

Financial Advisers (Australian Qualified Advisers) Exemption Notice 2018

Pursuant to section 148 of the Financial Advisers Act 2008, the Financial Markets Authority, being satisfied of the matters set out in section 148(3) of that Act, gives the following notice.

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Notice

1 Title

This notice is the Financial Advisers (Australian Qualified Advisers) Exemption Notice 2018.

2 Commencement

This notice comes into force on 24 February 2018.

3 Revocation

This notice is revoked on the close of 31 May 2021.

4 Interpretation

(1) In this notice, unless the context otherwise requires, —

Act means the Financial Advisers Act 2008

AFA Application means an application to be an authorised financial adviser under the Act

AFA Licence means an authorisation granted by the Financial Markets Authority pursuant to section 55 of the Act

ASIC means the Australian Securities and Investments Commission

Australian Licence means:

- (a) an Australian financial services licence as defined in the Corporations Act; or
- (b) an Australian credit licence as defined in the NCCP Act

Australian Representative means a person who is a representative of a holder of an Australian Licence

Handwritten signature

Code means the Code of Professional Conduct for Authorised Financial Advisers brought into force by notice in the Gazette under section 94 of the Act

Code Standard means the relevant Code Standard set out in the Code together with all explanatory text

Corporations Act means the Corporations Act 2001 of the Commonwealth of Australia

NCCP Act means the National Consumer Credit Protection Act 2009 of the Commonwealth of Australia

RG146 means Regulatory Guide 146 which is a document published by ASIC setting out training requirements for financial product advisers in Australia

RG206 means Regulatory Guide 206 which is a document published by ASIC setting out, amongst other things, competence and training requirements for representatives of holders of Australian Licences to provide credit services.

- (2) Any term or expression that is defined in the Act and used, but not defined, in this notice has the same meaning as in the Act.

5 Exemptions

A person who meets the training requirements specified in column A of the Schedule is exempted from Code Standard 15 (to the extent it requires attainment of Unit 26360) and Code Standard 16 in relation to an AFA Application—

- (a) for the AFA Licence categories specified in column B of the Schedule; and
- (b) for the classes of financial products specified in column C of the Schedule.

6 Condition

The exemptions in clause 5 are subject to the condition that the person has provided services to retail clients for which the person meets the applicable training requirements specified in column A of the Schedule, either as an Australian Representative or as the holder of an Australian Licence, for a minimum of six consecutive months within the three years prior to making the AFA Application.

7 Application

For the purposes of this notice a person is taken to meet the training requirements specified in column A of the Schedule only if he or she meets the requirements through having attained Australian qualifications or assessments and not through any exemption from the requirements of RG146 or RG206.

8 Revocation of Financial Advisers (Australian Qualified Advisers) Exemption Notice 2016

The Financial Advisers (Australian Qualified Advisers) Exemption Notice 2016 is revoked.

Schedule

Clauses 5, 6, 7

RG146

A	B	C
<p>Training requirements set out in RG146, ASIC's training register, and the competency standards in the Financial Services Training Package (referred to in RG146), to provide personal advice to retail clients on the following financial products or activities:</p>	<p>AFA Licence categories</p>	<p>Classes of financial products</p>
<p>All of the following: (Tier 1)</p> <ul style="list-style-type: none"> • Securities • Derivatives • Managed investments 	<p>FA DIMs FA+DIMs</p>	<p>all</p>
<p>All of the following:</p> <ul style="list-style-type: none"> • Financial planning • Securities • Derivatives • Managed investments 	<p>FA+IPS FA+DIMs+IPS</p>	<p>all</p>
<p>Securities</p>	<p>FA</p>	<p>debt securities, equity securities and managed investment products as defined in the Financial Markets Conduct Act 2013</p>
<p>Managed investments</p>	<p>FA</p>	<p>managed investment products as defined in the Financial Markets Conduct Act 2013</p>
<p>Derivatives</p>	<p>FA</p>	<p>derivatives as defined in the Financial Markets Conduct Act 2013</p>
<p>Superannuation</p>	<p>FA</p>	<p>retirement schemes as defined in the Financial Markets Conduct Act 2013</p>
<p>Life insurance (including investment life insurance products)</p>	<p>FA</p>	<p>investment-linked contracts of insurance and category 2 products</p>
<p>Deposit products (Tier 1)</p>	<p>FA</p>	<p>debt securities as defined in the Financial Markets Conduct Act 2013</p>
<p>Insurance other than investment life insurance products</p>	<p>FA</p>	<p>all category 2 products</p>

RG206

A	B	C
Training requirements set out in RG206 to provide the following service:	AFA Licence categories	Classes of financial products
Independent home loan credit assistance as a responsible manager, being at least: <ul style="list-style-type: none"> • a Certificate IV in Financial Services (Finance and Mortgage Broking) (FNS10) or Certificate IV in Financial Services (Finance/Mortgage Broking) (FNS04); and • two years 'problem free' experience as required by RG206 	FA	all category 2 products

In this Schedule the AFA Licence categories have been abbreviated as follows,-

FA means financial advice

FA+IPS means financial advice and investment planning services

DIMs means personalised DIMS

FA+DIMs means financial advice and personalised DIMS

FA+DIMs+IPS means financial advice, personalised DIMS and investment planning services.

Dated at Auckland this *8th* day of *February* 2018.



