



Financial Advisers Act Commencement Order 2010

Anand Satyanand, Governor-General

Order in Council

At Wellington this 9th day of August 2010

Present:

His Excellency the Governor-General in Council

Pursuant to section 2 of the Financial Advisers Act 2008, 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 Advisers Act Commencement Order 2010.

2 Commencement of specified provisions for August 2010 implementation stage

- (1) The following sections of the Financial Advisers Act 2008 come into force on 16 August 2010:
 - (a) section 16 (types of financial adviser):
 - (b) sections 20D to 20F (persons acting in course of business of employers and principals):
 - (c) Part 3 (authorised financial advisers and qualifying financial entities), other than—
 - (i) sections 59 to 62 (Commission's powers in relation to default by authorised financial advisers):
 - (ii) sections 75D to 77 (Commission's powers in relation to default by, and obligations of, QFEs and members of QFE groups):
 - (d) sections 77A to 77C (who is broker and what is broking service):
 - (e) sections 103 to 113 (disciplinary committee):
 - (f) section 136 (offence of false declaration, etc, in support of application for authorisation or grant of QFE status):
 - (g) sections 137K and 137L (pecuniary and compensatory orders for contravening wholesale certification requirement):
 - (h) those provisions of Part 5 that are not already in force on 16 August 2010, other than—
 - (i) section 161 (review of Act):
 - (ii) sections 164 to 166 (other legislation amended):
 - (iii) section 167 (transitional provision).
- (2) *See* the Financial Service Providers and Financial Advisers Transitional Regulations 2010 for transitional provisions affecting sections 20D, 55, and 67 to 68.

3 Commencement of specified provisions for December 2010 implementation stage

The following sections of the Financial Advisers Act 2008 come into force on 1 December 2010:

- (a) sections 20A and 20C (who may hold themselves out as authorised financial advisers or as QFEs):
- (b) sections 32 to 35, 37, 45 to 49 (specified conduct obligations for financial advisers and QFEs, and related Commission powers):
- (c) sections 59 to 62 (Commission's powers in relation to default by authorised financial advisers):
- (d) sections 75D to 77 (Commission's powers in relation to default by, and obligations of, QFEs and members of QFE groups):
- (e) sections 77J to 77M and sections 77P to 77V (specified conduct obligations for brokers and related Commission powers):
- (f) sections 96 to 102 (complaints about authorised financial advisers):
- (g) those sections of subpart 3 of Part 4 (offences) that are not already in force on 1 December 2010, other than—
 - (i) section 114 (offence of providing financial adviser service without being permitted to do so):
 - (ii) section 117 (failure to make disclosure under or in accordance with disclosure obligation):
 - (iii) section 120 (offence of contravening restrictions on use of term sharebroker):
 - (iv) section 121 (offence of recommending offer of securities when subscription illegal):
 - (v) section 134B (offence of receiving client money if offer for subscription illegal):
- (h) those sections of subpart 4 of Part 4 (injunctions and other remedies) that are not already in force on 1 December 2010, other than—
 - (i) sections 137C to 137E (banning orders):
 - (ii) sections 137M to 137S (Commission's banning orders).

4 Commencement of remaining provisions for July 2011 implementation stage

The remaining sections of the Financial Advisers Act 2008 that are not already in force on 1 July 2011 come into force on that date.

5 Non-application of order to redundant provisions

This order does not apply to sections 116 and 161A of the Financial Advisers Act 2008.

Rebecca Kitteridge,
Clerk of the Executive Council.

Explanatory note

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

This order brings into force, in specified stages, the provisions of the Financial Advisers Act 2008 (**FAA**) that are not already in force.

The transitional scheme for financial advisers under this order, when taken together with the Financial Service Providers (Registration and Dispute Resolution) Act Commencement Order 2010 and the Financial Service Providers and Financial Advisers Transitional Regulations 2010 (the **Transitional Regulations**), is as follows:

- (a) on and from 16 August 2010—
 - (i) the register opens under the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (the **FSP Act**) and persons may register under that Act, but are not required to do so:
 - (ii) applications for approval as an authorised financial adviser or for QFE status may be made, and decided on, under the FAA. However, no period of authorisation or grant of QFE status can commence before 1 December 2010 (*see* regulation 4 of the Transitional Regulations):
 - (iii) the disciplinary committee may be established under the FAA:

- (iv) all interpretative and other provisions of the FAA relevant to this preliminary implementation stage come into force (including the offence relating to the applications to the Commission and court powers for contraventions of the wholesale certification requirements). However, no conduct obligations for financial advisers, brokers, QFEs, or members of QFE groups come into force at this stage:
- (b) on and from 1 December 2010,—
 - (i) it becomes mandatory for providers of financial services (other than financial adviser services) to be registered under the FSP Act:
 - (ii) the holding-out protections for the terms of authorised financial advisers and QFEs come into force (because periods of authorisation and periods of grants of QFE status may commence from this time):
 - (iii) most of the conduct obligations under the FAA for financial advisers, brokers, QFEs, and members of QFE groups, and the related enforcement provisions, come into force:
- (c) on and from 1 April 2011, it becomes mandatory for financial advisers to be registered under the FSP Act. Accordingly, any person seeking to rely on a grant of QFE status to avoid the need to register its employees and nominated representatives must have that status granted by this date. At this time, the FSP Act is fully in force:
- (d) on 1 July 2011, all remaining provisions of the FAA come into force. In particular,—
 - (i) the restrictions on who is permitted to provide financial adviser services (sections 17 to 20 of the FAA) and the prohibition on holding out as a financial planner or investment planner (section 20B of the FAA) come into force:
 - (ii) the disclosure obligations for financial advisers and brokers replace those set out in the Securities Markets Act 1988 for investment advisers and brokers.

This order does not apply to sections 116 and 161A of the FAA on the basis that these provisions are redundant because they relate to provisions that have been repealed and have no operative effect.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 12 August 2010.
This order is administered by the Ministry of Economic Development.
