



# Financial Markets Legislation (Phase 1) Commencement Order 2014

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 section 2 of the Financial Markets Conduct Act 2013 and section 2 of the Financial Markets (Repeals and Amendments) Act 2013, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following order.

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## Order

### 1 Title

This order is the Financial Markets Legislation (Phase 1) Commencement Order 2014.

### 2 Commencement of specified provisions of Financial Markets Conduct Act 2013 for phase 1 implementation stage

- (1) The following provisions of the Financial Markets Conduct Act 2013 come into force on 1 April 2014:
  - (a) Part 1 (preliminary provisions):
  - (b) Part 2 (fair dealing), other than—
    - (i) sections 23 to 27 (which relate to unsubstantiated representations):
    - (ii) sections 34 to 37 (which relate to offers in the course of unsolicited meetings):
  - (c) those provisions of Part 6 (licensing and other regulation of market services) that are not already in force on 1 April 2014, other than—
    - (i) sections 388 and 389 (which relate to when a provider of market services needs to be licensed and exemptions):
    - (ii) section 422(a) (which relates to the application of subpart 4 to the provision of discretionary investment management services):
    - (iii) section 429(a) and (b) (which relate to the application of subpart 5 to the provision of discretionary investment management services and derivatives issuers):
    - (iv) subpart 6 (additional regulation of discretionary investment management services):
  - (d) Part 7 (financial reporting) (as replaced by section 48 of the Financial Reporting (Amendments to Other Enactments) Act 2013):
  - (e) Part 8 (enforcement, liability, and appeals), other than—
    - (i) sections 470 to 473 (which relate to various FMA orders):

- (ii) sections 510 and 511 (which relate to offences for defective disclosure):
- (f) section 597 (transitional provisions) (but only for the purpose of the provisions of Schedule 4 that are coming into force under paragraph (h)):
- (g) the following provisions of Schedule 1 (provisions relating to exclusions):
  - (i) clause 1 (overview of Part):
  - (ii) clause 2 (Part subject to FMA's power to require disclosure):
  - (iii) clause 6 (offers of financial products through licensed intermediaries):
  - (iv) clause 8 (offers under employee share purchase schemes):
  - (v) clause 9 (offers to persons under control do not need disclosure):
  - (vi) clause 10 (offers of financial products under dividend reinvestment plans):
  - (vii) clauses 12 to 14 (which relate to small offers):
  - (viii) clause 15 (offers of controlling interest where 5 or fewer investors):
  - (ix) clause 19 (exclusion for offers of financial products of same class as quoted financial products):
  - (x) clause 21 (offers of category 2 products or debt securities by registered banks), other than paragraph (b):
  - (xi) clauses 25 to 29 (which relate to limited disclosure and other requirements) (including clause 27A as inserted by section 60 of the Financial Reporting (Amendments to Other Enactments) Act 2013):
  - (xii) clauses 48 and 49 (control and other definitions for schedule):
- (h) the following provisions of Schedule 4 (transitional provisions):
  - (i) clause 1 (overview):
  - (ii) clause 2 (transitional provisions subject to transitional regulations and exemptions):
  - (iii) clause 3 (interpretation):

- (iv) clauses 13(2) and (3) and 14 (which relate to fair dealing):
  - (v) clause 51 (section 10A of Auditor Regulation Act 2011 also applies to exemptions granted under Securities Act 1978):
  - (vi) clause 58 (exclusions for employee share purchase schemes and small offers can take into account offers under former law):
  - (vii) clause 59 (additional Securities Act 1978 exemption).
- (2) Sections 23 to 27 of the Financial Markets Conduct Act 2013 come into force on 17 June 2014.

### **3 Commencement of specified provisions of Financial Markets (Repeals and Amendments) Act 2013 for phase 1 implementation stage**

The following provisions of the Financial Markets (Repeals and Amendments) Act 2013 come into force on 1 April 2014:

- (a) sections 6 to 9 (amendments to the Fair Trading Act 1986):
- (b) sections 10, 11, 13, 35, 37 to 39, 41, 42(1) to (3), 43 to 47, 49, 52, 53, 58, and 61(2) to (10) (various amendments to the Financial Advisers Act 2008):
- (c) section 42(4), other than as far as it relates to new subsection (1A):
- (d) sections 62, 64, 65, 66(1), 67 to 69, 70(1), (4), and (6), and 71 (various amendments to the Financial Markets Authority Act 2011):
- (e) section 150 (amendments to other enactments) (but only for the purpose of the items that are coming into force under paragraph (f)):
- (f) the following items in the Schedule (consequential amendments):
  - (i) the item relating to the definition of issuer audit in the item relating to the Auditor Regulation Act 2011:
  - (ii) the item relating to new section 10A in the item relating to the Auditor Regulation Act 2011:

