

Financial Service Providers (Pre-Implementation Adjustments) Bill

Government Bill

Explanatory note

General policy statement

The intention of this Bill is to make amendments to the Financial Advisers Act 2008 and to the Financial Service Providers (Registration and Dispute Resolution) Act 2008 to ensure that those Acts can be implemented effectively and consistently within existing policy frameworks.

Clause by clause analysis

Clause 1 is the Title clause. The Bill is an omnibus Bill in terms of SO 259(a). It is intended that the Bill will be divided into 2 separate Bills at the committee of the whole House stage.

Clause 2 relates to commencement. The Bill comes into force on the day after the Bill receives the Royal assent. The consequential amendments in the *Schedule* will take effect when Part 4 of the Securities Markets Act 1988 is repealed.

Part 1

Amendments to Financial Advisers Act 2008

Clause 3 clarifies that where any provision of the Financial Advisers Act 2009 (the **principal Act**) is amended or enacted by this Part, the provision, as amended or enacted, comes into force in accordance with section 2 of the principal Act, namely by Order in Council.

Clause 4 states that *Part 1* amends the principal Act.

Clause 5 states the purpose of the Part, which is to prepare for the effective and efficient implementation of the principal Act by making a number of necessary and desirable amendments.

Clause 6 relates to interpretation. New definitions of bonus bonds, call building society shares, call debt securities, and term life insurance policy are inserted or substituted. These products are included in the new definition of category 2 product, which is a low-risk type of investment product for which the requirements of the principal Act are less stringent. The clause also inserts definitions of promoter, insurance product, and nominated representative. The definition of promoter is the same as that in the Securities Act 1978. The definition of insurance product clarifies that an insurance product, which is included in category 2 products, does not include life insurance policies other than term life policies. The definition of nominated representative is the most significant. A nominated representative is an individual who is formally nominated by a qualifying financial entity (a **QFE**) in accordance with *new section 68A* to perform financial adviser services in respect of that QFE.

Clause 7 amends section 9 of the principal Act, which sets out the permitted types of financial adviser, to replace a reference to agent with a reference to nominated representative.

Clause 8 amends section 12 of the principal Act, which provides that activities performed by certain classes of person do not amount to financial adviser services. The amendment clarifies that exemptions that apply to activities undertaken by companies or organisations also apply if they are undertaken by employees of those companies or organisations. In relation to activities taking place between related companies, the amendment clarifies that the exemption operates only if those services are provided solely for related companies. The amendment also confers a new exemption for advice that forms

part of, or is connected with, ratings given by rating agencies that have been approved under the Reserve Bank of New Zealand Act 1989 or under insurance legislation.

Clause 9 amends section 13 of the principal Act, which excludes from the meaning of financial advice material contained in a list of documents produced under certain enactments. The amendment adds to that list annual reports of companies, notices of meetings of shareholders, statements prepared for general meetings of entities that issue securities, statements prepared for a registered exchange in accordance with listing requirements, as well as the records that companies are required to keep for public inspection.

Clause 10 replaces sections 17 to 19 of the principal Act. Section 17 relates to the ability of employees and agents of QFEs to give certain financial advice and to make certain investment transactions. *New section 17* makes 3 changes. First, it replaces the term agent with nominated representative, as defined in section 5. Secondly, it places nominated representatives in the same position as employees in respect of financial advice and investment transactions that may be undertaken. Thirdly, it permits employees and nominated representatives to undertake investment transactions not only in respect of category 1 products issued by the relevant QFE (as currently provided), but also in respect of category 1 products that the QFE promotes.

Section 18 of the principal Act requires employers and principals of financial advisers to be registered. *New section 18* refers expressly to nominated representatives of QFEs and requires QFEs to be registered and to maintain their QFE status while a nomination of a nominated representative is in effect. The new section also removes the existing condition that the employee or agent perform the financial adviser services for the clients of the employer or principal, and provides that the requirements do not apply to financial services provided exclusively for the employer or principals (other than QFEs).

Section 19 of the principal Act exempts employees from having to belong to an approved dispute resolution scheme if their employer is a member. *New section 19* extends the exemption to nominated representatives. It is made clear that the exemption operates only so far as financial advisers perform their services in their capacity as employees or nominated representatives.

