



# Financial Markets Conduct Amendment Regulations 2018

Patsy Reddy, Governor-General

## Order in Council

At Wellington this 7th day of May 2018

Present:

The Right Hon Jacinda Ardern presiding in Council

These regulations are made under subpart 1 of Part 9 and section 448 of the Financial Markets Conduct Act 2013 and section 209C(6) of the Companies Act 1993—

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the recommendation of the Minister of Commerce and Consumer Affairs made in accordance with sections 448, 549, and 550 of the Financial Markets Conduct Act 2013.

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**Regulations**

**1 Title**

These regulations are the Financial Markets Conduct Amendment Regulations 2018.

**2 Commencement**

These regulations come into force on the 28th day after the date of their notification in the *Gazette*.

**3 Principal regulations**

These regulations amend the Financial Markets Conduct Regulations 2014 (the **principal regulations**).

**4 Regulation 61D amended (Annual report to be publicly available)**

Replace regulation 61D(3)(a) with:

- (a) be made available on the site as soon as practicable after it is prepared, but in any event—
  - (i) not less than 20 working days before the date fixed for the entity’s annual meeting of shareholders for the accounting period; or
  - (ii) if the entity is not required to hold an annual meeting of shareholders for that period, not more than 20 working days after the annual report for the period is prepared; and

**5 Regulation 61E amended (Notice to shareholders)**

Replace regulation 61E(2)(a) with:

- (a) the person is a shareholder of the entity on—
  - (i) a date fixed by the board of the entity for the purpose (being a date that is no more than 20 working days before the last date by which the notice for that period must be sent under subclause (4)); or
  - (ii) the working day before the last date by which the notice for that period must be sent under subclause (4) (if the board of the entity has not fixed a date under subparagraph (i)); and

**6 New regulation 114A inserted (Exemption involving acquiring certain products by way of issue)**

In Part 5, after the subpart 1AA heading, insert:

**114A Exemption involving acquiring certain products by way of issue**

- (1) Conduct by a person, to the extent that it is conduct falling within section 241(1) of the Act, is exempt from being insider conduct if—
  - (a) the conduct is a trade in a quoted debt security, equity security, or managed investment product; and
  - (b) the trade is an acquisition of the debt security, equity security, or managed investment product by way of issue.
- (2) Conduct by a person (**A**), to the extent that it is conduct falling within section 242(1) of the Act, is exempt from being insider conduct if—
  - (a) the conduct is directly or indirectly disclosing inside information to another person (**B**) where A knows or ought reasonably to know or believes that B will, or is likely to,—
    - (i) trade in a quoted debt security, equity security, or managed investment product; or
    - (ii) advise or encourage another person (**C**) to trade in a quoted debt security, equity security, or managed investment product; and

- (b) the trade would be an acquisition of the debt security, equity security, or managed investment product by way of issue.
- (3) Conduct by a person (A), to the extent that it is conduct falling within section 243(1) of the Act, is exempt from being insider conduct if—
  - (a) the conduct is—
    - (i) advising or encouraging another person (B) to trade a quoted debt security, equity security, or managed investment product; or
    - (ii) advising or encouraging B to advise or encourage another person (C) to trade a quoted debt security, equity security, or managed investment product; and
  - (b) the trade would be an acquisition of the debt security, equity security, or managed investment product by way of issue.
- (4) Despite subclauses (1) to (3), this regulation does not apply if—
  - (a) the trade referred to in any of those subclauses is an acquisition of a quoted managed investment product; and
  - (b) the manager of the scheme to which the product relates continuously offers those managed investment products in the ordinary course of its business.
- (5) For the purposes of subclause (4)(b), managed investment products are not continuously offered merely because they are offered under a dividend reinvestment plan of a kind referred to in clause 10 of Schedule 1 of the Act.

**7 Regulation 206 amended (Investment proposal must be provided to investors)**

In regulation 206(1), replace “428” with “426A”.

**8 Regulation 208 amended (Information that must be available to investors)**

In regulation 208(1), replace “428” with “426A”.

**9 Regulation 210 amended (Ongoing reporting for DIMS)**

In regulation 210(1) and (6), replace “428” with “426A”.

**10 Regulation 211 amended (Annual information)**

In regulation 211(1), replace “428” with “426A”.

**11 Regulation 219 amended (Prescribed intermediary service providers must provide transaction information to investors)**

In regulation 219(1), replace “428” with “426A”.

