



Financial Service Providers and Financial Advisers Transitional Regulations 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 154(1)(r) and (s) of the Financial Advisers Act 2008, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council and on the recommendation of the Minister of Commerce made after consultation with the Securities Commission and in accordance with section 154(6) of that Act, makes the following regulations.

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Regulations

1 Title

These regulations are the Financial Service Providers and Financial Advisers Transitional Regulations 2010.

2 Commencement

These regulations come into force on 16 August 2010.

3 Interpretation

In these regulations, unless the context requires otherwise, **FAA** means the Financial Advisers Act 2008.

4 Periods of authorisation and grant of QFE status not to commence before 1 December 2010

- (1) The Commission must not specify—
 - (a) a period of authorisation under section 55 of the FAA that commences before 1 December 2010; or
 - (b) a period for which QFE status is granted under sections 67 to 68 of the FAA that commences before 1 December 2010.
- (2) This regulation expires on 1 December 2010.

5 Transitional application of section 20D of FAA

- (1) During the period on and from 16 August 2010 until the commencement of sections 17 to 20 of the FAA, section 20D of the FAA must be applied as if sections 17 to 20 of the FAA were in force.
- (2) This regulation expires on 1 July 2011.

Rebecca Kitteridge,
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 16 August 2010, do the following 2 things to enable the orderly implementation of the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (the **FSP Act**) and the Financial Advisers Act 2008 (the **FAA**):

- provide that a period of authorisation of a financial adviser or a period of grant of QFE status under the FAA must not commence before 1 December 2010 (on which date the key related provisions under the FAA come into force). Under the FAA, persons may apply to be authorised financial advisers or for a grant of QFE status and those applications may be processed and decided on. However, this regulation ensures that authorisations and grants of QFE status do not take effect in this implementation period:
- provide that section 20D of the FAA must be read as if sections 17 to 20 of that Act were in force. Sections 17 to 20 of the FAA, in effect, require persons who provide financial adviser services to be registered under the FSP Act (even if they are only employees or agents and do not carry on the business). Section 20D of the FAA ensures that the FSP Act can apply to all these financial advisers. However, because these persons will seek to be registered before being required to do so, this regulation is needed to ensure section 20D is technically effective in the implementation period.

The transitional scheme for financial service providers and financial advisers under these regulations, when taken together with the Financial Service Providers (Registration and Dispute Resolution) Act Commencement Order 2010 and the Financial Advisers Act Commencement Order 2010, is as follows:

- (a) on and from 16 August 2010—
 - (i) the register opens under 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*):
- (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.

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These regulations are administered by the Ministry of Economic Development.
