



COVERSHEET

Minister	Hon Dr David Clark	Portfolio	Commerce and Consumer Affairs
Title of Cabinet paper	Financial Markets Conduct (Disclosure Requirements for Bank Perpetual Preference Shares and Other Matters) Amendment Regulations 2022	Date to be published	11 August 2022

List of documents that have been proactively released

Date	Title	Author
<i>June 2022</i>	<i>Financial Markets Conduct (Disclosure Requirements for Bank Perpetual Preference Shares and Other Matters) Amendment Regulations 2022</i>	<i>Office of the Minister of Commerce and Consumer Affairs</i>
<i>23 June 2022</i>	<i>LEG-22-MIN-0113 Minute</i>	<i>Cabinet Office</i>

Information redacted

NO

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In Confidence

Office of the Minister of Commerce and Consumer Affairs
Chair, Cabinet Legislation Committee

Financial Markets Conduct (Disclosure Requirements for Bank Perpetual Preference Shares and Other Matters) Amendment Regulations 2022

Proposal

- 1 This paper seeks authorisation for submission to the Executive Council of the Financial Markets Conduct (Disclosure Requirements for Bank Perpetual Preference Shares and Other Matters) Amendment Regulations 2022 (**Amendment Regulations**).

Policy

- 2 The Financial Markets Conduct Regulations 2014 (**FMC Regulations**) assist investors with making informed decisions by setting out the information that must be given to retail investors (such as “Mum and Dad” investors) and published when a financial product is issued. The information that must be disclosed differs according to the type of financial product. For example, the information disclosed for an equity security (such as shares) differs from that disclosed for a debt security (such as bonds).
- 3 Since 1 October 2021, to meet regulatory capital requirements set by the Reserve Bank, registered banks have been able to issue new capital instruments known as “perpetual preference shares” (**PPS**, also known as “Additional Tier 1” or “AT1” capital). The new PPS instruments are significantly less complex than previous instruments banks were able to issue as regulatory capital.
- 4 PPS instruments are equity securities but have several features of debt securities, so the existing disclosure requirements in the FMC Regulations relating to either equity or debt securities are not suitable for PPS instruments.
- 5 In this context, in June 2021, Cabinet agreed to amend the FMC Regulations to prescribe tailored disclosure requirements for issuing PPS instruments to retail investors [DEV-21-MIN-0132 refers]. The Amendment Regulations give effect to Cabinet’s decision.

The Amendment Regulations

- 6 Many of the specific features of PPS are set by the Reserve Bank’s banking prudential requirements. The Amendment Regulations aim to ensure that those features and risks specific to PPS are explained clearly to retail investors. The regulations for example require disclosure that:

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- 6.1 PPS are equity securities, but they do not provide their holders with the same rights and opportunity for growth as ordinary shares do.
 - 6.2 Distributions are scheduled to be paid to investors at regular intervals, but the distributions may be cancelled, including where cancellation is required by the issuing bank's conditions of registration with the Reserve Bank.
 - 6.3 On a liquidation of the issuing bank, the PPS rank behind all liabilities of the bank other than ordinary shares.
 - 6.4 PPS are perpetual and have no fixed term. The investor cannot require the issuer to repay the money invested.
 - 6.5 The disclosure information must also set out whether there will be a market on which an investor can sell their PPS to other investors.
- 7 The Amendment Regulations have been developed by the Ministry of Business, Innovation and Employment (**MBIE**) working with the Financial Markets Authority (**FMA**) and Reserve Bank. The New Zealand Bankers' Association was consulted on draft details of the proposed regulations and its feedback was taken into account when finalising the Amendment Regulations.

Other minor matters

- 8 The Amendment Regulations also address two other minor unrelated matters:
- 8.1 The Financial Markets Conduct (NZX–NXT Market) Regulations 2014 are revoked as the financial product market that they enable – the NXT Market – has been wound up and the FMA cancelled the licence for the NXT Market in June 2021.
 - 8.2 Reinstating a regulation that had provided that disclosure requirements did not apply to two classes of financial products issued by the Public Trust, namely its fixed-term deposit products and on-call debt securities. A paragraph had been removed from clause 29(2) inadvertently in March 2021 when consequential changes were being made as a result of the repeal of the Financial Advisers Act 2008.

