a level of liquid assets sufficient to enable it to withstand a plausible range of liquidity shocks (for example, events that result in it experiencing a significantly reduced inflow of liquid assets):
 - (g) require the licensee or an authorised body to have systems or procedures for assessing the suitability of a derivative for a retail investor or class of retail investors and for preventing the issue of a derivative to a retail investor where the derivative is assessed as not suitable under those systems or procedures:
 - (h) require the licensee or an authorised body to maintain and enforce limits on the extent to which a retail investor is permitted to be leveraged under a derivative issued by the licensee or authorised body.
- (2) The FMA may not impose a condition under subclause (1)(a) to (f) (capital and liquidity) for a derivatives issuer that is a registered bank, an NBDT, or a licensed insurer.

33 Other FMA conditions for crowd funding service or peer-to-peer lending service

The FMA may impose on a market services licence for a provider of a crowd funding service or a peer-to-peer lending service any or all of the following conditions:

- (a) conditions that restrict or prohibit the provider or its associated persons from issuing under or using the service:
- (b) conditions that specify requirements that must be observed relating to that issuing or use, including requirements that relate to the systems or procedures that must be maintained to identify, disclose, and manage any

risks associated with the provider or its associated persons issuing under or using the service.

Disclosure obligations for prescribed intermediary services

34 Disclosure obligations apply to prescribed intermediary services

For the purposes of section 422(b) of the Act, subpart 4 of Part 6 of the Act applies to each of the following:

- (a) the provision of a crowd funding service:
- (b) the provision of a peer-to-peer lending service.

35 Timing of disclosure for prescribed intermediary services

The prescribed time under section 424(1)(b) of the Act (for providing a disclosure statement to a retail investor relating to a prescribed intermediary service) is before the investor enters into a client agreement for the crowd funding service or peer-to-peer lending service.

36 Disclosure statement for crowd funding service or peer-to-peer lending service

(1) A disclosure statement under section 423 of the Act for a crowd funding service or a peer-to-peer lending service must contain a brief description of—

- (a) the nature of the service provided; and
- (b) how investors apply for, and obtain, access to the facility and the eligibility criteria that apply; and
- (c) how issuers apply for, and obtain, access to the facility and the eligibility criteria that apply; and
- (d) how investments are made and financial products are issued under the service; and
- (e) how investor money is received and dealt with; and
- (f) the nature and extent of the checks and assessments made by the provider of the following:
 - (i) each issuer that offers financial products under the service:
 - (ii) the directors and senior managers of those issuers:

- (iii) the risks involved in those financial products (or, if checks and assessments of those risks are not made as part of the service, a statement to that effect); and
 - (g) the nature and extent of the disclosure arrangements that apply in relation to the financial products offered under the service; and
 - (h) the charges that may be payable to the provider by an investor under the service (or, if those charges are not fixed, the types and bases on which charges will be imposed) and when the investor must pay the charges; and
 - (i) the rights of the provider or any other person to alter any of the charges applicable to the service; and
 - (j) the charges that may be payable to the provider by an issuer under the service (or, if those charges are not fixed, the types and bases on which charges will be imposed); and
 - (k) if the provider, or issuers that are associated with the provider, are restricted or prohibited from issuing under or using the service, the nature of the restrictions or prohibitions (*see also* subclause (2)); and
 - (l) the nature and extent of any interest held by or in the provider that may materially adversely impact on the provider's ability to have fair, orderly, and transparent systems and procedures for providing the service, and of the steps taken to manage any risks of that adverse impact; and
 - (m) contact details of the provider; and
 - (n) how investors may complain about the service to the provider and to any dispute resolution scheme that is available; and
 - (o) the type of information relating to the service that is required to be, or otherwise will be, available on request from the provider and how the request should be made (including whether any charge may be made for the information and the amount of the charge).
- (2) If subclause (1)(k) does not apply in relation to the provider or issuers that are associated with the provider (or both), a disclosure statement under section 423 of the Act for a crowd

funding service or a peer-to-peer lending service must also contain a statement to the effect that the provider or those issuers (or both) are not restricted or prohibited from issuing under or using the service.

- (3) A disclosure statement under section 423 of the Act for a crowd funding service must also contain the warning statement required by regulation 27.
- (4) A disclosure statement under section 423 of the Act for a peer-to-peer lending service must also contain—
 - (a) a brief description of the nature and extent of the provider's monitoring of compliance by the issuer with its obligations to make repayments and payments under the debt securities (or, if such monitoring is not part of the service, a statement to that effect); and
 - (b) a brief description of processes in the event of a default by an issuer of those obligations or (if such processes are not part of the service) of the investor's remedies in the event of a default.

37 Disclosure statement must be worded and presented in clear, concise, and effective manner

A disclosure statement under section 423 of the Act for a crowd funding service or a peer-to-peer lending service must be worded and presented in a clear, concise, and effective manner.

38 Disclosure statement may refer to facility's Internet site

- (1) If the facility is available through an Internet site, the disclosure statement under section 423 of the Act may incorporate the information required by regulation 36(1), (2), and (4) by reference to the page or section of the Internet site on which the information is located.
- (2) The reference in the disclosure statement must include—
 - (a) a link or URL to the page or section of the Internet site where that information is located; and
 - (b) a brief description of the information on the relevant page or section.

- (3) In this regulation, **URL** means a World Wide Web uniform resource locator.

39 Prescribed intermediary service providers must provide transaction information to investors

- (1) A licensee or an authorised body that provides a prescribed intermediary service must, in accordance with regulation 40, make available the information specified in subclause (2) to each investor who makes transactions under the service.
- (2) The information is a record of all transactions made by the investor under the service, including for each transaction (to the extent applicable)—
- (a) the names of the parties (unless the parties are anonymous under the service); and
 - (b) a product description; and
 - (c) the price per product; and
 - (d) the quantity of products; and
 - (e) the total amount of the transaction; and
 - (f) the date of the transaction; and
 - (g) in the case of a loan, any security given.