Clause 11 amends section 26 of the principal Act, which relates to the disclosure requirements by QFEs. The existing section makes a distinction between employees and agents of QFEs. Currently, agents may perform financial adviser services only in relation to category 2 products, while employees may also provide such services in relation to category 1 products issued by their employing QFE. The amendment places nominated representatives in the same position as employees and also authorises both to provide financial adviser services in relation to category 1 products promoted by the QFE.

Clause 12 amends section 36 of the principal Act, which restricts the use of the term sharebroker in advertisements promoting persons as financial advisers or promoting financial adviser services. The amendment extends the prohibition to advertising or promotional material generally, but permits the use of that term by employees of a firm that is a member of a registered exchange.

Clause 13 amends section 47 of the principal Act, which prohibits QFEs from engaging in misleading or deceptive conduct in relation to financial adviser services performed by employees or agents. The amendment replaces references to agents with references to nominated representatives.

Clause 14 amends section 65, which deals with applications for QFE status. The section is amended by requiring applicants to state the names of any individuals that the entity proposes to nominate as its nominated representatives.

Clause 15 inserts *new section 68A* into the principal Act. The new section provides for the nomination of individuals as nominated representatives by QFEs. The QFE must do this by following the method prescribed in its grant of QFE status or, if no method is prescribed, by recording the nomination in a written instrument with the required content.

Clause 16 replaces section 75 of the principal Act, which exempts employees and agents of QFEs from liability for contravening a financial adviser obligation. The replacement section substitutes references to nominated representatives for references to agents and also takes account of the new authority of employees and nominated representatives to provide financial adviser services in relation to category 1 products promoted by their QFEs.

Clause 17 amends section 76 of the principal Act, which relates to a QFE's ongoing compliance obligations. The amendment requires QFEs to provide the Securities Commission with an up-to-date list of the names of the QFEs' nominated representatives, as required by the terms and conditions in the grant of QFE status and when reasonably required by the Securities Commission. The amendment also replaces references to agents with references to nominated representatives.

Clause 18 amends section 77 to replace references to agent with references to nominated representative.

Clause 19 amends section 86 of the principal Act, which relates to the content of the code of professional conduct. The amendment enables new standards to be phased in during transitional periods.

Clause 20 replaces section 94 of the principal Act, which relates to the commencement of codes of professional conduct. The effect of the replacement is to allow different provisions to be brought into force on different dates.

Clause 21 replaces section 98 of the principal Act, which relates to references of complaints about authorised financial advisers to the disciplinary committee. The replacement section clarifies that complaints need to be referred to the disciplinary committee only if the Securities Commission has first investigated the complaint.

Clause 22 amends section 114 of the principal Act, which relates to offending constituted by performing financial adviser services without being registered. The amendment replaces a reference to agent with a reference to a nominated representative. The amendment also simplifies a defence given by the section, which currently allows defendants charged with the offence to prove that the financial adviser service was performed by the defendant's employee or agent and that the employee or agent was registered. The amended defence simply focuses on whether the act in question was performed by a registered financial adviser, regardless of that adviser's status as employee or agent.

Clause 23 amends section 115 of the principal Act, which relates to offending constituted by performing financial adviser services without being authorised. The amendment replaces a reference to agent with a reference to nominated representative. The amendment also simplifies the defence given by the section, which currently allows

defendants charged with the offence to prove that the financial adviser service was performed by the defendant's employee or agent and that the employee or agent was authorised. The amended defence simply focuses on whether the act in question was performed by an authorised financial adviser, regardless of that adviser's status as employee or agent.

Clause 24 replaces section 116 of the principal Act, which relates to offences arising out of employers or principals failing to maintain registration. The replacement updates references in the section to the *new section 18* and also corrects a referential error in the existing section to ensure that employers are subject to a higher penalty, and employees to a lower penalty.

Clauses 25 and 26 amend sections 130 and 131 of the principal Act respectively to replace references to agent with references to nominated representative.

Clause 27 relocates a cross-heading.

Clause 28 repeals a provision in section 154, which allows regulations to be made that define the meaning of call debt security. The repeal is consequential on the new definition of that term in *clause 6*, which no longer contemplates modifications of the definition by regulation.

Clause 29 adds *new sections 168 and 169*, which are transitional provisions. The transitional provision in *new section 168* relates to section 54 of the principal Act, which requires the Securities Commission to inquire into possible convictions of applicants. In the transitional period, the Securities Commission may authorise applicants without inquiring into their convictions. However, such an authorisation ceases to have effect if, in that transitional period, the Commission notifies the applicant that he or she is ineligible because of convictions that have subsequently come to light. The transitional provision in *new section 169* relates to applications for QFE status made in the transitional period. Entities that apply for QFE status in that period will not have to provide the Securities Commission with their intended nominated representatives. Instead, they will have to give the Securities Commission a list of their nominated representatives as at the end of the transitional period.