**12 Regulation 221 and cross-heading replaced**

Replace regulation 221 and the cross-heading above regulation 221 with:

*False or misleading SDS*

**221 Application of regulations relating to defective SDS provided to investor**

(1) Regulations 221A to 221C apply for the purposes of section 427(3) to (5) of the Act (which relate to the consequences of a defective SDS being provided to an investor).

(2) In those regulations,—

**A** means the person A referred to in section 427(3) of the Act (that is, the person to whom a defective SDS has already been provided)

**provider** means the person who is in the business of providing the service to which the SDS relates.

**221A Circumstance in which service may not continue to be provided**

For the purposes of section 427(3)(a) of the Act, the provider must not continue to provide the service to A if doing so would involve the provider acting otherwise than in the best interests of—

- (a) the investors using the service to whom the defective SDS was provided (if the service is provided to a class of investors); or
- (b) A (if the service is provided only to A).

**221B Conditions for continuing to provide service**

(1) For the purposes of section 427(3)(b) of the Act, the provider must—

- (a) provide to A a document that includes the information set out in subclause (3); and
- (b) ensure that a report under section 412 of the Act is sent in relation to the contravention of section 427 of the Act (that is, the contravention of providing a defective SDS to A).

(2) The document under subclause (1)(a) must be provided—

- (a) as soon as practicable but, in any event, within 10 working days after the provider becomes aware that the SDS is defective; and
- (b) by giving it to A or delivering or sending it to A's last known address or an address (including an electronic address) specified by A for that purpose.

(3) The document under subclause (1)(a) must—

- (a) identify the SDS that is defective and briefly explain why it is defective in terms of section 427(1)(a) and (b) of the Act; and
- (b) state the steps being taken to remedy the defect; and
- (c) state that the provider will, as soon as practicable, provide a new SDS that is not defective; and

- (d) state that the provider will continue to provide the service to A unless continuing to do so would involve the provider acting otherwise than in the best interests of—
    - (i) the investors using the service to whom the defective SDS was provided (if the service is provided to a class of investors); or
    - (ii) A (if the service is provided only to A); and
  - (e) explain what continuing to provide the service will involve; and
  - (f) explain what rights A has to withdraw from the service.
- (4) Subclauses (1)(a), (2), and (3) do not apply if the provider complies with regulation 221C within 10 working days after the provider becomes aware that the SDS is defective.

**221C Provision of new SDS that is not defective**

- (1) For the purposes of section 427(4) and (5) of the Act, the provider must—
- (a) provide to A a new SDS that is not defective in terms of section 427(1)(a) and (b) of the Act as soon as practicable after the provider becomes aware that the original SDS is defective; and
  - (b) ensure that the new SDS is accompanied by a document that—
    - (i) identifies the SDS that is defective and briefly explains why it is defective in terms of section 427(1)(a) and (b) of the Act; and
    - (ii) describes the material changes that have been made in the new SDS to ensure that it is not defective in terms of section 427(1)(a) and (b) of the Act; and
    - (iii) explains what rights A has to withdraw from the service.
- (2) The new SDS must be provided by giving it to A or delivering or sending it to A's last known address or an address (including an electronic address) specified by A for that purpose.
- (3) Subclause (1)(b)(iii) does not apply if, before providing the new SDS, the provider has provided a document to A under regulation 221B in respect of the same defect.

**13 Regulation 222 amended (Provider of DIMS or prescribed intermediary service must make information available on request)**

In regulation 222(2), replace “428” with “426A”.

**14 Regulation 238 amended (Interpretation and application)**

- (1) In regulation 238(1), definition of **derivatives investor money**, after “239(1) to (3)”, insert “and (6)”.
- (2) In regulation 238(1), definition of **derivatives investor property**, replace “and (5)” with “to (6)”.

**15 Regulation 239 amended (Derivatives investor money and investor property)**

After regulation 239(5), insert:

- (6) Despite subclauses (1)(a)(i) and (4)(a)(i), money or property received in connection with an exchange-traded derivative is not derivatives investor money or derivatives investor property if the derivative is not offered under a regulated offer and either or both of the following apply:
- (a) the derivative is quoted, or approved for trading, on a financial product market that—
    - (i) is not a licensed market; or
    - (ii) is a market licensed under section 317 of the Act:
  - (b) the derivatives issuer—
    - (i) is not a participant in a market that is licensed under section 316 of the Act; and
    - (ii) does not have a place of business in New Zealand.