40 How transaction information is made available

- (1) This regulation applies for the purposes of regulation 39.
- (2) The information must be made available to the investor (**A**)—
- (a) through an electronic facility on a substantially continuous basis (but only if A has agreed to this method); or
 - (b) by giving it to A or delivering or sending it to A's address not later than 10 working days after the last day of each reporting period in each year (but only if A has agreed to this method); or
 - (c) by giving it to A or delivering or sending it to A's address not later than 5 working days after a financial product is issued or transferred under each transaction.
- (3) The information must cover,—
- (a) in the case of subclause (2)(a), the transactions entered into in the period starting when regulation 39 first applies to the provider and ending at a stated time that is not earlier than 48 hours before the information is made available:

- (b) in the case of subclause (2)(b), the transactions entered into in the last reporting period.
- (4) The information under subclause (2)(a) or (b) must state the period that it covers.
- (5) No information is required to be made available under subclause (2)(b) for a reporting period if no transactions are entered into in that period.
- (6) In this regulation, **reporting period** means—
 - (a) each of the 4 quarters of a year ending on 30 June, 30 September, 31 December, and 31 March; or
 - (b) any period shorter than a quarter of a year that is agreed with A.

Client agreement requirements apply to prescribed intermediary services

41 Client agreement requirements apply to prescribed intermediary services

For the purposes of section 429(c) of the Act, subpart 5 of Part 6 of the Act applies to each of the following:

- (a) the provision of a crowd funding service;
- (b) the provision of a peer-to-peer lending service.

Client agreements

42 Time for entering into client agreement for prescribed intermediary services

For the purposes of section 430(2)(c) of the Act, a client agreement required by subpart 5 of Part 6 of the Act for a crowd funding service or a peer-to-peer lending service must be entered into before the investor applies for or acquires any financial products under the service.

43 Terms implied into client agreements

The following provisions are treated as being implied into a client agreement required by subpart 5 of Part 6 of the Act:

- “1 The licensee and every authorised body must, in exercising any powers or performing any duties in relation to the service provided under the licence, exercise the care, diligence, and

skill that a prudent licensee for that service would exercise in the same circumstances.

- “2 If the licensee or an authorised body contracts out any of its functions in providing the service, the licensee or authorised body must take all reasonable steps to—
- “(a) ensure that those functions are performed in the same manner, and are subject to the same duties and restrictions, as if the licensee or authorised body were performing them directly; and
 - “(b) monitor the performance of those functions.”

44 Client agreements for DIMS must provide for certain matters

- (1) A client agreement required by subpart 5 of Part 6 of the Act for a discretionary investment management service must provide adequately for the following matters:
- (a) if investor money or investor property is to be held under the service on behalf of investors,—
 - (i) how custodianship will be provided under the service and the process for appointing and removing a custodian; and
 - (ii) whether and, if so, how the investor may give instructions to exercise rights over the investor’s financial products (for example, a right to vote at meetings of product holders); and
 - (iii) how the investor may acquire legal title to the investor’s financial products, or dispose of those financial products, within a reasonable period after termination of the client agreement; and
 - (iv) how holdings of wholesale products (if any) will be dealt with on termination of the client agreement:
 - (b) how the investment authority may be changed:
 - (c) a right for the investor to terminate the client agreement without penalty:
 - (d) how the right under paragraph (c) may be exercised within a reasonable notice period.
- (2) In subclause (1)(a)(iv), **wholesale products** means financial products that the investor is eligible to acquire only by virtue

of the investor acquiring the products through a discretionary investment management service.

45 Client agreements for crowd funding service must provide for certain matters

A client agreement required by subpart 5 of Part 6 of the Act for a crowd funding service must provide adequately for the use and operation of the facility, including in relation to the following matters:

- (a) how investors and issuers apply for, and obtain, access to the facility and the eligibility criteria that apply in each case:
- (b) how investments are made and financial products are issued under the service:
- (c) how investor money is received and dealt with (to the extent that this is part of the service):
- (d) the nature, extent, and frequency of monitoring of issuers undertaken by the provider (to the extent that this is part of the service):
- (e) the charges that may be payable to the provider by an investor under the service (or, if those charges are not fixed, the types and bases on which charges will be imposed) and when the investor must pay the charges.

46 Client agreements for peer-to-peer lending service must provide for certain matters

A client agreement required by subpart 5 of Part 6 of the Act for a peer-to-peer lending service must provide adequately for the use and operation of the facility, including in relation to the following matters:

- (a) how investors and issuers apply for, and obtain, access to the facility and the eligibility criteria that apply in each case:
- (b) how investments are made and financial products are issued under the service:
- (c) how investor money is received and dealt with:
- (d) how the provider will monitor compliance by the issuer with its obligations to make repayments and payments

under the debt securities (to the extent that this is part of the service):

- (e) processes in the event of a default by an issuer of its obligations under the terms of a debt security (to the extent that this is part of the service):
- (f) the charges that may be payable to the provider by an investor under the service (or, if those charges are not fixed, the types and bases on which charges will be imposed) and when the investor must pay the charges.

47 Client agreements may use different terminology

Regulations 44 to 46 do not require client agreements to use the same terminology as is used in those regulations (for example, in relation to a peer-to-peer lending service, an agreement may refer to a borrower, a lender, or a loan rather than to an issuer, an investor, or a debt security).