Clause 30 removes references from enactments to Part 4 of the Securities Markets Act 1988, which will be repealed by the principal Act.

Part 2 Amendments to Financial Service Providers (Registration and Dispute Resolution) Act 2008

Clause 31 clarifies that where any provision of the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (the **principal Act**) that is not yet in force is amended or enacted by this Part, the provision, as amended or enacted, comes into force in accordance with section 2 of the principal Act, namely by Order in Council.

Clause 32 states that *Part 2* amends the principal Act.

Clause 33 states the purpose of the Part, which is to prepare for the effective and efficient implementation of the principal Act by making a number of necessary and desirable amendments.

Clause 34 amends the definition of person by omitting references to superannuation schemes.

Clause 35 amends section 7 of the principal Act, which sets out a list of people who are not financial service providers. The clause adds 2 further categories to that list. First, a person is not a financial service provider if the person is a nominated representative and acts in that capacity in accordance with the Financial Advisers Act 2008. The second exempted group are employers, so far as they provide services for their employees to enable them to join certain superannuation or KiwiSaver schemes in which the employers participate for the benefit of their employees. The amendment also recasts the existing exemption for financial services between related companies by clarifying that the services may be provided by employees of the companies and that, for the exemption to apply, the services must be provided to no one other than to related companies.

Clause 36 amends section 14 of the principal Act, which disqualifies persons from registration as financial service providers. The amendment adds a new disqualification that bars persons that have no intention of providing financial services in New Zealand.

Clause 37 amends section 29, which sets out the circumstances when the Registrar may amend the register. The amendment clarifies that

the Registrar must do this when circumstances specified in regulations arise.

Clause 38 replaces section 46 of the principal Act, which deals with the territorial scope of the Act. The new section brings 2 new classes of person within the ambit of the Act, in addition to the existing class of financial service providers in New Zealand. The new classes are licensed providers, namely those providers identified in Schedule 2 of the principal Act, and persons who are required to be registered by the Financial Advisers Act 2008. The principal Act will apply to those new classes of person, even when they are outside New Zealand.

Clause 39 makes a technical amendment to Schedule 2 of the principal Act, which lists the types of licensed providers. The amendment removes registered superannuation schemes and registered Kiwi-Saver schemes because they are not the actual providers.

Regulatory impact statement

A regulatory impact statement was not required for this Bill as the proposals are minor and machinery in nature.

Hon Simon Power

**Financial Service Providers
(Pre-Implementation Adjustments)
Bill**

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The Parliament of New Zealand enacts as follows:

1 Title
This Act is the Financial Service Providers (Pre-Implementation Adjustments) Act **2009**.

- 2 Commencement**
- (1) **Section 30** and the **Schedule** come into force on the commencement of section 164(4) of the Financial Advisers Act 2008. 5
- (2) The rest of this Act comes into force on the day after the date on which it receives the Royal assent.

Part 1 10
**Amendments to Financial Advisers Act
2008**

3 Commencement of provisions of principal Act
To avoid doubt, a provision of the Financial Advisers Act 2008 that is amended or enacted by this **Part** comes into force in accordance with section 2 of that Act. 15

4 Principal Act amended

This **Part** amends the Financial Advisers Act 2008.

5 Purpose

The purpose of this **Part** is to prepare for the effective and efficient implementation of the principal Act by making a number of necessary and desirable amendments to that Act. 5

6 Interpretation

(1) Section 5 is amended by inserting the following definitions in their appropriate alphabetical order:

“**bonus bonds** means a unit in an approved unit trust within the meaning of section 2 of the Finance Act (No 2) 1990 10

“**building society** has the same meaning as in section 2(1) of the Building Societies Act 1965

“**call building society share** means a share issued by a building society under which— 15

“(a) the shareholder has a right to demand repayment of the value of the share in full at any time; and

“(b) the building society has an obligation to repay the value of the share in full not later than 1 working day after the demand is made; and 20

“(c) the rate of dividend or interest payable or any other benefit provided does not alter as a result of the demand being made; and

“(d) no fee or other amount is payable as a result of the principal sum not having been held by the issuer for a particular period of time 25

