



## COVERSHEET

<b>Minister</b>	Hon Dr David Clark	<b>Portfolio</b>	Commerce and Consumer Affairs
<b>Title of Cabinet paper</b>	Regulations to support the new financial advice regime and other recent financial markets legislation changes	<b>Date to be published</b>	5 February 2021

### List of documents that have been proactively released

<b>Date</b>	<b>Title</b>	<b>Author</b>
December 2020	Cabinet paper: Regulations to support the new financial advice regime and other recent financial markets legislation changes	Office of the Minister of Commerce and Consumer Affairs
9 December 2020	DEV-20-MIN-0176: New Financial Advice Regime and Other Financial Markets Legislation Changes: Regulations	Cabinet Office
19 November 2020	Cost Recovery Impact Statement: Licensing fees for benchmark administrators	MBIE

### Information redacted

**YES**

Any information redacted in this document is redacted in accordance with MBIE's policy on Proactive Release and is labelled with the reason for redaction. This may include information that would be redacted if this information was requested under Official Information Act 1982. Where this is the case, the reasons for withholding information are listed below. Where information has been withheld, no public interest has been identified that would outweigh the reasons for withholding it.

Some information has been withheld due to confidentiality of advice and some information has been withheld due to legal professional privilege.



# Cabinet Economic Development Committee

## Minute of Decision

---

*This document contains information for the New Zealand Cabinet. It must be treated in confidence and handled in accordance with any security classification, or other endorsement. The information can only be released, including under the Official Information Act 1982, by persons with the appropriate authority.*

---

### New Financial Advice Regime and Other Financial Markets Legislation Changes: Regulations

Portfolio                      Commerce and Consumer Affairs

On 9 December 2020, the Cabinet Economic Development Committee:

#### Background

1        **noted** that:

- 1.1        on 8 August 2018, the Cabinet Economic Development Committee (DEV) agreed to the establishment of a licensing regime for administrators of financial benchmarks under the Financial Markets Conduct Act 2013 (FMC Act) [DEV-18-MIN-0157];
- 1.2        on 12 June 2019, DEV agreed to regulations to support a new financial advice regime and other changes in the Financial Services Legislation Amendment Act 2019, which comes into force on 15 March 2021 [DEV-19-MIN-0155];
- 1.3        on 22 July 2020, DEV agreed to changes to Financial Markets Authority (FMA) levies to reflect the new financial advice regime and to increases to the FMA's funding in 2021/22 and 2022/23 [DEV-20-MIN-0144];

#### Further policy decisions

- 2        **agreed** to introduce a licensing fee, set on an hourly basis, being the current FMA hourly rate of \$178.25 (plus a \$115 application fee, both GST inclusive) for applications for a licence to act as an administrator of a financial benchmark;
- 3        **agreed** that civil liability, including a maximum pecuniary penalty of \$200,000 in the case of an individual or \$600,000 in any other case, should attach for non-compliance with the licensing conditions for administrators of financial benchmarks, as described in Annex 1 to the paper under DEV-20-SUB-0176;
- 4        **agreed** to disapply parts of the Trusts Act 2019 in relation to portfolio investment entity trusts regulated under the FMC Act;
- 5        **agreed** to the policy matters set out in Annex 2 to the paper under DEV-20-SUB-0176, being matters that are consistent with earlier policy approvals or desirable to provide for an orderly transition into the new financial advice regime;

## Regulations

- 6 **noted** that the following regulations give effect to the decisions in paragraphs 1 to 5 above:
- 6.1 Financial Markets Conduct Amendment Regulations 2020 [PCO 22736/10.0];
  - 6.2 Financial Service Providers (Registration) Regulations 2020 [PCO 22365/12.0];
  - 6.3 Financial Service Providers (Exemptions) Amendment Regulations 2020 [PCO 22393/8.0];
  - 6.4 Financial Markets Authority (Levies) Amendment Regulations (No 2) 2020 [PCO 23245/5.0];
  - 6.5 Financial Markets Conduct (Licensing of Administrators of Financial Benchmarks) Amendment Regulations 2020 [PCO 22499/12.0];
  - 6.6 Financial Markets Conduct (Fees) Amendment Regulations 2020 [PCO 23201/3.0];
  - 6.7 Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act Commencement Order 2020 [PCO 22503/3.0];
  - 6.8 Anti-Money Laundering and Countering Financing of Terrorism (Definitions) Amendment Regulations 2020 [PCO 23202/3.0];
  - 6.9 Electronic Identity Verification Amendment Regulations 2020 [PCO 23074/2.0];
  - 6.10 Fair Trading (Uninvited Direct Sales - Financial Products) Amendment Regulations 2020 [PCO 232073/2.0];
  - 6.11 Non-Bank Deposit Takers (Declared-out Entities) Amendment Regulations 2020 [PCO 23075/2.0];
- 7 **authorised** the submission to the Executive Council of the regulations referred to in paragraph 6 above;