Part 5 Financial reporting

48 Entities that are FMC reporting entities as a result of exclusions

- (1) For the purposes of clause 27A of Schedule 1 of the Act, an entity that has made an offer in reliance upon clause 12 of Schedule 1 of the Act is an FMC reporting entity if it has 50 or more relevant shareholders and 50 or more parcels of relevant shares.
- (2) In subclause (1),—
 - relevant shareholder** means a shareholder who holds a voting product of the entity that was acquired under an offer made in reliance upon clause 12 of Schedule 1 of the Act
 - relevant shares** means voting products of the entity acquired under an offer made in reliance upon clause 12 of Schedule 1 of the Act.

49 Prescribed circumstances for definition of recipient of money from conduit issuer

For the purposes of section 453(b)(ii) of the Act (recipients of money from conduit issuers), the prescribed circumstances are

where the offer is made in reliance upon clause 12 of Schedule 1 of the Act by an entity that—

- (a) is an FMC reporting entity as a result of regulation 48; or
- (b) will be an FMC reporting entity as a result of regulation 48 immediately after the issue or transfer of voting products under the offer.

Part 6

Enforcement, liability, and appeals

50 Financial service does not include providing credit in definition of restricted communication

For the purposes of paragraph (c) of the definition of financial service in section 6(1) of the Act, the service of providing credit under a credit contract is declared not to be a financial service for the purposes of section 464 of the Act (which relates to the meaning of restricted communication).

51 Infringement offence fees

The infringement fee for an infringement offence is the fee specified in relation to the offence in the third column of Schedule 2.

52 Infringement notice and reminder notice

- (1) An infringement notice issued under section 514 of the Act must be in the form set out in Schedule 3.
- (2) A reminder notice issued under section 515(4) of the Act must be in the form set out in Schedule 4.

Part 7

Transitional provisions

53 Transitional provisions

- (1) The transitional provisions in Schedule 5 have effect.
- (2) See clause 58 of Schedule 4 of the Act for another transitional provision relating to Schedule 1 of the Act.

- (3) This regulation and Schedule 5 are revoked on the close of 1 December 2014.
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Schedule 1
Provisions relating to exclusions and
other Schedule 1 matters

Contents

	Page
Part 1	
Limited disclosure and other requirements	
1	Limited disclosure and other requirements 36
2	Interpretation 36
Offers through licensed intermediaries	
3	Application 37
4	Offeror must not breach \$2 million aggregate limit 37
5	Matters relating to calculation 38
Employee share purchase schemes exclusion	
6	Application 39
7	Offeror must provide description of scheme, warning, and access to annual report and financial statements 39
8	Warning statement 39
9	Annual report and financial statements 41
Dividend reinvestment plan exclusion	
10	Application 41
11	Offeror must provide description of scheme and access to annual report and financial statements 42
12	Annual report and financial statements 42
Small offer exclusion	
13	Application 43
14	Offeror must give notice to FMA 43
15	Small offer warning 44
Quoted financial products exclusion	
16	Application 45
17	Issuer must give notice to registered exchange and be in compliance with continuous disclosure and financial reporting obligations 45
18	Obligation to correct defective notice 47

Part 2

	Other matters prescribed for purposes of Schedule 1 of Act	
19	Category 2 products and currency forwards prescribed	47

Part 1

Limited disclosure and other requirements

1 Limited disclosure and other requirements

- (1) This Part prescribes limited disclosure and other requirements for the purposes of clause 26 of Schedule 1 of the Act.
- (2) *See* clause 26(6) of Schedule 1 of the Act (which provides that a contravention of those requirements does not prevent an exclusion in Schedule 1 of the Act from continuing to apply but may give rise to consequences under Part 8 of the Act).
- (3) *See* regulation 13 (which refers to limited disclosure and other requirements prescribed under this schedule applying to an offer made in reliance upon clause 59(1) of Schedule 4 of the Act).

2 Interpretation

- (1) In this Part,—
 - application**, in relation to an investor (**B**), means an application for the financial products that is made by B
 - group** means an issuer and its subsidiaries
 - overseas company** means a body corporate that is incorporated outside New Zealand
 - relevant financial statements** means—
 - (a) the financial statements for the relevant reporting entity that comply with generally accepted accounting practice and that are prepared for the most recently completed accounting period; or
 - (b) if the financial statements referred to in paragraph (a) have not been prepared, the issuer's financial statements for its most recently completed income year that are prepared under sections 21B and 21C of the Tax Administration Act 1994; or

Part 1—*continued*

- (c) if the financial statements referred to in paragraph (a) or (b) have not been prepared and the issuer is an overseas company, financial statements for the relevant reporting entity that are prepared—
 - (i) for the most recently completed accounting period; and
 - (ii) in accordance with the laws of the jurisdiction in which the issuer is incorporated or established or the listing rules of a financial product market on which it is listed

relevant reporting entity means,—

- (a) in the case of an offer of managed investment products, the scheme;
 - (b) in the case of any other offer, the issuer’s group or, if the issuer has no subsidiaries, the issuer.
- (2) In this Part, **continuous disclosure obligations**, **listed**, **listing rules**, **registered exchange**, and **registered market** have the same meanings as in the Securities Markets Act 1988.

Offers through licensed intermediaries

3 Application

Clauses 4 and 5 apply to a person (**A**) who offers financial products to another person (**B**) in reliance upon clause 6 of Schedule 1 of the Act.

4 Offeror must not breach \$2 million aggregate limit

- (1) A must not breach the \$2 million aggregate limit under sub-clause (2), whether before or after—
 - (a) the offer; or
 - (b) the issue of the financial products.
- (2) The \$2 million aggregate limit is breached if the amount that is raised by A from the issue or transfer of financial products of the issuer under 1 or more relevant offers exceeds \$2 million in any 12-month period.

Part 1—*continued***Example**

ABC Limited offers debt securities through a peer-to-peer lending facility in June 2015. ABC Limited raises \$700,000 under this offer.

ABC Limited also offers ordinary shares through a crowd-funding facility in November 2015. ABC Limited raises a further \$400,000 under this offer.