“**insurance product** does not include a life insurance policy

“**nominated representative** means an individual who has been nominated by a QFE, in accordance with **section 68A**, to perform financial adviser services in respect of the QFE 30

“**promoter** has the same meaning as in section 2(1) of the Securities Act 1978

“**term life insurance policy** means a policy—

“(a) under which an amount (other than an amount not exceeding the sum of the premiums paid to the insurer) is 35

- payable only if during the term of the policy the life insured dies or becomes ill or disabled; and
- “(b) that is for a specified term that is less than the life expectancy of the life insured (measured in accordance with generally accepted actuarial practice) at the time the policy is issued”.
- (2) Section 5 is amended by repealing the definitions of **call debt security**, **category 2 product**, and **life insurance policy** and inserting the following definitions in their appropriate alphabetical order:
- “**call debt security** means a debt security under which—
- “(a) the security holder has a right to demand repayment of the principal sum in full at any time; and
- “(b) the issuer has an obligation to repay the principal sum in full not later than 1 working day after the demand is made; and
- “(c) the rate of interest payable or any other benefit provided does not alter as a result of the demand being made; and
- “(d) no fee or other amount is payable as a result of the principal sum not having been held by the issuer for a particular period of time
- “**category 2 product** means—
- “(a) a bank term deposit; or
- “(b) any bonus bonds; or
- “(c) any call building society shares; or
- “(d) a call debt security; or
- “(e) a consumer credit contract (as defined in section 11 of the Credit Contracts and Consumer Finance Act 2003); or
- “(f) an insurance product, including a term life insurance policy; or
- “(g) a life insurance policy issued before 1 January 2009; or
- “(h) any other product specified by the regulations
- “**life insurance policy**—
- “(a) means a policy other than a term life insurance policy that—
- “(i) is a policy of life or endowment insurance; or
- “(ii) secures an annuity; and
- “(b) includes—

- “(i) a policy of insurance other than a term life insurance policy that is declared by regulations made under the Securities Act 1978 to be a life insurance policy for the purposes of that Act; and
 - “(ii) a renewal or variation of the terms or conditions of any policy described in **paragraph (a)** or **sub-paragraph (i)**”.
- (3) Paragraph (b) of the definition of **trust account** in section 5 is amended by inserting “, nominated representative,” after “employee”.

- 7 Types of financial adviser**
Section 9(c) is amended by omitting “agent” and substituting “nominated representative”.

- 8 When advice or transaction by certain persons is not performing financial adviser service**
- (1) Section 12(l) is amended by inserting “or an employee of a Crown organisation” after “a Crown organisation”.
- (2) Section 12 is amended by repealing paragraph (p) and substituting the following paragraph:
 - “(p) an employer, or an employee of the employer, providing assistance to a person who is an employee of the employer with the implementation of a decision to acquire or dispose of a financial product made available through the person’s workplace unless the assistance includes or is accompanied by a recommendation or opinion as to the suitability of the financial product; or”.
- (3) Section 12 is amended by repealing paragraph (q) and substituting the following paragraph:
 - “(q) a company or an employee of a company—
 - “(i) giving advice, in the course of the company’s business, to no person other than a related company; or
 - “(ii) making an investment transaction, in the course of the company’s business, on behalf of no person other than a related company; or”.

- (4) Section 12(r) is amended by inserting “or an employee of the offeror or target company” after “the offeror or target company”.
- (5) Section 12 is amended by inserting the following paragraph after paragraph (t): 5
- “(ta) a rating agency, or an employee of a rating agency, giving advice as part of, or in connection with, a rating that the agency is to complete or has completed, but only if the agency is approved under section 157J of the Reserve Bank of New Zealand Act 1989 or under section 17 of the Insurance Companies (Ratings and Inspections) Act 1994; or” 10

9 Meaning of financial advice clarified

- (1) Section 13(1) is amended by inserting the following paragraphs after paragraph (c): 15
- “(ca) a statement or report made to, or for the purposes of, a general meeting of the members of an issuer, or a report of the proceedings of such a meeting; or
- “(cb) a statement or report relating to the affairs of an issuer made to any registered exchange for the purposes of compliance with the listing requirements relating to that registered exchange, by or on behalf of that issuer, or any report of such a statement or report; or” 20
- (2) Section 13(1) is amended by inserting the following paragraph after paragraph (e): 25
- “(ea) any of the following documents relating to a company:
- “(i) the company’s annual report:
- “(ii) the company’s records required to be kept under section 215 of the Companies Act 1993:
- “(iii) a notice of a meeting of the shareholders of the company; or” 30

10 New heading and sections 17 to 19 substituted

Sections 17 to 19 and the heading above section 18 are repealed and the following sections and heading substituted:

“17 Individual who is QFE employee or nominated representative

An individual (whether registered or not) who is an employee or a nominated representative of a QFE may, in the course of the QFE’s business, give financial advice or make an investment transaction in relation to— 5

- “(a) a category 2 product; or
- “(b) a category 1 product of which the QFE is the issuer or promoter.

