

## **Financial Markets Conduct (Australian Licensees) Exemption Notice 2020**

Pursuant to section 556 of the Financial Markets Conduct Act 2013, the Financial Markets Authority, being satisfied of the matters set out in section 557 of that Act, gives the following notice.

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### **Notice**

- 1 Title**  
This notice is the Financial Markets Conduct (Australian Licensees) Exemption Notice 2020.
- 2 Commencement**  
This notice comes into force on 15 March 2021.
- 3 Revocation**  
This notice is revoked on the close of 14 March 2026.
- 4 Interpretation**  
In this notice, unless the context otherwise requires,—

**Act** means the Financial Markets Conduct Act 2013

**ASIC** means the Australian Securities and Investments Commission

**Australian licensee** means a person to whom all of the following apply:

- (a) the person holds a current Australian financial services licence granted by ASIC under the Corporations Act that licenses or authorises the person to provide financial product advice to retail clients in Australia;
- (b) the person is in the business of providing a financial service in Australia;
- (c) the person has no place of business in New Zealand

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

**digital advice facility** means a facility for giving automated financial advice through a computer program using algorithms (whether with or without the involvement of any individual)

**exempt financial advice** means regulated financial advice given by or on behalf of an Australian licensee to which all of the following apply:

- (a) the financial advice is received by a retail client in New Zealand and 1 or more of the following apply:
  - (i) the client's name is on the list that is provided to the FMA under clause 5(1)(e);
  - (ii) the client's name has been notified to the FMA under clause 9(2)(b) or (3)(a);
  - (iii) the client is an individual who became a client of the Australian licensee when the client was physically in Australia;
  - (iv) the client did not become a client of the Australian licensee as a result of conduct that was intended to induce or solicit retail clients in New Zealand to use any financial advice service, or conduct that was likely to have that effect, engaged in by the Australian licensee or its specified representatives;
- (b) the financial advice is given from outside New Zealand by the Australian licensee or by a specified representative on behalf of the Australian licensee;
- (c) the financial advice is not given through a digital advice facility

**exempt financial advice service** means a financial advice service provided by an Australian licensee to a retail client in New Zealand to which both of the following apply:

- (a) the only regulated financial advice received by retail clients in New Zealand under the service is exempt financial advice;

- (b) the services are equivalent to, or no more than, the services that the Australian licensee is licensed or authorised to provide to retail clients in Australia

**FSP Act** means the Financial Service Providers (Registration and Dispute Resolution) Act 2008

**specified representative** means an individual to whom all of the following apply:

- (a) the individual is a representative (as defined in the Corporations Act) of the Australian licensee;
- (b) the individual is registered on the Register of Relevant Providers (as defined in the Corporations Act) that is maintained by ASIC;
- (c) the individual is or will be engaged by the Australian licensee to give exempt financial advice on behalf of the Australian licensee to retail clients in New Zealand from a place of business in Australia;
- (d) the individual has no place of business in New Zealand;
- (e) the individual is not registered under section 22C of the FSP Act (which relates to financial advisers);
- (f) the individual is not otherwise registered for a financial advice service under the FSP Act.

## 5 When notice applies

- (1) This notice applies to an Australian licensee and its specified representatives if all of the following apply:
  - (a) the Australian licensee is registered as a financial service provider under the FSP Act;
  - (b) the Australian licensee is a member of a dispute resolution scheme in New Zealand in accordance with section 48 of the FSP Act, and under that scheme it is responsible for the actions of its specified representatives in giving exempt financial advice;
  - (c) the Australian licensee has submitted, and has taken all reasonable steps to ensure that its specified representatives have submitted, irrevocably to the non-exclusive jurisdiction of the New Zealand courts in respect of exempt financial advice services provided, or exempt financial advice given, to retail clients in New Zealand by the Australian licensee or its specified representatives in reliance on this notice;
  - (d) the Australian licensee has provided to the FMA—
    - (i) written notice that the Australian licensee intends to rely on this notice; and
    - (ii) written notice of the exemptions or relief under Australian law that the Australian licensee relies on in relation to providing finan-

- cial product advice to retail clients under its Australian financial services licence; and
- (iii) particulars of any material investigation, enforcement, or disciplinary action that has been taken by ASIC or any other overseas regulatory authority against the Australian licensee or any of its specified representatives:
  - (e) if the Australian licensee has relied on the Financial Advisers (Australian Licensees) Exemption Notice 2011 (the **2011 notice**) or otherwise provided a financial adviser service under the Financial Advisers Act 2008, the Australian licensee has provided to the FMA, at the time it provides the notice under paragraph (d)(i), a list of its current retail clients in New Zealand who received services provided by the Australian licensee—
    - (i) in accordance with the 2011 notice; or
    - (ii) otherwise in accordance with the Financial Advisers Act 2008.
- (2) This clause is subject to clauses 7 to 9.