ABC Limited also offers ordinary shares through a small offer under clause 12 of Schedule 1 of the Act in February 2016. ABC Limited raises a further \$1.5 million under this offer.

In total, ABC Limited has raised \$2.6 million from relevant offers. ABC Limited does not breach the small offer requirements in clause 12 of Schedule 1 of the Act. However, the \$2 million aggregate limit under this clause has been breached and, accordingly, there may be consequences under Part 8 of the Act.

(3) In this clause,—

financial products of the issuer, in relation to an offer of a financial product (**product A**), means equity securities and debt securities issued by the issuer of product A (regardless of whether those products are of the same class or kind as those under the offer)

relevant offer means an offer made in reliance on either of the following:

- (a) clause 6 of Schedule 1 of the Act (whether or not it is the same as or separate from the offer to B);
- (b) clause 12 of Schedule 1 of the Act (small offers).

5 Matters relating to calculation

In calculating the amount of money raised by A by issuing financial products, the following must be included:

- (a) the amount payable for the products at the time when the products are issued;
- (b) if the products are shares issued partly paid, any amount payable at a future time if a call is made;
- (c) if the product is an option, any amount payable on the exercise of the option:

Part 1—*continued*

- (d) if the products carry a right to convert the products into other financial products, any amount payable on the exercise of that right.

Employee share purchase schemes exclusion

6 Application

Clauses 7 to 9 apply to a person (A) who offers financial products to another person (B) in reliance upon clause 8 of Schedule 1 of the Act.

7 Offeror must provide description of scheme, warning, and access to annual report and financial statements

- (1) A must not accept an application, or issue or transfer the financial products to B, if the following were not provided to B before the application was made:
 - (a) a document that contains, in a prominent position, the warning statement referred to in clause 8; and
 - (b) a document that contains a description of the employee share purchase scheme and its terms and conditions; and
 - (c) the document or documents referred to in clause 9.
- (2) One or more of the documents specified in subclause (1) may be combined in a single document.
- (3) A must, if B requests a document referred to in subclause (1) or clause 9(1)(a), provide B with that document within 5 working days after A receives the request.
- (4) A document must be provided by giving it to B or delivering or sending it to B's address.

8 Warning statement

- (1) The warning statement must be in the following form:

“Warning

“You are being offered [*name of financial product type (for example, ordinary shares)*] in [*name of issuer*]. This investment gives you a stake in the ownership of [*name of issuer*]. You could receive a return if [*name of issuer*] becomes more valu-

Part 1—*continued*

able, and you may also receive dividends, if it decides to pay them.

“If [*name of issuer*] runs into financial difficulties and is wound up, shareholders will only be paid after all other creditors have been paid, resulting in you losing some or all of the money you invested.

“New Zealand law normally requires people who offer financial products to give information to investors before they invest. This requires those offering financial products to have disclosed information that is important for investors to make an informed decision.

“The usual rules do not apply to this offer because it is made under an employee share purchase scheme. As a result, you may not be given all the information usually required. You will also have fewer other legal protections for this investment.

“Ask questions, read all documents carefully, and seek independent financial advice before committing yourself.”

- (2) The warning statement must also—
- (a) include a statement as to whether the financial products are listed; and
 - (b) if the financial products are not listed but are approved for trading on a financial product market, contain a statement to that effect; and
 - (c) include whichever of the following statements better applies:
 - (i) “The trading market for the investment is likely to be limited and you may not be able to sell it.”;
 - (ii) “These financial products are quoted or approved for trading on the [*name of market*]. This means that you can sell your investment on the [*name of market*] if there are buyers for it. If you sell your investment, the price you get may vary depending on factors such as the financial condition of [*name of issuer*]. You may receive less than the full amount that you paid for it.”; and

Part 1—*continued*

- (d) explain any other arrangements under which the investor may redeem or sell the investor's investment (if any) and any restrictions on their ability to do so.

9 Annual report and financial statements

- (1) The document or documents are either—
 - (a) both of the following:
 - (i) a copy of the issuer's latest annual report prepared under any enactment or overseas law (if any);
 - (ii) a copy of the relevant financial statements and, if those statements are not audited or reviewed by an auditor, a statement to that effect; or
 - (b) a notice that contains—
 - (i) a statement to the effect that the investor has a right to receive from the issuer, free of charge, a copy of the documents referred to in paragraph (a) if the investor makes a request to the issuer to receive a copy of those documents; and
 - (ii) a statement to the effect that the investor may obtain a copy of those documents by electronic means; and
 - (iii) a statement as to how the investor may obtain a copy of those documents by electronic means (for example, from a specified Internet site address).
- (2) Subclause (1)(a)(ii) does not apply if, at the date on which the application from B is made, the issuer has not completed its first accounting period or has not prepared its financial statements for that period.

Dividend reinvestment plan exclusion

10 Application

Clauses 11 and 12 apply to a person (A) who offers financial products to another person (B) in reliance upon clause 10 of Schedule 1 of the Act.

Part 1—*continued***11 Offeror must provide description of scheme and access to annual report and financial statements**

- (1) A must not accept an application, or issue or transfer the financial products to B, if the following were not provided to B before the application was made:
 - (a) a document that contains a description of the dividend reinvestment plan and its terms and conditions;
 - (b) the document or documents referred to in clause 12.
- (2) One or more of the documents specified in subclause (1) may be combined in a single document.
- (3) A must, if B requests a document referred to in subclause (1) or clause 12(1)(a), provide B with that document within 5 working days after A receives the request.
- (4) A document must be provided by giving it to B or delivering or sending it to B's address.