“Provisions relating to employers or principals of financial advisers 10

“18 Employers or principals of financial advisers must be registered

“(1) If a person employs an employee or engages an agent (other than as a nominated representative) to perform 1 or more financial adviser services in the course of the person’s business,— 15

- “(a) the person must maintain registration throughout the time that the employee is so employed or the agent is so engaged; and
- “(b) the employee or the agent must not perform a financial adviser service in the course of the person’s business if the employee or the agent knows or ought to know that the person is not currently registered. 20

“(2) If an entity with QFE status nominates a nominated representative,— 25

- “(a) the entity must maintain its QFE status and its registration throughout the time that the nominated representative is nominated; and
- “(b) the nominated representative must not perform a financial adviser service in the course of the entity’s business if the nominated representative knows or ought to know that the entity no longer has QFE status or is no longer registered. 30

“(3) This section does not apply to financial adviser services performed by an employee or agent (other than as a nominated representative) in the course of the employer’s or principal’s business for— 35

- “(a) the employer and, if the employer is a company, any related company of the employer; or
“(b) the principal and, if the principal is a company, any related company of the principal.
“(4) A person who contravenes this section commits an offence 5
(see **section 116**).
- “**19 Certain employees and nominated representatives exempted from joining approved dispute resolution scheme**
“(1) A financial adviser who is an employee or a nominated representative is not required to be a member of an approved dispute resolution scheme for the purposes of registration under the FSP Act if— 10
“(a) the employer of the financial adviser, or the QFE that nominated the financial adviser as nominated representative, is a member of an approved dispute resolution scheme; and 15
“(b) the financial services that the financial adviser performs are performed—
“(i) in the financial adviser’s capacity as an employee of that employer or as a nominated representative of that QFE; and 20
“(ii) in the course of the business of that employer or, as the case requires, of that QFE.
“(2) This section overrides the FSP Act.” 25
- 11 Disclosure by qualifying financial entity**
Section 26 is amended by repealing subsections (1) and (1A) and substituting the following subsection:
“(1) This section applies if a financial adviser (**A**) who is an employee or a nominated representative of a QFE, but who is not an authorised financial adviser, performs, in the course of the QFE’s business, a financial adviser service (the **financial adviser service**) in relation to— 30
“(a) a category 2 product; or
“(b) a category 1 product of which the QFE is the issuer or promoter.” 35

12 Restriction on use of term sharebroker

Section 36 is amended by repealing subsection (1) and substituting the following subsection:

- “(1) In any advertising or promotional material, the term sharebroker must not be used in connection with a person unless the person, or the person’s employer, is a member of a registered exchange.” 5

13 QFE must not engage in misleading or deceptive conduct in relation to financial adviser service by employee or agent 10

- (1) The heading to section 47 is amended by omitting “agent” and substituting “nominated representative”.
(2) Section 47(1) is amended by omitting “agent” and substituting “nominated representative”.

14 Application for QFE status 15

Section 65 is amended by adding the following subsection as subsection (2):

- “(2) If the entity proposes to nominate 1 or more individuals as nominated representatives, the application must state, or be accompanied by a list that states, the name of each person proposed to be nominated.” 20

15 New section 68A inserted

The following section is inserted after section 68:

“68A Nominated representatives of QFEs

- “(1) In order to nominate an individual as one of its nominated representatives, a QFE must— 25
“(a) comply with the method (if any) prescribed for that purpose in the terms and conditions of its grant of QFE status; or
“(b) if those terms and conditions do not prescribe a method for that purpose, record the nomination in a written instrument that— 30
“(i) nominates the individual as a nominated representative of the QFE; and