## 6 Exemptions

- (1) An Australian licensee is exempted from the following provisions of the Act in respect of an exempt financial advice service provided to a retail client and exempt financial advice given to the retail client under that service:
- (a) sections 388(ba), 431G(a), 431I, 431M, and 431O; and
  - (b) section 431F(2) to the extent that it requires the Australian licensee to not allow a specified representative of the Australian licensee to give advice in contravention of section 431F(1); and
  - (c) section 431Q to the extent that it requires the Australian licensee to take all reasonable steps to ensure that a specified representative of the Australian licensee complies with the provisions from which the representative is exempted under subclause (2).
- (2) A specified representative of an Australian licensee is exempted from sections 431F(1), 431G(a), 431I, 431M, and 431O of the Act in respect of an exempt financial advice service provided to a retail client and exempt financial advice given to the retail client under that service.

## 7 Conditions of exemptions

- (1) The exemptions in clause 6 are subject to the following conditions in respect of an exempt financial advice service provided to a retail client and exempt financial advice given to the retail client under that service:
- (a) the Australian licensee must ensure that it is competent under Australian law to provide that exempt financial advice service:

- (b) the Australian licensee must ensure that its specified representatives that give exempt financial advice are adequately trained and competent under Australian law to give that advice:
  - (c) the Australian licensee must have given a written disclosure statement (which may be via email) to the retail client, before the exempt financial advice services are provided to the client, that contains statements and information to the effect set out in subclause (2):
  - (d) the disclosure statement under paragraph (c) must be worded and presented in a clear, concise, and effective manner:
  - (e) the Australian licensee is satisfied on reasonable grounds that it has procedures in place—
    - (i) that give reasonable assurance that the Australian licensee and its specified representatives will comply with all disclosure, conduct, and other relevant Australian regulatory requirements in relation to the exempt financial advice service as if the service were provided to a retail client in Australia; and
    - (ii) for identifying deficiencies in the effectiveness of the procedures referred to in subparagraph (i) and for promptly remedying any deficiencies discovered.
- (2) The statements and information under subclause (1)(c) are as follows:
- (a) the Australian licensee has been granted an exemption from the requirement to be licensed as a financial advice provider in New Zealand:
  - (b) the Australian licensee holds an Australian financial services licence granted by the Australian Securities and Investments Commission (ASIC) under the Corporations Act 2001 that licenses or authorises the Australian licensee to provide financial product advice to retail clients:
  - (c) the Australian licensee and the Australian licensee's specified representatives are regulated by ASIC under Australian law, which differs from New Zealand law:
  - (d) the Australian licensee and the Australian licensee's specified representatives remain subject to certain statutory duties under New Zealand law including the requirements in sections 431J, 431K, and 431L of the Financial Markets Conduct Act 2013 to—
    - (i) ensure clients understand the nature and scope of advice being given; and
    - (ii) give priority to the client's interests; and
    - (iii) exercise care, diligence, and skill:
  - (e) the Australian licensee is a member of a dispute resolution scheme in New Zealand, and under that scheme the Australian licensee is responsible for the actions of its specified representatives:

- (f) the name and contact details of the Australian licensee's dispute resolution scheme in New Zealand;
- (g) the Australian licensee and its specified representatives have submitted to the non-exclusive jurisdiction of the New Zealand courts in respect of regulated financial advice given to retail clients in New Zealand.

**8 Australian licensee and representatives must not induce or solicit retail clients in New Zealand to use its service**

- (1) This notice ceases to apply to an Australian licensee and its specified representatives if the Australian licensee or its specified representatives engage in—
  - (a) conduct that is intended to induce or solicit retail clients in New Zealand to use the Australian licensee's financial advice service; or
  - (b) conduct that is likely to have that effect.
- (2) This clause does not apply to retail clients that are notified by the Australian licensee under clause 9(2)(b).

**9 Notice does not apply to period of non-compliance with certain obligations**

- (1) This notice does not apply to an Australian licensee and its specified representatives during a period that—
  - (a) starts when the Australian licensee fails to comply with 1 or more duties set out in subclause (2); and
  - (b) ends at the close of the date on which all of those failures have been remedied under subclause (3).
- (2) The duties are as follows:
  - (a) the Australian licensee must notify the FMA as soon as practicable of the following if it is relevant to the exempt financial advice services provided under this notice:
    - (i) any change to its Australian financial services licence (including any variation, suspension, or cancellation); and
    - (ii) any exemptions or relief under Australian law that it obtains in relation to providing financial product advice to retail clients under its Australian financial services licence;
  - (b) the Australian licensee must notify the FMA as soon as practicable of the name and contact details of any retail clients in New Zealand that were on another Australian licensee's New Zealand retail client list provided under clause 5(1)(e) and to whom the Australian licensee intends to provide services under this notice;
  - (c) the Australian licensee must notify the FMA as soon as practicable of any material investigation, enforcement, or disciplinary action taken by ASIC or any other overseas regulatory authority against the Australian licensee or any of its specified representatives;