12 Annual report and financial statements

- (1) The document or documents are either—
 - (a) both of the following:
 - (i) a copy of the issuer's latest annual report prepared under any enactment or overseas law (if any);
 - (ii) a copy of the relevant financial statements and, if those statements are not audited or reviewed by an auditor, a statement to that effect; or
 - (b) a notice that contains—
 - (i) a statement to the effect that the investor has a right to receive from the issuer, free of charge, a copy of the documents referred to in paragraph (a) if the investor makes a request to the issuer to receive a copy of those documents; and
 - (ii) a statement to the effect that the investor may obtain a copy of those documents by electronic means; and
 - (iii) a statement as to how the investor may obtain a copy of those documents by electronic means (for example, from a specified Internet site address).

Part 1—*continued*

- (2) Subclause (1)(a)(ii) does not apply if, at the date on which the application from B is made, the issuer has not completed its first accounting period or has not prepared its financial statements for that period.

Small offer exclusion

13 Application

Clauses 14 and 15 apply to a person (A) who offers financial products to another person (B) in reliance upon clause 12 of Schedule 1 of the Act.

14 Offeror must give notice to FMA

- (1) If A makes an offer in reliance upon clause 12 of Schedule 1 of the Act during an accounting period, A must, within 1 month after the end of that period, give a written notice to the FMA that states—
- (a) that A relied on the exclusion in clause 12 of Schedule 1 of the Act during that period; and
 - (b) the type of financial products to which the offer relates and, if A is not the issuer, the name of the issuer; and
 - (c) the opening date and closing date for the offer (if known); and
 - (d) whether A has distributed to 1 or more investors, within that period, a document that contains the key terms of the offer and, if so, the date during that period on which the document was first distributed to an investor; and
 - (e) the number of persons to whom financial products of the issuer have been issued or sold by A within that period in reliance upon the exclusion in clause 6 or 12 of Schedule 1 of the Act; and
 - (f) the amount raised by A from issuing or selling financial products of the issuer during that period in reliance upon the exclusion in clause 6 or 12 of Schedule 1 of the Act.
- (2) If A has, during the accounting period, relied upon both clauses 6 and 12 of Schedule 1 of the Act, the notice must state the information in subclause (1)(e) and (f) separately in respect of each exclusion.

Part 1—*continued*

- (3) Despite subclauses (1) and (2), this clause does not apply to an accounting period if A proves that A did not knowingly act in reliance on clause 12 of Schedule 1 of the Act in making an offer in that period.
- (4) In this clause, **financial products of the issuer** has the same meaning as in clause 12 of Schedule 1 of the Act.

15 Small offer warning

- (1) A must ensure that a warning statement is included at the front (in a prominent position) of every document provided to B that contains the key terms of the offer of the financial products.
- (2) However, if a document referred to in subclause (1) is not provided to B, A must not accept an application, or issue or transfer the financial products to B, if a warning statement was not, before the application was made, given to B or delivered or sent to B's address.
- (3) The warning statement must be in the following form:
“Warning
“You are being offered [*name of financial product type (for example, ordinary shares)*] in [*name of issuer*].
“New Zealand law normally requires people who offer financial products to give information to investors before they invest. This requires those offering financial products to have disclosed information that is important for investors to make an informed decision.
“The usual rules do not apply to this offer because it is a small offer. As a result, you may not be given all the information usually required. You will also have fewer other legal protections for this investment.
“Ask questions, read all documents carefully, and seek independent financial advice before committing yourself.”
- (4) Despite subclauses (1) and (2), this clause does not apply to an offer to B if A proves that A did not knowingly act in reliance upon clause 12 of Schedule 1 of the Act in making the offer to B.

Part 1—*continued*

Quoted financial products exclusion

16 Application

Clauses 17 and 18 apply to a person (A) who offers financial products to another person (B) in reliance upon clause 19 of Schedule 1 of the Act.

17 Issuer must give notice to registered exchange and be in compliance with continuous disclosure and financial reporting obligations

- (1) A must not offer the financial products, or issue or transfer those products, unless—
 - (a) the issuer has, within the 24-hour period before the offer is made, provided a notice to the registered exchange that operates the registered market on which the listed financial products are listed for the purpose of that notice being notified to the market; and
 - (b) the issuer, as at the date of the notice, is in compliance with the continuous disclosure obligations that apply to it in relation to the listed financial products; and
 - (c) the issuer, as at the date of the notice, is in compliance with its financial reporting obligations.
- (2) The notice under subclause (1)(a) must—
 - (a) state that an offer for issue or sale is being made to investors in reliance upon the exclusion in clause 19 of Schedule 1 of the Act; and
 - (b) state that the notice is provided under subclause (1)(a); and
 - (c) state that, as at the date of the notice, the issuer is in compliance with the continuous disclosure obligations that apply to it in relation to the listed financial products; and
 - (d) state that, as at the date of the notice, the issuer is in compliance with its financial reporting obligations; and
 - (e) set out the information (if any) that is excluded information as at the date of the notice; and
 - (f) in the case of financial products that are equity securities, describe—

Part 1—*continued*

- (i) the potential effect that the offer and acquisition of the equity securities will have on the control of the issuer; and
 - (ii) the consequences of those effects; and
 - (g) in the case of financial products that are debt securities that have a different redemption date or interest rate from that of the listed financial products, set out the information that would (if the listed financial products had had the same redemption date or interest rate) be—
 - (i) required to be disclosed under a continuous disclosure obligation; or
 - (ii) excluded information.
- (3) The notice provided under subclause (1)(a) must contain information under subclause (2)(e), (f), and (g) only to the extent to which it is material information within the meaning of section 59 of the Act (applied as if the offer were a regulated offer).
- (4) In this clause,—
- control** has the same meaning as in clause 48 of Schedule 1 of the Act
- excluded information** means information to which a continuous disclosure obligation would apply but which has not been disclosed under such an obligation as a result of an exclusion in, or a waiver given under, the listing rules for the registered market upon which the financial products are listed
- financial reporting obligations**, in relation to an issuer, means requirements imposed under—
- (a) the Act or another enactment to prepare financial statements or group financial statements in relation to the issuer, its group, or (if it is a manager) a scheme of which it is a manager for the most recently completed accounting period, to have those statements audited, and to lodge or register those statements; and
 - (b) the listing rules of the registered market in relation to providing financial statements for release to the market in relation to any more recent interim accounting period than the period referred to in paragraph (a)

Part 1—*continued*

listed financial products means the listed financial products that are of the same class as those that are being offered.