- “(ii) is dated and, if the nomination is to take effect on a later date, specifies that later date.
- “(2) The QFE may terminate the nomination by giving written notice to the individual concerned and to the Commission.”
- 16 New section 75 substituted** 5
Section 75 is repealed and the following section substituted:
- “75 Exemption from liability for employee or nominated representative of QFE**
- “(1) This section applies if a financial adviser who is an employee or a nominated representative of a QFE, but who is not an authorised financial adviser, gives financial advice or makes an investment transaction, in the course of the QFE’s business, in relation to— 10
- “(a) a category 2 product; or
- “(b) a category 1 product of which the QFE is the issuer or promoter. 15
- “(2) A financial adviser to whom this section applies is exempt from liability under this Act for contravening a financial adviser obligation.”
- 17 QFE’s ongoing compliance obligations** 20
- (1) Section 76(1) is amended by omitting “agents” in each place where it appears and substituting in each case “nominated representatives”.
- (2) Section 76(1) is amended by inserting the following paragraph after paragraph (c): 25
- “(ca) provide the Commission, whenever reasonably required by the Commission and in any case in accordance with any requirements specified in the terms and conditions of its grant of QFE status, with an up-to-date list of the names of the QFE’s nominated representatives; and”. 30
- 18 QFE must provide annual report to Commission**
- Section 77(1) is amended by omitting “agent” in each place where it appears and substituting in each case “nominated representative”.

19 Content of code

Section 86 is amended by adding the following subsection:

- “(4) The code may limit or modify standards, or provide for separate standards, for the duration of 1 or more periods of transition.”

5

20 New section 94 substituted

Section 94 is repealed and the following section substituted:

“94 Code comes into force by *Gazette* notice

- “(1) After the Minister has approved the draft code or after the 90-day deadline for approval specified in section 93 has expired, the Commissioner must give notice in the *Gazette* of the date or dates on which the provisions of the code come into force.

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- “(2) The notice may state different dates for different provisions, but no date may be before the 28th day after the date on which the notice is published in the *Gazette*.

15

- “(3) Each provision in the code comes into force on the date stated in the notice that applies to the provision.

- “(4) The code and the notice are each regulations for the purposes of the Regulations (Disallowance) Act 1989.”

20

21 New section 98 substituted

Section 98 is repealed and the following section substituted:

“98 Reference of complaint to disciplinary committee

When the Commission has, under section 97, investigated a complaint about an authorised financial adviser, it must refer the complaint to the disciplinary committee if, in the Commission’s opinion, the conduct complained of amounts to a breach of the code.”

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22 Offence of performing financial adviser service without being registered

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- (1) Section 114(2)(b) is amended by omitting “agent” and substituting “nominated representative”.

- (2) Section 114(2) is amended by repealing paragraph (c) and substituting the following paragraph:

“(c) the financial advisers service is performed by an individual who is a registered financial adviser.”

23 Offence of performing financial adviser service without being authorised

(1) Section 115(2) is amended by omitting “agent” and substituting “nominated representative”. 5

(2) Section 115 is amended by repealing subsection (3) and substituting the following subsection:

“(3) A person has a defence to a charge under subsection (1) if the person proves on a balance of probabilities that the financial adviser service to which the charge relates was performed by an individual who is an authorised financial adviser.” 10

24 New section 116 substituted

Section 116 is repealed and the following section substituted:

“116 Offences in relation to employer or principal failing to maintain registration” 15

“(1) A person who contravenes **section 18(1)(a) or (2)(a)** commits an offence and is liable on summary conviction to a fine not exceeding \$10,000.

“(2) A person who contravenes **section 18(1)(b) or (2)(b)** commits an offence and is liable on summary conviction to a fine not exceeding \$5,000.” 20

25 Offence of misleading or deceptive conduct in relation to financial adviser service by employee or agent

The heading to section 130 is amended by omitting “agent” and substituting “nominated representative”. 25

26 Offence of misleading, etc, advertisement of financial adviser service by employee or agent

The heading to section 131 is amended by omitting “agent” and substituting “nominated representative”. 30

27 New heading inserted

(1) The following heading is inserted above section 135:

“Miscellaneous offences”.

(2) The heading above section 136 is repealed.

28 General regulations

Section 154(1)(a) is repealed.

29 New sections 168 and 169 added

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The following sections are added:

“168 Grant of authorisations in transitional period without prior inquiry into convictions

“(1) In this section, **transitional period** means the period that commences on the commencement of section 55 and ends on the commencement of section 14. 10

“(2) In the transitional period, the Commission may authorise a person under section 55 even though it has not yet undertaken or completed its inquiries in relation to section 54(b).

