

DRAFT FOR CONSULTATION

Financial Markets Conduct (Conduct of Institutions) Amendment Regulations 2022

Governor-General

Order in Council

At Wellington this day of 2022

Present:
in Council

These regulations are made under section 546 of the Financial Markets Conduct Act 2013—

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the recommendation of the Minister of Commerce and Consumer Affairs in accordance with sections 546(4) and 549 of that Act.

Contents

		Page
1	Title	2
2	Commencement	2
3	Principal regulations	2
4	New regulations 237B to 237D and cross-heading inserted	2
	<i>Conduct of financial institutions and their intermediaries</i>	
	237B What is a prohibited incentive	2
	237C Financial institution must not offer or give incentives based on volume or value targets	3
	237D Intermediary must not offer or give incentives based on volume or value targets	3
5	Schedule 1 amended	3

Schedule
New Part 9 inserted into Schedule 1

4

Regulations**1 Title**

These regulations are the Financial Markets Conduct (Conduct of Institutions) Amendment Regulations 2022.

2 Commencement

These regulations come into force on *[date]*.

3 Principal regulations

These regulations amend the Financial Markets Conduct Regulations 2014.

4 New regulations 237B to 237D and cross-heading inserted

After regulation 237A, insert:

*Conduct of financial institutions and their intermediaries***237B What is a prohibited incentive**

In regulations 237C and 237D, an incentive (as defined in section 446M of the Act) is a **prohibited incentive**, in relation to relevant services or associated products, if a person's entitlement to the incentive, or the nature or value of the incentive, is determined or calculated in any way by reference (directly or indirectly) to a target or other threshold that relates to the volume or value of the services or products.

Examples*Prohibited incentive*

The employee of a life insurer is offered a \$1,000 bonus for selling 100 life policies in a 3 month period.

Incentive that is not prohibited (linear basis)

An employee (**A**) is paid a 5% commission for each life policy that A arranges. The percentage does not depend on any target or threshold (that is, the percentage does not change based on the volume or value of life policies).

This incentive is not prohibited because it is determined or calculated on a linear basis only (that is, on a per service or per product basis). It is not determined or calculated in any way by reference to a target or threshold.

237C Financial institution must not offer or give incentives based on volume or value targets

- (1) For the purposes of section 446K of the Act, a financial institution must not offer or give a prohibited incentive to a relevant person.
- (2) In this regulation, **relevant person**, in relation to a financial institution, means—
 - (a) an employee of the financial institution; or
 - (b) an intermediary that is involved in the provision of the financial institution's relevant services or associated products; or
 - (c) an agent of the financial institution that is involved in the provision of the financial institution's relevant services or associated products.

237D Intermediary must not offer or give incentives based on volume or value targets

- (1) For the purposes of section 446L of the Act, an intermediary must not offer or give a prohibited incentive to a relevant person in connection with the provision of a financial institution's relevant services or associated products.
- (2) In this regulation, **relevant person**, in relation to an intermediary, means—
 - (a) an employee of the intermediary; or
 - (b) another intermediary that is involved in the provision of the financial institution's relevant services or associated products; or
 - (c) an agent of the intermediary that is involved in the provision of the financial institution's relevant services or associated products.

5 Schedule 1 amended

In Schedule 1,—

- (a) insert the Part set out in the Schedule of these regulations as the last Part; and
- (b) make all necessary consequential amendments.

Schedule
New Part 9 inserted into Schedule 1

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Part 9
**Provisions relating to Financial Markets Conduct (Conduct of
Institutions) Amendment Regulations 2022**

[To come]

Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.

[To come]

Regulatory impact statement

The Ministry of Business, Innovation, and Employment produced a regulatory impact statement on 9 December 2019 to help inform the decisions taken by the Government relating to the contents of this instrument.

A copy of this regulatory impact statement can be found at—

- <https://www.mbie.govt.nz/dmsdocument/7372-regulatory-impact-statement-regulatory-regime-to-govern-the-conduct-of-financial-institutions-december-2019-pdf>
- <https://treasury.govt.nz/publications/informationreleases/ris>

Issued under the authority of the Legislation Act 2019.

Date of notification in *Gazette*:

These regulations are administered by the Ministry of Business, Innovation, and Employment.