18 Obligation to correct defective notice

- (1) This clause applies if—
 - (a) the notice given under clause 17(1)(a) is defective; and
 - (b) A becomes aware of the defect in the notice within 12 months after the relevant financial products are issued or transferred.
- (2) A must, within a reasonable time after becoming aware of the defect, provide a notice to the registered exchange that sets out the information necessary to correct the defect (for the purpose of the registered exchange notifying that information to the market).
- (3) The notice is **defective** if—
 - (a) there is—
 - (i) a statement in the notice that is false or misleading or is likely to mislead; or
 - (ii) an omission from the notice of information that is required to be contained in the notice by clause 17; and
 - (b) the matter referred to in paragraph (a) is materially adverse from the point of view of an investor.

Part 2

Other matters prescribed for purposes of
Schedule 1 of Act

19 Category 2 products and currency forwards prescribed

- (1) The following kinds of category 2 products are prescribed for the purposes of clause 21(c) of Schedule 1 of the Act:
 - (a) a PIE call fund unit;
 - (b) a PIE term fund unit;
 - (c) a bank notice product that is a specified unit.
- (2) A currency forward for which settlement is at a time no later than 12 months after the time at which the currency forward is

Part 2—*continued*

entered into is prescribed for the purposes of clause 21(d) of Schedule 1 of the Act.

- (3) In this clause,—
- (a) **PIE call fund unit**, **PIE term fund unit**, and **specified unit** have the same meanings as in regulation 4(2) of the Financial Advisers (Definitions, Voluntary Authorisation, Prescribed Entities, and Exemptions) Regulations 2011:
 - (b) **bank notice product** has the same meaning as in regulation 7B(2) of the Financial Advisers (Definitions, Voluntary Authorisation, Prescribed Entities, and Exemptions) Regulations 2011.
-

**Schedule 2
Infringement fees**

r 51

Provision of Financial Markets Conduct Act 2013	Description of offence provision	Infringement fee (\$)
s 457	Accounting records to be in English	7,500
s 459	Inspection of accounting records	12,500
s 461H	Lodgement of financial statements	7,500

Schedule 3
Infringement notice

r 52(1)

Infringement notice*Section 514, Financial Markets Conduct Act 2013*

Infringement notice No: Date of notice:

Enforcement authority

This infringement notice is issued by the Financial Markets Authority.

Address for correspondence and queries:

Infringement notice served on—

Full name:

Full address:

Date of birth*:

Occupation*:

Gender*:

Telephone number*:

*These particulars must be specified only if known. The particulars for date of birth, occupation, and gender are not required if the notice is served on a company or other body corporate.

Alleged infringement offence details

The offence is one against section [*specify*] of the Financial Markets Conduct Act 2013.

Date: Time:

Place:

Nature of alleged infringement:

The infringement fee payable is:

Service detailsInfringement notice served by [*method of service*] on [*date*].

Payment of infringement fee

The infringement fee is payable within 28 days after [*date notice delivered personally or sent by post*].

The infringement fee may be paid to the Financial Markets Authority at [*address*] by [*specify method(s)*].

Important: Please read the summary below—if you do not understand it, you should consult a lawyer immediately.

Summary of rights

- 1 This notice sets out an alleged infringement offence.

Payments

- 2 If you pay the infringement fee for an alleged infringement offence within 28 days after you have been served with this notice, no further enforcement action will be taken for that offence. Payments should be made to the Financial Markets Authority at the address for payment specified in this notice. If, under section 21(3A) or (3C)(a) of the Summary Proceedings Act 1957, you enter or have entered into a time-to-pay arrangement with the Financial Markets Authority in respect of an infringement fee payable by you, paragraphs 4(b), 4(c), 5, 6, and 7 below do not apply, and you are not entitled either to request a hearing to deny liability or to ask the court to consider any submissions (as to penalty or otherwise) in respect of the infringement.

Defence

- 3 You have a complete defence against proceedings for an alleged infringement offence if the infringement fee has been paid to the Financial Markets Authority, at the address for payment specified in this notice, before or within 28 days after a reminder notice in respect of the alleged offence is served on you. Late payment or payment made to any other address will not constitute a defence.

Further action

4 You should write to the Financial Markets Authority at the address for correspondence shown on the front page of this notice if you wish to—

- (a) raise any matter relating to the circumstances of an alleged offence for consideration by the Financial Markets Authority; or
- (b) deny liability for the alleged offence and request a court hearing; or
- (c) admit liability for the alleged offence, but wish to have a court consider written submissions as to penalty or otherwise.

The letter should be signed.

5 You have a right to request a hearing. If you deny liability for the alleged offence and request a hearing, the Financial Markets Authority will serve you with a notice of hearing that sets out the place and time at which the matter will be heard by the court (unless the Financial Markets Authority decides not to start court proceedings).

Note: If the court finds you guilty of the offence, costs will be imposed in addition to any penalty.

6 A request for a hearing must—

- (a) be in writing and signed by you; and
- (b) be delivered to the Financial Markets Authority at the address for correspondence shown on the front page of this notice; and
- (c) be delivered within 28 days after you have been served with a reminder notice.