“(3) An authorisation granted in reliance on **subsection (2)** is subject to the condition that it ceases to have effect if, before the expiry of the transitional period, the Commission notifies the applicant for authorisation that he or she is, given section 54(b), ineligible to be authorised. 15

“(4) If, at any time after the expiry of the transitional period, the Commission is satisfied that an authorised financial adviser is, given section 54(b), ineligible to be authorised, but that the adviser has been granted authorisation in reliance on **subsection (2)**, section 59(1)(a) applies to that adviser as if he or she had ceased to be eligible for authorisation. 20 25

“169 Applications for QFE status made in transitional period

“(1) In this section, **transitional period** means the period that commences on the commencement of section 65 and ends on the commencement of section 14.

“(2) **Section 65(2)** does not apply to an application for QFE status that is made in the transitional period. 30

“(3) A QFE that attains its QFE status in the transitional period must provide the Commission with a list of the names of the individuals who, as at the day on which the transitional period ends, are the QFE’s nominated representatives.” 35

- 30 Enactments amended consequential on principal Act**
The enactments specified in the **Schedule** are amended in the manner indicated in that schedule.

Part 2
**Amendments to Financial Service
Providers (Registration and Dispute
Resolution) Act 2008** 5

- 31 Commencement of provisions of principal Act**
To avoid doubt, a provision of the Financial Service Providers (Registration and Dispute Resolution) Act 2008 that is amended or enacted by any of **sections 36 to 38** comes into force in accordance with section 2(1) of that Act. 10
- 32 Principal Act amended**
This **Part** amends the Financial Service Providers (Registration and Dispute Resolution) Act 2008. 15
- 33 Purpose**
The purpose of this **Part** is to prepare for the effective and efficient implementation of the principal Act by making a number of necessary and desirable amendments to that Act.
- 34 Interpretation** 20
The definition of **person** in section 4 is amended by omitting “an unincorporated body, and a superannuation scheme as defined in section 2A of the Superannuation Schemes Act 1989” and substituting “and an unincorporated body”.
- 35 Application of Act** 25
(1) Section 7(2) is amended by adding the following paragraphs:
“(n) a nominated representative (within the meaning of the Financial Advisers Act 2008) while acting in that capacity in accordance with that Act:
“(o) an employer while providing financial services to enable employees of the employer to obtain rights or benefits under a registered superannuation scheme (as de- 30

- fined in section 2(1) of the Superannuation Schemes Act 1989) or a KiwiSaver scheme (as defined in section 4(1) of the KiwiSaver Act 2006), being a scheme in which that employer and other employers participate for the benefit of their employees.” 5
- (2) Section 7 is amended by repealing subsection (3) and substituting the following subsection:
- “(3) This Act does not apply to any financial services that are provided, in the course of a company’s business, by the company or an employee of the company to no persons other than related companies.” 10
- 36 Disqualified person**
Section 14(1) is amended by adding “; or” and also by adding the following paragraph:
- “(c) a person who does not intend to offer financial services to persons in New Zealand.” 15
- 37 Registrar must amend register in certain circumstances**
Section 29 is amended by repealing paragraph (e) and substituting the following paragraph:
- “(e) regulations made under this Act require the Registrar to do so in circumstances specified by the regulations.” 20
- 38 New section 46 substituted**
Section 46 is repealed and the following section substituted:
- “46 Territorial scope**
- “(1) This Act applies to each of the following: 25
- “(a) a person who provides a financial service in New Zealand:
- “(b) a person who is a licensed provider, whether the person is in New Zealand or outside New Zealand:
- “(c) a person who is required, by the Financial Advisers Act 2008, to be registered or licensed, whether the person is in New Zealand or outside New Zealand. 30
- “(2) For the purposes of **subsection (1)**, no account is to be taken of the place where the person—
- “(a) resides; or 35

“(b) is incorporated; or
“(c) carries on business.”

39 Schedule 2 amended

Schedule 2 is amended by omitting the items relating to the Superannuation Schemes Act 1989 and the KiwiSaver Act 2006.

Schedule

s 30

Enactments consequentially amended

Securities Markets Act 1988 (1988 No 234)

Section 17: repeal.

Takeovers Act 1993 (1993 No 107)

5

Section 44D: repeal.

Takeovers Code Approval Order 2000 (SR 2000/210)

Rule 65 of the Schedule: revoke.