## Statutory prerequisites

- 8 **noted** that the Minister of Commerce and Consumer Affairs is required to:
- 8.1 consult the FMA before recommending regulations under the FMC Act;
  - 8.2 for regulations relating to exemptions and exclusions under the FMC Act, have regard to the purposes of that Act and the Trusts Act 2019 and to be satisfied that the exemptions or exclusions are not broader than is reasonably necessary;
  - 8.3 be satisfied that transitional regulations are necessary or desirable for the orderly implementation of the amendment legislation and are consistent with the purposes of the FMC Act or Financial Service Providers (Registration and Dispute Resolution) Act 2008 (FSP Act);
  - 8.4 be satisfied that regulations relating to recognition regimes under the FMC Act are in the public interest having regard to the securities laws of the designated country and the interests of New Zealand investors;
  - 8.5 have regard to the principles in section 308 of the FMC Act for regulation changes relating to financial product markets;

- 8.6 for exemptions under the FSP Act, have regard to New Zealand's obligations under the international Financial Action Task Force Recommendations and to be satisfied that the costs of compliance with that Act would be unreasonable or not justified by the benefits;
- 8.7 be satisfied that exemptions under the Fair Trading Act 1986 are not broader than is reasonably necessary, and that persons or representatives that will be substantially affected have been consulted;
- 9 **noted** that the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 requires the Minister of Justice to have regard to certain factors and to give representatives of affected parties an opportunity to comment;
- 10 **noted** that the Non-Bank Deposit Takers Act 2013 requires the Minister of Finance to have regard to certain matters after a recommendation is made by the Reserve Bank of New Zealand after certain requirements have been met;
- 11 **noted** the advice of the Minister of Commerce and Consumer Affairs that the requirements in paragraphs 8.1-8.7 above have been met;
- 12 **noted** that the Minister of Justice has had regard to the relevant factors and provided an opportunity to comment in accordance with the requirements referred to in paragraph 9 above;
- 13 **noted** that the Minister of Finance has had regard to the required matters after a recommendation made by the Reserve Bank in accordance with the requirements referred to in paragraph 10 above;

### Timing

- 14 **noted** that:
- 14.1 regulations 29(2) and 30 of the Financial Markets Conduct Amendment Regulations 2020 will come into force on 18 January 2021;
- 14.2 regulation 17 of the Financial Markets Conduct Amendment Regulations 2020 will come into force on 30 January 2021;
- 14.3 the commencement order will bring the remaining provisions of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 into force on 14 March 2021;
- 14.4 in the Financial Markets Authority (Levies) Amendment Regulations (No 2) 2020, regulations 11-13 and Schedule 2 will come into force on 1 July 2021 and regulations 14-16 and Schedule 3 will come into force on 1 July 2022 to reflect phased increases to FMA levies;
- 14.5 the rest of the regulations will come into force on 15 March 2021 to coincide with the start of the new financial advice regime.

Charlotte Doyle  
Committee Secretary

---

**Present: (see over)**

**Present:**

Hon Grant Robertson (Chair)  
Hon Dr Megan Woods (Deputy Chair)  
Hon David Parker  
Hon Nanaia Mahuta  
Hon Poto Williams  
Hon Damien O'Connor  
Hon Kris Faafoi  
Hon Willie Jackson  
Hon Michael Wood  
Hon Dr David Clark  
Hon Meka Whaitiri  
Rino Tirikatene, MP  
Dr Deborah Russell, MP

**Officials present from:**

Office of the Prime Minister  
Officials Committee for DEV