7 If you admit liability for the alleged offence but want the court to consider your submissions as to penalty or otherwise, you should, in your letter to the Financial Markets Authority,—

- (a) request a hearing; and
- (b) admit liability for the offence; and
- (c) set out the written submissions you wish to be considered by the court.

The Financial Markets Authority will then file your letter with the court (unless the Financial Markets Authority decides not

to start court proceedings). There is no provision for an oral hearing before the court if you follow this course of action.

Note: Costs will be imposed in addition to any penalty.

- 8 If you do not pay the infringement fee and do not request a hearing in respect of an alleged offence within 28 days after you have been served with this notice, you will (unless the Financial Markets Authority decides otherwise) be served with a reminder notice.
- 9 If you do not pay the infringement fee and do not request a hearing in respect of the alleged offence within 28 days after being served with the reminder notice, you will become liable to pay costs in addition to a fine (if the Financial Markets Authority decides to start court proceedings against you). The fine will be equal to the amount of the infringement fee or the amount of the infringement fee remaining unpaid.
- 10 When writing or making payment of an infringement fee, please indicate—
- (a) the date of the alleged infringement offence; and
 - (b) the infringement notice number; and
 - (c) your full name and address for replies.

Note: All queries and correspondence regarding the infringement offence must be directed to the Financial Markets Authority at the address shown on the front page of this notice.

Further details of your rights and obligations are set out in section 21 of the Summary Proceedings Act 1957.

Schedule 4
Reminder notice

r 52(2)

Reminder notice

Section 515, Financial Markets Conduct Act 2013

Reminder notice No: Date of notice:

Enforcement authority

Infringement notice issued by the Financial Markets Authority

Address for correspondence and queries:

This notice is to remind you that an infringement notice has been issued to you. The details of the notice are as follows:

Infringement notice served on—

Full name:

Full address:

Date of birth*:

Occupation*:

Gender*:

Telephone number*:

*These particulars must be specified only if known. The particulars for date of birth, occupation, and gender are not required if the notice is served on a company or other body corporate.

Alleged infringement offence detailsThe offence is one against section [*specify*] of the Financial Markets Conduct Act 2013.

Date: Time:

Place:

Nature of alleged infringement:

The infringement fee payable is:

The amount of the infringement fee remaining unpaid:

Service details

(To be provided for filing in court)

Infringement notice served by [*method of service*] on [*date*].

Reminder notice served by *[method of service]* at *[full address of service]* on *[date]*.

Payment of infringement fee

The infringement fee was payable to the Financial Markets Authority within 28 days after *[date infringement notice was delivered personally or sent by post]*. The infringement fee remains payable to the Financial Markets Authority at *[address]*.

The last day for payment of the infringement fee is *[date]*, being 28 days after the date of service of this notice. The payment may be made by *[specify method(s)]*.

Important: Please read the summary below—if you do not understand it, you should consult a lawyer immediately.

Summary of rights

- 1 You have not paid the infringement fee described on the front page, or asked for a hearing, within 28 days after you were served with the infringement notice. That is why you have been served with this reminder notice.

Payments

- 2 If you pay the infringement fee for an alleged infringement offence within 28 days after you are served with this notice, no further enforcement action will be taken for that offence. Payments should be made to the Financial Markets Authority at the address for payment specified in this notice.
If, under section 21(3A) or (3C)(a) of the Summary Proceedings Act 1957, you enter or have entered into a time-to-pay arrangement with the Financial Markets Authority in respect of an infringement fee payable by you, paragraphs 4(b), 4(c), 5, 6, and 7 below do not apply, and you are not entitled either to request a hearing to deny liability or to ask the court to consider any submissions (as to penalty or otherwise) in respect of the infringement.

Defence

- 3 You have a complete defence against proceedings for an alleged infringement offence if the infringement fee has been

paid to the Financial Markets Authority, at the address for payment specified in this notice, before or within 28 days after a reminder notice in respect of the alleged offence is served on you. Late payment or payment made to any other address will not constitute a defence.

Further action

- 4 You should write to the Financial Markets Authority at the address for correspondence shown on the front page of this notice if you wish to—
- (a) raise any matter relating to the circumstances of an alleged offence for consideration by the Financial Markets Authority; or
 - (b) deny liability for the alleged offence and request a court hearing; or
 - (c) admit liability for the alleged offence, but wish to have a court consider written submissions as to penalty or otherwise.
- The letter should be signed.
- 5 You have a right to request a hearing. If you deny liability for the alleged offence and request a hearing, the Financial Markets Authority will serve you with a notice of hearing that sets out the place and time at which the matter will be heard by the court (unless the Financial Markets Authority decides not to start court proceedings).
- Note:** If the court finds you guilty of the offence, costs will be imposed in addition to any penalty.
- 6 A request for a hearing must—
- (a) be in writing and signed by you; and
 - (b) be delivered to the Financial Markets Authority at the address for correspondence shown on the front page of this notice; and
 - (c) be delivered within 28 days after you are served with this notice.
- 7 If you admit liability for the alleged offence but want the court to consider your submissions as to penalty or otherwise, you should, in your letter to the Financial Markets Authority,—
- (a) request a hearing; and
 - (b) admit liability for the offence; and

- (c) set out the written submissions you wish to be considered by the court.

The Financial Markets Authority will then file your letter with the court (unless the Financial Markets Authority decides not to start court proceedings). There is no provision for an oral hearing before the court if you follow this course of action.

Note: Costs will be imposed in addition to any penalty.

- 8 If you do not pay the infringement fee and do not request a hearing in respect of the alleged offence within 28 days after being served with this reminder notice, you will become liable to pay costs in addition to a fine (if the Financial Markets Authority decides to start court proceedings against you). The fine will be equal to the amount of the infringement fee or the amount of the infringement fee remaining unpaid.