Timing and 28-day rule

- 9 The Amendment Regulations will come into force on 28 July 2022.

Compliance

- 10 The Amendment Regulations comply with:
- 10.1 the principles of the Treaty of Waitangi;
 - 10.2 the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993;

- 10.3 the principles and guidelines set out in the Privacy Act 2020;
 - 10.4 relevant international standards and obligations;
 - 10.5 the Legislation Guidelines (2021 edition), which are maintained by the Legislation Design and Advisory Committee.
- 11 The FMA has been consulted on the Amendment Regulations as required under section 549 of the Financial Markets Conduct Act 2013 and I have had regard to or am satisfied of the matters set out in section 351(3) of the Act as required in relation to the revocation of the NZX-NXT Regulations.

Regulations Review Committee

- 12 There are no grounds for the Regulations Review Committee to draw the Amendment Regulations to the attention of the House of Representatives under Standing Order 327.

Certification by Parliamentary Counsel

- 13 The Amendment Regulations have been certified by Parliamentary Counsel Office as being in order for submission to Cabinet.

Impact Analysis

- 14 Treasury's Regulatory Impact Analysis team has determined that the proposal to create tailored disclosure requirements for PPS capital instruments is exempt from the requirement to provide a Regulatory Impact Statement on the grounds that it has no or only minor impacts on businesses, individuals and not-for-profit entities.

Publicity

- 15 MBIE intends to notify affected stakeholders of the approval of these Amendment Regulations.

Proactive release

- 16 I intend to release this paper proactively in whole within 30 business days. MBIE will publish a copy on its website.

Consultation

- 17 The FMA, Reserve Bank of New Zealand, the Treasury and the Department of Prime Minister and Cabinet (Policy Advisory Group) have been consulted on this paper.
- 18 The New Zealand Bankers' Association was consulted on the proposed details of the regulations. Its feedback was taken into account when finalising the Amendment Regulations.

Recommendations

I recommend that the Cabinet Legislation Committee:

- 1 note that on 23 June 2021 the Cabinet Economic Development Committee agreed to amend the disclosure requirements in the Financial Markets Conduct Regulations 2014 to prescribe tailored requirements for new perpetual preference shares [DEV-21-MIN-0132 refers];
- 2 note that the Financial Markets Conduct (Disclosure Requirements for Bank Perpetual Preference Shares and Other Matters) Amendment Regulations 2022 will give effect to the decision referred to in paragraph 1 above;
- 3 note that the Financial Markets Conduct (Disclosure Requirements for Bank Perpetual Preference Shares and Other Matters) Amendment Regulations 2022 also address two other minor unrelated matters:
 - 3.1 revoking the Financial Markets Conduct (NZX–NXT Market) Regulations 2014 as the NXT Market which they relate to has been wound up;
 - 3.2 reinstating a regulation that was inadvertently removed in March 2021 relating to disclosure requirements not applying to two classes of financial products issued by the Public Trust, namely its fixed-term deposit products and on-call debt securities;
- 4 authorise the submission to the Executive Council of the Financial Markets Conduct (Disclosure Requirements for Bank Perpetual Preference Shares and Other Matters) Amendment Regulations 2022;
- 5 note that the Financial Markets Conduct (Disclosure Requirements for Bank Perpetual Preference Shares and Other Matters) Amendment Regulations 2022 come into force on 28 July 2022;
- 6 note that section 549 of the Financial Markets Conduct Act 2013 requires the Minister of Commerce and Consumer Affairs to consult the Financial Markets Authority before recommending regulations under that Act and section 351(3) requires the Minister to have regard to or be satisfied of certain matters before recommending the regulations referred to in paragraph 3.1 above;
- 7 note the advice of the Minister of Commerce and Consumer Affairs that the requirements in paragraph 6 above have been met.

Authorised for lodgement

Hon Dr David Clark
Minister of Commerce and Consumer Affairs