

Providing overseas firms' research reports to retail clients

Research reports produced by overseas firms may be distributed by New Zealand advice firms to their retail clients. This information sheet discusses how this will be regulated under the Financial Markets Conduct Act 2013 (FMC Act) from 15 March 2021¹.

Obligations of overseas firms

Under the FMC Act (see s388(ba) and s389(2)), a person may act as a provider of a financial advice service without a market services licence, so long as the service is not provided to any retail clients.

Therefore, overseas firms can supply research reports containing financial advice to New Zealand licensed Financial Advice Providers (NZ firms) or other New Zealand wholesale clients:

- without holding a Financial Advice Provider licence; and
- without complying with the statutory duties in Subpart 5A of Part 6 of the FMC Act that apply when regulated financial advice is given to retail clients.

This remains the position even if the NZ firm or wholesale client passes on that research report to its retail clients in New Zealand (with or without the overseas firm's permission).

However, this assumes that the overseas firm:

- does not engage the NZ firm or wholesale client (or its employees or contractors) to give financial advice on its behalf;
- does not carry out any other activities that might require the overseas firm to hold a licence; and

- does not itself supply the research report to any retail clients in New Zealand (or allow them to access the reports directly).

Some duties under the FMC Act that apply to regulated financial advice given to wholesale clients will still apply to the overseas firm, including:

- the duty to give priority to clients' interests in s431K; and
- the duty to exercise care, diligence and skill in s431L.

An overseas firm will not need to register on the Financial Service Providers Register under the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (FSP Act) merely because it supplies research reports to NZ firms or other wholesale clients in New Zealand, providing it:

- has no place of business in New Zealand; and
- does not provide financial services to New Zealand retail clients.

If an overseas firm does have a place of business in New Zealand it may need to register, if the extent of financial advice services it provides in New Zealand is over the minimum threshold prescribed by regulations. We recommend that overseas firms seek advice on how the FSP Act will apply in their particular situation.

1: This information sheet discusses the law that will apply under the FMC Act and the FSP Act once the amendments made by the Financial Services Legislation Amendment Act 2019 come fully into force on 15 March 2021.

Obligations of NZ firms

An NZ firm that merely passes on a research report prepared by an overseas firm to its retail clients will not 'give' financial advice under the FMC Act, providing it doesn't hold out the research report as its own financial advice. There is a statutory exclusion in clause 7(e) of Schedule 5 of the FMC Act (passing on exclusion). This provides that a person (A) does not give financial advice merely by passing on financial advice given by another person (unless A holds out that the financial advice is its own advice)². If the passing on exclusion does not apply then the NZ firm will be fully responsible for the financial advice in the research report.

Holding out

Holding out may arise through written or spoken words or conduct that directly or impliedly conveys a representation. To come within the passing on exclusion, the NZ firm needs to be careful not to convey a representation to its retail clients that the research report was prepared by the NZ firm. Things that might convey such a representation could include (for example):

- replacing the original branding on the research report with the NZ firm's branding; or
- putting excerpts of the report in the NZ firm's publications or communications to retail clients without mentioning the source; or
- passing on the report without a clear statement that it was prepared by the overseas firm and is not financial advice given by the NZ firm.

Use of appropriate branding, clear attribution of the source of the research report, and disclaimers may avoid any holding out of the research reports as the NZ firm's own financial advice.

Conduct of NZ firms

We expect licensed NZ firms to be thoughtful about financial advice they pass on to their retail clients. In most cases, an NZ firm will look to gain a benefit for its business when it passes on overseas research reports to its retail clients. While NZ firms do not need to check the financial advice they pass on, they should take reasonable steps to ensure the financial advice comes from a reputable provider to avoid doing harm to their retail clients. This is consistent with the following obligations under the Code of Professional Conduct for Financial Advice Services:

- Standard 1 – A person who gives financial advice must always treat clients fairly.
- Standard 2 – A person who gives financial advice must always act with integrity.

We will be monitoring use of the passing on exclusion. If it is used to avoid regulation beyond its intended purpose in a way that may result in harm to retail clients, we may take steps to intervene.

General

This information sheet is intended to provide general information. We recommend you seek legal advice on how the law applies in your specific situation.

2: The exclusion will apply whether the overseas firm has (or has not) given permission for the report to be passed on to the NZ firm's clients. However, passing the report on without permission may infringe copyright or other (non-financial market) laws.

 fma.govt.nz

 0800 434 566

 questions@fma.govt.nz


FINANCIAL MARKETS AUTHORITY

TE MANA TATAI HOKOHOKO - NEW ZEALAND