- 9 When writing or making payment of an infringement fee, please indicate—

- (a) the date of the alleged infringement offence; and
(b) the number of this reminder notice; and
(c) your full name and address for replies.

Note: All queries and correspondence regarding the infringement offence must be directed to the Financial Markets Authority at the address shown on the front page of this notice.

Further details of your rights and obligations are set out in section 21 of the Summary Proceedings Act 1957.

Schedule 5

rr 4, 53

Transitional provisions**1 Employee share purchase schemes and small offer exclusion calculations take into account offers under former law**

Clauses 8(3)(a) and 14(1)(a) of Schedule 1 of the Act must be treated as including references to—

- (a) an offer of securities to the public in New Zealand for which, under the Securities Act 1978 or an exemption granted under that Act, no registered prospectus is required;
- (b) an offer of securities that, under an exclusion in section 3(2) of the Securities Act 1978, is not an offer of securities to the public in New Zealand.

2 Exclusion for quoted financial products includes equivalent references under former law

In clause 19(1) of Schedule 1 of the Act, references to quoted, a licensed market, market rules, or continuous disclosure provisions must be treated as including references to listed, a registered market, market rules, or continuous disclosure provisions respectively within the meaning of the Securities Markets Act 1988.

3 FMA order power includes equivalent reference under former law

In section 474(1)(a) of the Act, the reference to a continuous disclosure obligation must be treated as including a reference to a continuous disclosure obligation within the meaning of the Securities Markets Act 1988.

4 Definitions of client money, etc, apply for purposes of Financial Advisers Act 2008 amendments

The definitions of client money, client property, and custodial service to be inserted into the Financial Advisers Act 2008 by section 12(2) of the Financial Markets (Repeals and Amendments) Act 2013 must be treated as having been inserted into section 5 of the Financial Advisers Act 2008 for the purposes

of the amendments to that Act that come into force on 1 April 2014.

5 Definition of involved in a contravention applies for purposes of Financial Markets Authority Act 2011 amendments

The definition of involved in a contravention to be inserted into the Financial Markets Authority Act 2011 by section 63(2) of the Financial Markets (Repeals and Amendments) Act 2013 must be treated as having been inserted into section 4 of the Financial Markets Authority Act 2011 for the purposes of the amendments to that Act that come into force on 1 April 2014.

6 Financial Markets Conduct Act 2013 is financial markets legislation

Part 1 of Schedule 1 of the Financial Markets Authority Act 2011 must be treated as including a reference to the Financial Markets Conduct Act 2013.

7 Licensed market service is financial service under Financial Service Providers (Registration and Dispute Resolution) Act 2008

Section 5 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008 must be treated as including a reference to a licensed market service as defined in section 6(1) of the Act for the purposes of the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (other than subpart 1 of Part 2 and section 48).

Michael Webster,
for 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 April 2014, prescribe various matters as part of the first implementation stage of the Financial Markets Conduct Act 2013 (the **FMCA**).

In summary, these regulations prescribe matters relating to—

- Part 2 of the FMCA (fair dealing). In particular, the service of providing credit under a credit contract is declared not to be a financial service for the purposes of that Part. Instead, misleading and deceptive conduct relating to that service is regulated by the Commerce Commission under the Fair Trading Act 1986:
- Part 6 of the FMCA (licensing and other regulation of market services). This will enable the Financial Markets Authority (the **FMA**) to commence licensing various market participants (although licensing is not yet mandatory). The matters include—
 - prescribing exemptions from the licensing requirement for discretionary investment management services:
 - prescribing crowd funding services and peer-to-peer lending services as prescribed intermediary services and prescribing additional licensing criteria for those services. This is relevant to the disclosure exclusion in clause 6 of Schedule 1 of the FMCA (exclusion for offers of financial products through licensed intermediaries):
 - prescribing conditions for various market service licence holders, including a general condition to report various matters to the FMA:
 - prescribing additional conditions that the FMA may impose on a licence, including a condition about professional indemnity insurance:
 - applying client agreement requirements in subpart 5 of Part 6 of the FMCA to crowd funding services and peer-to-peer lending services and prescribing implied terms and other matters relating to these agreements:

- prescribing service disclosure statement requirements for crowd funding services and peer-to-peer lending services:
- Part 8 of the FMCA (enforcement). This includes prescribing infringement fees for various infringement offences that apply in the first implementation stage and forms for infringement notices and reminder notices:
- transitional matters. Clause 59 of Schedule 4 of the FMCA provides for an additional Securities Act 1978 exemption based on the FMCA disclosure exclusions that are prescribed by these regulations for the purposes of clause 59. To this end,—
 - *regulation 12* prescribes the exclusions in the following clauses of Schedule 1 of the FMCA: clause 6 (prescribed intermediary services), clause 8 (employee share purchase schemes), clause 9 (persons under control), clause 10 (dividend reinvestment plans), clause 12 (small offers), clause 15 (transfer of controlling interest), clause 19 (quoted financial products), and clause 21 (registered banks for particular types of products only):
 - various disclosure and other requirements are prescribed in *Schedule 1* of these regulations for the purposes of clause 26 of Schedule 1 of the FMCA.

It is anticipated that, as part of the second implementation stage, the rest of the substantive parts of the FMCA will come into force on 1 December 2014 (*see* the Financial Markets Legislation (Phase 1) Commencement Order 2014). It is also anticipated that these regulations will be replaced at that stage with a full set of regulations for the purposes of the FMCA.

Some disclosure and other requirements for providers of discretionary investment management services and derivatives issuers are not set out in these regulations because such persons will not be operating under market services licences until the second implementation stage.

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*: 27 February 2014.

Reprints notes

1 *General*

This is a reprint of the Financial Markets Conduct (Phase 1) Regulations 2014 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 Markets Conduct Regulations 2014 (LI 2014/326): regulation 281