**16 Regulation 242 amended (When derivatives investor money ceases to be held on trust)**

Replace regulation 242(1)(c) with:

- (c) is used to meet obligations relating to exchange-traded derivatives, but only if—
- (i) the client agreement authorises the money to be used in that way; and
  - (ii) the derivatives issuer is satisfied that the person who receives the money is a hedging counterparty or is subject, in respect of the money, to obligations that are the same as, or substantially similar to, the obligations in regulations 238 to 250:

**17 Regulation 243 amended (When derivatives investor property ceases to be held on trust)**

Replace regulation 243(1)(c) with:

- (c) is used to meet obligations relating to exchange-traded derivatives, but only if—
- (i) the client agreement authorises the property to be used in that way; and
  - (ii) the derivatives issuer is satisfied that the person who receives the property is a hedging counterparty or is subject, in respect of the property, to obligations that are the same as, or substantially similar to, the obligations in regulations 238 to 250:

**18 Schedule 1 amended**

In Schedule 1, after Part 5, insert the Part 6 set out in the Schedule of these regulations.

**19 Schedule 9 amended**

In Schedule 9, clause 6(2)(a), delete “quarterly”.

**Schedule**  
**New Part 6 inserted into Schedule 1**

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**Part 6**  
**Provision relating to Financial Markets Conduct Amendment**  
**Regulations 2018**

**37 Annual reports to be made available by e-reporting entities**

Regulations 61D and 61E, as amended by the Financial Markets Conduct Amendment Regulations 2018, apply to an e-reporting entity in relation to the following accounting periods of the entity:

- (a) an accounting period that commenced before, but ends on or after, the commencement of this clause:
- (b) accounting periods that commence on or after the commencement of this clause.

**38 Defective SDS requirements**

- (1) This clause applies if,—
  - (a) before the commencement of this clause, a provider (as defined in regulation 221(2)) became aware that an SDS was defective in terms of section 427(1)(a) and (b) of the Act; and
  - (b) the provider is required to provide a new SDS under section 427(4) of the Act.
- (2) Regulations 221B and 221C do not apply if the new SDS under section 427(4) of the Act was provided before the commencement of this clause.



- (3) If, on the commencement of this clause, the new SDS has not yet been provided under section 427(4) of the Act,—
- (a) the document under regulation 221B(1)(a) must be provided within 10 working days after the commencement of this clause (and this paragraph applies instead of regulation 221B(2)(a)); and
  - (b) regulation 221B(4) applies as if the reference to 10 working days were a reference to 10 working days after the commencement of this clause.

Michael Webster,  
Clerk of the Executive Council.

### Explanatory note

*This note is not part of the regulations, but is intended to indicate their general effect.*

These regulations, which come into force 28 days after the date of their notification in the *Gazette*, amend the Financial Markets Conduct Regulations 2014.

These regulations—

- amend the timing requirements relating to annual reports that are made available by e-reporting entities under regulations 61B to 61F. The changes relate to when the report must be available on an entity’s Internet site and which shareholders must be given a notice relating to the report:
- insert an exemption from the insider trading provisions in relation to quoted debt securities, equity securities, or managed investment products that are acquired by way of issue. The exemption renews a broadly similar exemption in regulation 114A (which was in force until 30 November 2017). However, the exemption is extended to include products offered in reliance on clause 19 of Schedule 1 of the Financial Markets Conduct Act 2013 (exclusion for offers of products of the same class). In addition, the exemption no longer applies to continuously offered managed investment products:
- update cross-references as a result of sections 75 to 77 of the Regulatory Systems (Commercial Matters) Amendment Act 2017 coming into force:
- insert provisions relating to defective service disclosure statements (SDS). These include providing for when the provider must stop providing the service to an investor and the provision of a new SDS that is not defective:
- clarify the application of provisions relating to the holding and application of investor funds and property by derivatives issuers where the derivatives concerned are exchange-traded derivatives.

### **Regulatory impact assessment**

The Ministry of Business, Innovation, and Employment produced a regulatory impact assessment on 21 February 2018 to help inform the decisions taken by the Government relating to the contents of this instrument.

A copy of this regulatory impact assessment can be found at—

- <http://www.mbie.govt.nz/publications-research/publications/business-law/ria-application-of-insider-trading-prohibition.pdf>
- <http://www.treasury.govt.nz/publications/informationreleases/ria>

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 10 May 2018.

These regulations are administered by the Ministry of Business, Innovation, and Employment.