- (iii) the items relating to section 383 in the item relating to the Companies Act 1993, other than the items relating to section 383(1)(c)(i) and (4A):
- (iv) the item relating to section 385(3) in the item relating to the Companies Act 1993:
- (v) the item relating to section 5(ab) in the item relating to the Financial Service Providers (Registration and Dispute Resolution) Act 2008:
- (vi) the item relating to section 8A in the item relating to the Financial Service Providers (Registration and Dispute Resolution) Act 2008:
- (vii) the second item relating to Schedule 2 in the item relating to the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (relating to persons who hold, or are authorised bodies under, a market services licence):
- (viii) the item relating to the definition of infringement notice in the item relating to the Summary Proceedings Act 1957:
- (ix) the items relating to section 44G in the item relating to the Takeovers Act 1993.

Michael Webster,  
for Clerk of the Executive Council.

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### Explanatory note

*This note is not part of the order, but is intended to indicate its general effect.*

This order brings into force various provisions of the Financial Markets Conduct Act 2013 (the **FMCA**) and the Financial Markets (Repeals and Amendments) Act 2013 (the **FMRAA**) on 1 April 2014 as part of the first implementation stage of that legislation.

It is anticipated that, as part of the second implementation stage, the rest of the substantive parts of the FMCA and the FMRAA will come into force on 1 December 2014.

In summary, the following provisions come into force on 1 April 2014:

- Part 1 of the FMCA (preliminary provisions):
- Part 2 of the FMCA (fair dealing), other than the provisions that relate to unsubstantiated representations and offers in the course of unsolicited meetings. The unsubstantiated representations provisions will come into force on 17 June 2014 to coincide with the commencement of similar provisions in the Fair Trading Act 1986 (which were inserted by the Fair Trading Amendment Act 2013). The associated amendments to the Fair Trading Act 1986 in the FMRAA also come into force on 1 April 2014:
- most of Part 6 of the FMCA (licensing and other regulation of market services). The provisions that will not come into force on 1 April 2014 include the requirement for various market service providers to hold a licence and provisions relating to the regulation of discretionary investment management services. The commencement of various provisions of Part 6 on 1 April 2014 will allow the Financial Markets Authority to receive and consider applications for licences and to grant licences before the main substantive provisions come into force in the second implementation stage. In addition, the exclusion for offers through crowd funding services and peer-to-peer lending services (which will apply from 1 April 2014 under transitional arrangements) will require the providers of these prescribed intermediary services to hold a licence under these provisions:
- Part 7 of the FMCA (financial reporting). The Part 7 that comes into force on 1 April 2014 is inserted into the FMCA by the Financial Reporting (Amendments to Other Enactments) Act 2013. *See* sections 55 and 56 of the Financial Reporting Act 2013 for transitional arrangements:
- most of the provisions of Part 8 of the FMCA (enforcement, liability, and appeals). These provisions will come into force to allow for the enforcement of the substantive provisions of the FMCA that come into force on 1 April 2014:
- various exclusions in Schedule 1 of the FMCA and clause 59 of Schedule 4 of that Act (and various associated transitional

provisions). Clause 59 provides for an additional Securities Act 1978 exemption based on these exclusions in Schedule 1 that will come into force on 1 April 2014. The exemption is to the effect that nothing in Part 2 of the Securities Act 1978 applies in respect of a financial product if the offer of the product would not require disclosure under the FMCA as a result of these exclusions:

- various amendments to the Financial Advisers Act 2008 in the FMRAA relating to custodian obligations and regulation-making powers;
- various amendments to the Financial Markets Authority Act 2011 in the FMRAA, including provisions relating to undertakings and the Financial Markets Authority's functions;
- various amendments to the Companies Act 1993 and the Takeovers Act 1993 in the FMRAA that relate to court banning orders (allowing those orders to be permanent or to apply for any period specified in the order).

*See* also the Financial Reporting Legislation Commencement Order 2014. This order brings into force on 1 April 2014 most of the provisions of the Financial Reporting Act 2013 and the Financial Reporting (Amendments to Other Enactments) Act 2013 (including amendments to the FMCA).

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Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 27 February 2014.

This order is administered by the Ministry of Business, Innovation, and Employment.

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