

Review of Financial Advisers (Australian Licensees) Exemption Notice 2011

15 February 2013

Introduction

The Financial Markets Authority (FMA, or we) are reviewing the Financial Advisers (Australian Licensees) Exemption Notice 2011 (Financial Advisers (Australian Licensees) notice) which expires on 30 June 2013.

FMA is keen to hear the views of Australian financial service licence holders who are relying on the Financial Advisers (Australian Licensees) notice and selected stakeholders to determine whether or not to renew the exemption.

We therefore seek submissions on the notice from Australian licensees and selected stakeholders to assist with this review process.

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Summary of Financial Advisers (Australian Licensees) notice

1. The Financial Advisers (Australian Licensees) notice, which expires on 30 June 2013, permits Australian-regulated financial services firms to provide financial adviser services into New Zealand on an offshore basis. The general effect is that persons who hold current Australian financial services licences granted by the Australian Securities and Investments Commission (ASIC), and their specified representatives under Australian law, are exempted from the following provisions of New Zealand law to the extent that they provide personalised services from Australia to New Zealand retail clients and have no place of business in New Zealand:
 - section 17(1) of the Financial Advisers Act 2008 (the Act). In the case of Australian licensees, the broad effect is that this exempts the entity from acting only through registered or authorised individual advisers. In the case of specified representatives, the broad effect is that this exempts the entity's individual advisers from having to be registered or authorised:
 - in the case of both Australian licensees and specified representatives, section 20B of the Act (restrictions on holding out as financial planner or investment planner):
 - in the case of both Australian licensees and specified representatives, section 22 of the Act (financial adviser must make disclosure before providing personalised service to retail client):
 - in the case of specified representatives, sections 11 and 12 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (broadly, this exempts the entity's individual advisers from having to be registered, and from the prohibition on holding out as being in the business of providing financial service unless registered).
2. The key policy reasons for granting the notice were:
 - a. the relevant persons, services and transactions were subject to the regulations of Australia;
 - b. the protection of the New Zealand public was unlikely to be prejudiced due to:
 - the protections offered under the Australian financial adviser regime
 - FMA's relationship with ASIC, involving sharing of information and co-operation arrangements
 - the scope and conditions of the exemption
 - c. without the exemption some Australian licensees would be unable to continue to provide services to their New Zealand clients;
 - d. the exemption was of limited duration and reciprocal single licence regime was proposed as a longer term project with Australia;

- e. the exemption was within FMA’s exemption policy: it was to address rigidities in the law, the exemption was framed in such a way that the extent of the exemption was not broader than was reasonably necessary to address the matters that gave rise to the exemption, it was granted as a class exemption so that potential candidates in similar situations would benefit from the same treatment.

Review underway

- 3. We are therefore reviewing this notice and propose to complete this review before it expires. This will provide a seamless ability for Australian licensees and their specified representatives to continue to rely on the notice if it is renewed without substantive amendment.
- 4. If it is determined an exemption is no longer warranted, or that substantive amendments are required, notice will be given and transitional provisions may be considered, to give Australian licensees and their specified representatives an appropriate opportunity to make any changes necessary to comply with the financial adviser laws.
- 5. Our process and timeline will vary depending on the significance of issues under consideration. The relevant dates from the timetable are summarised below.

Date	Actions
15 February 2013	Consultation paper distributed seeking submissions from Australian licensees and selected stakeholders
8 March 2013	Written submissions due from Australian licensees.
March/April 2013	We will analyse the submissions and seek further comments as necessary
April/May 2013	Proposal announced to Australian licensees and stakeholders
June 2013	Finalisation of drafting, granting of exemption (if relevant) before 30 June 2013.

Information sought

We are keen to gain a clear picture of the extent of reliance on the notice. Before granting any notice FMA wants to be satisfied there is a need for the exemption. Further, an exemption cannot be broader than is reasonably necessary to address the matters that gave rise to the exemption. A class notice may not be renewed if we do not receive submissions confirming continued reliance on the exemptions in that notice.

- 6. To gain an understanding of the extent of reliance on the notices we are keen to hear:
 - a. The extent of reliance on the notice. Please provide an up-to-date list of your specified representatives and New Zealand clients and details of the type of financial adviser services provided to the New Zealand clients and the financial products

involved. Please tell us how many of your clients became your clients since you notified FMA that you wished to rely on the exemptions under the notice.

- b. What is the impact of the notice (or its discontinuance) on regulatory compliance costs, in terms of costs to Australian licensees, and opportunities for New Zealand investors? Please provide any data or estimates, for example of cost savings, and opportunities New Zealand investors would miss out on if reliance could not be placed on the notice.
7. Please comment in particular on the following:
 - a. Whether your specified representatives have or intend to apply to be Authorised Financial Advisers in reliance on the competence requirement exemptions under the Financial Advisers (Australian Qualified Advisers) Exemption Notice 2012 (Australian qualified adviser notice)? If not, why not?
 - b. Why the notice should not be allowed to expire or be revoked given the availability of the Australian qualified adviser notice.
 - c. What steps you are taking to comply with the non-solicitation condition in clause 6(l) of the notice.
8. Do you support the renewal of the notice/s or not? What are the reasons for your view?
9. If you support the renewal of the notice/s, would you recommend any amendments to it when renewed? This might include:
 - a. exemptions or conditions in the notice you consider are inconsistent with financial adviser law policy, and the amendments you propose as solutions;
 - b. new exemptions you consider should be granted in the notice, and the conditions to which you consider those exemptions should be subject;
 - c. impediments to reliance on the notice, and the amendments you propose as solutions;
 - d. practical difficulties or compliance costs encountered when relying on the notice, and the amendments you propose as solutions.
10. In relation to renewal and any amendments you propose please fully explain your reasons. Please particularly explain:
 - a. why you consider the renewal, and any amendments proposed, are consistent with both the policy of financial adviser law, and the particular policy of the relevant statutory provisions from which the exemption is granted;
 - b. the impact on Australian licensees including in terms of compliance costs;
 - c. the impact on retail clients including in relation to any benefit or detriment to protection of investors interests and information available to investors;

- d. why you consider the exemption is no broader than reasonably necessary to address the matters that gave rise to the need for the exemption;
- e. any effect on competition in the market.

Submission process

11. Please provide us with two versions of your submission: a PDF and a word document.
12. Please send your submission by e-mail only (no posted or delivered versions please) to exemptions@fma.govt.nz. The e-mail subject line should identify that the email contains a submission on the Financial Advisers Australian Licensees exemption review, and who the submission is from, eg 'Financial Advisers Australian Licensees exemption review by [submitter's name]'.
13. The deadline for submissions is 8 March 2013.
14. To complete our review of a particular notice it may be necessary or useful for us to share and discuss a submission with another regulator, including ASIC, and other New Zealand Government agencies.
15. More generally we note we will not treat any part of your submission as confidential unless you specifically request we do so. Submissions will be subject to the Official Information Act 1982. We may make submissions available on our website, may compile a summary of the submissions or draw attention to individual submissions in internal or external reports.
16. If you would like us to withhold any commercially sensitive, confidential or proprietary information included in your submission, please clearly state this in your submission and identify the relevant extracts of information. We will consider any request to have information withheld in accordance with our obligations under the Official Information Act.

Further information

Please contact Nicky Won (Telephone: (64) 9 985 4875, Email: exemptions@fma.govt.nz), for any further information about this review.