

Financial Markets Conduct (Booster Financial Services Limited) 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 (to which is appended a statement of reasons of the Financial Markets Authority).

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Notice

1 Title

This notice is the Financial Markets Conduct (Booster Financial Services Limited) Exemption Notice 2020.

2 Commencement

This notice comes into force on 15 March 2021.

3 Revocation

This notice is revoked on the close of 16 March 2023.

4 Interpretation

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

Act means the Financial Markets Conduct Act 2013.

BFSL means Booster Financial Services Limited.

BFSL nominated representative means any individual who is nominated by BFSL under section 431T of the Act and is engaged by BFSL to give regulated financial advice on BFSL's behalf.

Specified Financial Advice means regulated financial advice given on behalf of BFSL by a BFSL nominated representative to a retail client that is:

- (a) a personalised service in relation to BFSL's category 1 products; or
- (b) a personalised service in relation to category 2 products; or
- (c) a class service in relation to category 1 products or category 2 products.

Transitional licence means a transitional licence that covers the service of acting as a provider of a financial advice service issued by the FMA pursuant to Subpart 1 of Part 6 of Schedule 4 of the Act.



- (2) In this notice, unless the context otherwise requires, the terms **category 1 product**, **category 2 product**, **class service** and **personalised service**, have the same meanings as in section 5 of the Financial Advisers Act 2008 as in force before its repeal.
- (3) 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

- (1) BFSL is exempted from complying with section 402(3) of the Act to the extent that that section requires BFSL to comply with the condition imposed on a transitional licence by clause 75(1) of Schedule 4 of the Act.
- (2) Each BFSL nominated representative is exempted from complying with section 431I of the Act in respect of any Specified Financial Advice given by that BFSL nominated representative.
- (3) BFSL is exempted from section 431Q(1) of the Act to the extent that that section requires BFSL to take all reasonable steps to ensure that a BFSL nominated representative complies with section 431I, in respect of any Specified Financial Advice provided by that BFSL nominated representative.

Dated at Wellington this *21st* day of *July* 2020.


Nick Kynoch
General Counsel
Financial Markets Authority

Statement of Reasons

This notice comes into force on 15 March 2021. The notice is revoked on 16 March 2023. The notice exempts Booster Financial Services Limited (**BFSL**) from complying with the statutory condition imposed on a transitional licence for a financial advice service (**transitional licence**) by clause 75(1) of Schedule 4 of the Financial Markets Conduct Act 2013 (the **Act**). This will mean that, despite not being a Qualifying Financial Entity (**QFE**) or a member of a QFE group immediately before 9 April 2019, BFSL may still nominate individuals as nominated representatives under section 431T of the Act. The exemption from compliance with the statutory condition has the inadvertent consequence that BFSL's nominated representatives lose the benefit of the competency safe harbour at clause 83 of Schedule 4 of the Act. Accordingly, the notice also provides consequential exemptions to replicate the effect of that competency safe harbour for BFSL and its nominated representatives.

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—

- clause 75(1) of Schedule 4 of the Act imposes a statutory condition on all transitional licences (the **statutory condition**) that a licensee or an authorised body may nominate an individual as a nominated representative of the licensee or body under section 431T of the Act only if, immediately before 9 April 2019, the licensee or body (as the case may be) was:
 - a QFE or a member of a QFE group; or
 - an entity registered in respect of a financial adviser service that engages 1 or more unregistered individuals to provide a class service (within the meaning of section 5 of the Financial Advisers Act 2008 as in force before its repeal) – in which case a further condition limiting the scope of financial advice that can be provided by any nominated representatives of that registered entity will apply:

- BFSL only became a QFE on 23 April 2019, and does not otherwise meet the criteria above. This means that BFSL's transitional licence will be subject to a condition that restricts it from nominating individuals as nominated representatives to provide advice on its behalf under section 431T of the Act:
- however, Booster Investment Management Limited (**BIML**), a wholly owned subsidiary of BFSL, was a QFE prior to BFSL becoming a QFE. BIML had been a QFE since 31 March 2014. BFSL's two directors also sit on the BIML board and BFSL utilises the same Booster group compliance infrastructure (including staff, systems, processes and controls) that BIML utilised while BIML was a QFE. Accordingly, BFSL's financial advice business is in substance a continuation of the same financial advice business that BIML conducted while it was a QFE:
- the statutory condition would prevent BFSL from continuing to provide that service from 15 March 2021 without making significant structural changes to its financial advice business (or suspending its business while applying for a full financial advice provider licence), in circumstances where, but for a *de minimis* time period between 8 April and 23 April and what was in effect an internal restructure, BFSL would otherwise be permitted to do so. This could compromise BFSL's ability to continue to provide financial advice to its clients, reducing the availability of financial advice, and impose unnecessary compliance costs on BFSL:
- where individuals become nominated representatives in accordance with the statutory condition, they have the benefit of a competency safe harbour under clause 83 of Schedule 4 of the Act. During the transitional period to the new financial advice regime, this allows them to continue to provide the same services a former QFE adviser could provide under the Financial Advisers Act 2008 without meeting the competency requirements under section 431I of the Act. Exempting BFSL from the statutory condition has the inadvertent consequence that BFSL's nominated representatives lose the benefit of that competency safe harbour. Absent equivalent relief, BFSL's nominated representatives would be required to meet the new competency requirements from the outset (or cease providing advice in the interim) and, under section 431Q(1), BFSL would be required to take all reasonable steps to ensure this occurs. That would be inconsistent with the policy of the competency safe harbour and could undermine the broader purpose of the exemption:
- accordingly, the FMA is satisfied that the granting of the exemptions is necessary or desirable in order to promote the purposes of the Act, specifically to promote the confident and informed participation of businesses, investors, and consumers in the financial markets, and to avoid unnecessary compliance costs.
- the FMA is further satisfied that the exemptions granted are not broader than are reasonably necessary to address the matters that gave rise to the exemptions as the exemptions only apply to BFSL and its nominated representatives during their transition to the new financial advice regime, and only apply in respect of the condition imposed on a transitional licence by clause 75(1) of Schedule 4 of the Act and to replicate the competency safe harbour under clause 83 of Schedule 4 of the Act.