Nick Kynoch
General Counsel
Financial Markets Authority

Statement of reasons

This notice, which comes into force on 24 February 2018 and is revoked on the close of 31 May 2021, revokes and replaces the Financial Advisers (Australian Qualified Advisers) Exemption Notice 2016 (the **2016 notice**).

The effect of this notice is that people who meet certain Australian training requirements (**Australian advisers**) when they apply to be authorised financial advisers, are exempted from the educational competency requirements in Code Standard 15 (to the extent that it requires attainment of Unit 26360) and Code Standard 16. Code Standard 15 requires, as its underlying principle, that an authorised financial adviser must have knowledge of legal obligations relevant to the operation of the adviser's practice. The additional provisions to Code Standard 15 require that an authorised financial adviser attain Unit 26360 (previously referred to as Unit Standard Set B in the 2016 notice) and be able to demonstrate the adequacy of the adviser's knowledge of relevant legislative obligations. Code Standard 16 requires that to be an authorised financial adviser, the adviser must attain certain qualifications that are relevant to the financial adviser services to be provided. The exemption applies where the applicant has met specified Australian training standards and as a condition requires the person to meet experience requirements as an Australian Licence holder or an Australian Representative.

This notice continues the exemptions granted in the 2016 notice and updates the definition of Code in clause 4.

This notice does not affect Australian financial services licence holders or credit licence holders who are able to be recognised under the Trans-Tasman Mutual Recognition Act 1997. The notice provides an alternative to attaining the New Zealand qualifications in accordance with the broader principles underlying the Trans-Tasman Mutual Recognition Act 1997 and is in conjunction with similar steps taken by ASIC to recognise New Zealand qualified financial advisers in Australia.

Under the exemption, the training standards that must be met are set out in the Schedule. The Schedule shows (A) the services which the person is qualified to provide under RG146 or RG206 against (B and C) the New Zealand AFA Licence categories and classes of financial products, which the Financial Markets Authority (the **FMA**) considers broadly correspond. The experience requirement is that the person has worked in Australia providing such services for a minimum of six consecutive months within the last three years, prior to the application to the FMA for authorisation, either as a representative of an Australian financial services licensee or Australian credit licensee or under the adviser's own licence.

In considering applications under the exemption, the FMA will require evidence that the person comes within the exemption, including evidence of the person's Australian qualifications.

The Australian adviser will still be required to meet the other eligibility requirements for authorisation under the Act, including meeting good character requirements and criminal record checks. All other regulatory requirements relating to their application will apply. This exemption only applies to the requirement to meet the Code educational competency standards set out in Code Standard 15 (to the extent that it requires attainment of Unit 26360) and Code Standard 16.

The other provisions of the Code will be applicable to the Australian adviser upon becoming an authorised financial adviser. This includes Code Standard 14 (which requires an authorised financial adviser to have the competence, knowledge and skills to provide the service) and the remaining requirements of Code Standard 15 (which requires the adviser to have knowledge of the Act, the Code), and other legal obligations relevant to the operation of the adviser's practice as a financial adviser (including relevant consumer protection laws).

If the Australian adviser is approved as an authorised financial adviser, then the adviser will be subject to the Act (and all other relevant New Zealand laws), and the FMA will impose its standard terms and conditions of authorisation with such variations and/or additional terms as it considers appropriate. As a condition of authorisation, the FMA will require the Australian adviser to complete, as part of the continuous professional training in the first year, structured training covering the relevant regulatory obligations of authorised financial advisers.

The FMA, after satisfying itself as to the matters set out in section 148(3) of the Act, considers it appropriate to grant the exemptions set out in the notice for the following reasons—

- The exemptions and conditions of exemption in this notice are the same as the exemptions under the 2016 notice, and substantially the same as its predecessors: the Financial Advisers (Australian Qualified Advisers) Exemption Notice 2014 and the Financial Advisers (Australian Qualified Advisers) Exemption Notice 2012, which have been in place for a number of years and the policy reasons for these previous notices remain valid and relevant. The exemptions continue to be required and remain appropriate in light of the policy of this notice.
- The exemptions do not undermine consumer protection because:
 - in order to come within the exemptions a person must have satisfied training requirements in Australia which meet ASIC's requirements and must have experience as a representative or have acted under their own Australian licence; and

- the exemptions are limited to exemptions from the Code's educational competency requirements in order to be an authorised financial adviser, and Australian advisers must meet the other eligibility requirements under the Act in order to become an authorised financial adviser; and
 - the Australian advisers will be subject to the overarching competency requirements of the Code (which require an adviser, before providing a service to have the competence, knowledge and skills to provide that service) and the remaining requirements of Code Standard 15 (which require the adviser to have knowledge of the Act, Code and other legal obligations of authorised financial advisers); and
 - as authorised financial advisers the Australian advisers will be subject to the other provisions of the Code and New Zealand laws relating to the provision of financial adviser services and will also be subject to monitoring and oversight by the FMA and disciplinary committee decisions in the event of a breach of the Code.
- The costs of compliance with the Code qualifications requirements for Australian advisers, which would involve them qualifying in both Australia and New Zealand, would not be justified by the benefit of compliance with the Code qualifications requirements. ASIC has provided similar recognition for New Zealand qualified advisers. Together with this exemption, this will facilitate the flow of advisers and services across the Tasman. This is consistent with the close economic relationship between Australia and New Zealand and the recognition of qualifications for other occupations under Trans-Tasman mutual recognition legislation.