- (d) the Australian licensee must have adequate procedures to—
    - (i) identify and record the physical address of each retail client when they become a client; and
    - (ii) show when each retail client that is an individual advises the Australian licensee that they have moved to New Zealand:
  - (e) the Australian licensee must maintain a list of its specified representatives, including the person's name and contact details and the period or periods for which the person is or was a specified representative:
  - (f) the Australian licensee must provide any of the following information to the FMA within 15 working days after receiving a request from the FMA for the information:
    - (i) an up-to-date list of New Zealand retail clients that includes each client's name and contact details and the information specified in paragraphs (b) and (d):
    - (ii) an up-to-date list of specified representatives that includes the information specified in paragraph (e).
- (3) The duties may be remedied as follows:
- (a) the duty under subclause (2)(a) to (c) or (f) may be remedied by notifying or providing to the FMA the information required by the relevant paragraph:
  - (b) the duty under subclause (2)(d) may be remedied by having the adequate procedures referred to in that paragraph:
  - (c) the duty under subclause (2)(e) may be remedied by maintaining the list referred to in that paragraph.
- (4) Subclause (2)(a)(ii) and (c) does not apply to information provided under clause 5.

Dated at Auckland this

16<sup>th</sup> day of December 2020.

  
General Counsel.

### Statement of reasons

This notice comes into force on 15 March 2021 and is revoked on 14 March 2026.

The notice exempts certain Australian financial services licence holders and their representatives, on conditions, from certain requirements in the Financial Markets Conduct Act 2013 (the **Act**). The provisions relate to providing financial advice services to New Zealand retail clients on an offshore basis.



**Financial Markets Conduct (Australian Licensees)  
Exemption Notice 2020**

Statement of reasons

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The main effects of the notice are that—

- Australian licensees are not required to hold a New Zealand market services licence to act as a provider of financial advice services under the notice:
- Australian licensees' representatives are not subject to the restrictions on who can give regulated financial advice to retail clients on behalf of a financial advice provider in relation to providing financial advice services under the notice:
- Australian licensees and their representatives are exempt from the following statutory duties in relation to the financial advice services provided under the notice:
  - the duty to meet standards of competence, knowledge, and skill provided in the code of conduct:
  - the duty to comply with the other standards in the code of conduct:
  - the duty to make prescribed information available.

Terms and conditions under this notice include requirements that—

- an Australian licensee must have procedures that give reasonable assurance that the licensee and its representatives comply with relevant Australian regulatory requirements when giving regulated financial advice to a New Zealand retail client under the notice as if that advice were given to a retail client in Australia; and
- an Australian licensee give a disclosure statement to a retail client in New Zealand before any financial advice services are provided to the client; and
- an Australian licensee and its representatives must not engage in any conduct that is intended to induce or solicit New Zealand retail clients or is likely to have that effect.

The exemptions under the notice do not apply to regulated financial advice that is given to a retail client in New Zealand through a digital advice facility.

The Financial Markets Authority (the **FMA**), after satisfying itself as to the matters set out in section 557 of the Act, considers it appropriate to grant the exemptions because—

- Australian licensees are licensed by the Australian Securities and Investments Commission (**ASIC**), and those licensees and their specified representatives are regulated by ASIC and subject to the Australian regulatory regime. That regime seeks to achieve similar aims and provide broadly comparable protections overall to the New Zealand financial advice regime; and
- certain statutory duties under New Zealand law will continue to apply to Australian licensees and their specified representatives, and New Zealand retail clients will be given a disclosure statement so that they are aware of the nature of the exemptions; and



- the exemptions will ensure the availability of advice for New Zealand retail clients from Australian licensees and their representatives that would be unlikely to be available otherwise given the costs of compliance with dual licensing and regulation if the exemptions were not in place; and
- Australian licensees will be required to be registered on the New Zealand financial service providers register and to be members of a New Zealand dispute resolution scheme. This will provide New Zealand retail clients with independent access to redress; and
- the FMA's relationship with ASIC, which involves sharing of information and co-operation arrangements, will enable the FMA to seek assistance if enforcement issues arise; and
- as such, the FMA is satisfied that granting the exemptions is desirable in order to promote a number of purposes of the FMC Act, specifically promoting the confident and informed participation of businesses and consumers in financial markets, and avoiding unnecessary compliance costs; and
- the exemptions only apply in limited circumstances, specifically to Australian licensees without a New Zealand place of business that provide limited financial advice services to certain retail clients in New Zealand from offshore and who do not engage in conduct that is intended or likely to induce or solicit retail clients in New Zealand to use their services. As such, the FMA is satisfied that the exemptions are not broader than is reasonably necessary to address the matters that gave rise to the exemptions.

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*:

This notice is administered by the Financial Markets Authority.