



Financial Markets Conduct (Regulated Financial Advice Disclosure) Amendment Regulations 2020

Patsy Reddy, Governor-General

Order in Council

At Wellington this 22nd day of June 2020

Present:

Her Excellency the Governor-General in Council

These regulations are made under sections 546 and 548 of the Financial Markets Conduct Act 2013—

- (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 section 549 of that Act.

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Regulations

1 Title

These regulations are the Financial Markets Conduct (Regulated Financial Advice Disclosure) Amendment Regulations 2020.

2 Commencement

These regulations come into force on 15 March 2021.

3 Principal regulations

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

4 Regulation 3 amended (Overview)

- (1) In regulation 3(f), replace “and Schedule 21” with “, Schedule 21, and Schedule 21A”.
- (2) After regulation 3(f)(iv), insert:

(iva) additional regulation of financial advice and financial advice services; and

5 New subpart 1 heading in Part 6 inserted

After the Part 6 heading, insert:

Subpart 1—Issue of licences

6 New subpart 2 heading in Part 6 inserted

After regulation 190, insert:

Subpart 2—Conditions of licences

7 Cross-heading above regulation 191 replaced

Replace the cross-heading above regulation 191 with:

Conditions imposed by regulations

8 New subpart 3 heading in Part 6 inserted

After regulation 202, insert:

Subpart 3—Disclosure obligations

9 Cross-heading above regulation 223 replaced

Replace the cross-heading above regulation 223 with:

Subpart 4—Client agreements

10 Cross-heading above regulation 224 revoked

Revoke the cross-heading above regulation 224.

11 New subpart 5 heading in Part 6 inserted

After regulation 229, insert:

Subpart 5—Additional regulation

12 New regulations 229A to 229J and cross-heading inserted

In Part 6, after the subpart 5 heading (as inserted by regulation 11 of these regulations), insert:

Additional regulation of financial advice and financial advice services

229A Outline of disclosure requirements when giving financial advice to retail clients

- (1) Regulations 229C to 229J apply to a person who gives regulated financial advice to retail clients. Those regulations require the following information to be made available in accordance with section 431O of the Act:

Publicly available information

- (a) a financial advice provider must make the information set out in clause 4 of Schedule 21A publicly available (*see* regulation 229C):

Disclosures relating to advice

- (b) at the time when the nature and scope of the advice sought or provided become known, the information set out in clause 5 of Schedule 21A must be given to a client (*see* regulation 229D). When the advice is given, the client receives additional information as set out in clause 6 of Schedule 21A, together with an update of any clause 5 information that has been materially changed (*see* regulation 229E). In future, information does not need to be disclosed again provided that the information the client was previously given remains current (*see* regulation 229G):

Complaints information

- (c) if a complaint is made, the complainant must be given information about the dispute resolution process (*see* regulation 229F).

- (2) In addition to these regulations, a person who gives regulated financial advice is also required to comply with the duties set out in sections 431I to 431N and 431P of the Act.

- (3) This regulation is a guide only to the general scheme and effect of regulations 229C to 229J.

229B Application and interpretation

- (1) Regulations 229C to 229J apply to a person who gives regulated financial advice to retail clients.

- (2) In regulations 229C to 229J and Schedule 21A,—

advice means regulated financial advice given, or to be given, to a retail client

client, in relation to a financial advice provider, includes a person who may receive advice from the provider or advice given on behalf of the provider

material change, in relation to a change to information, has the meaning set out in subclause (3)

publicly available has the meaning set out in subclause (4).

- (3) A change to information is a **material change** under regulations 229C to 229J and Schedule 21A if a reasonable client would expect the change to, or to be likely to, materially influence a decision about whether to seek or obtain advice from a particular person or provider or to act on advice that they have been given.
- (4) Information is **publicly available** under regulations 229C to 229J and Schedule 21A if the information is available on an Internet site that is maintained by or on behalf of a financial advice provider in a way that ensures—
 - (a) that the information, or a link to the information, is prominently displayed either on the home page or on an appropriate section of the site; and
 - (b) that the home page prominently displays a link to the appropriate section of the site (if the information is displayed on that section of the site); and
 - (c) that members of the public can easily access the information at all reasonable times.

229C Information that must be publicly available

- (1) The purpose of this regulation is to give retail clients access to information that will help them to find a financial advice provider that meets their needs.
- (2) A financial advice provider (**P**) must make all of the applicable information set out in clause 4 of Schedule 21A publicly available.
- (3) P must also make that information available by providing it in writing on request from a member of the public.
- (4) P must comply with a request under subclause (3) as soon as practicable after receiving it.
- (5) The information made available under this regulation must include P's name and contact details and be clearly identified as having been provided by P.
- (6) Subclause (2) does not apply if no Internet site is maintained by or on behalf of P.

229D Information that must be given when nature and scope of advice known

- (1) The purpose of this regulation is to give retail clients information that will help them to make an informed decision about whether to seek, obtain, or act on advice from a particular person or provider.
- (2) This regulation applies if—
 - (a) a person who gives advice (**A**) knows or ought reasonably to know the nature and scope of the advice that—
 - (i) a client is seeking; or
 - (ii) A is giving or intending to give to a client; and

- (b) there are reasonable grounds for concluding that the financial advice provider (**P**) or **A** (or another person acting on **P**'s behalf) may give the advice to the client.
- (3) **A** must give the client all of the information set out in clause 5 of Schedule 21A that is applicable.
- (4) The information must be given at the time this regulation applies or, if it is not practicable to do so, as soon as practicable after that time.
- (5) In any event, the information must be given no later than the time when the information in regulation 229E is given.

Example

Alice is a mortgage adviser who works for ABC Limited. Claire approaches Alice seeking mortgage advice. During their initial meeting, Alice learns that Claire is seeking mortgage advice in relation to a purchase of a residential property.

At that initial meeting, Alice must give Claire all of the applicable information set out in clause 5 of Schedule 21A.

229E Information that must be given when advice given

- (1) The purpose of this regulation is to give retail clients information that will help them to make an informed decision about whether to act on advice that they have been given.
- (2) A person (**A**) who gives advice to a client must give the client the following information:
- (a) all of the information set out in clause 6 of Schedule 21A that is applicable; and
- (b) if any of the information set out in clause 5(1) of Schedule 21A has materially changed since the client was last given it (when considered as a whole together with any other information the client has been given under regulation 229D or this regulation), an updated version of the information or an explanation of what has changed.

Example (continued from regulation 229D)

ABC Limited only gives advice in relation to products from particular lenders.

After Alice has told Claire the names of the particular lenders under clause 5(1)(b) of Schedule 21A, but before Alice gives Claire the mortgage advice, ABC Limited changes its arrangements with a particular lender. As a result, ABC Limited is no longer giving advice about the financial products of that lender.

Alice emails Claire the advice. In the same email, Alice must give Claire—

- all of the information set out in clause 6 of Schedule 21A that is applicable; and
 - information about the change to the lender. Alice can do this by giving Claire an updated statement and list of names (see clause 5(1)(b) of Schedule 21A) or an explanation of the change.
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- (3) A must give the information—
- (a) before, or at the same time as, the advice is given; or
 - (b) if it is not practicable to comply with paragraph (a), as soon as practicable after the advice is given.
- (4) Nothing in this regulation prevents A from giving the information required by this regulation at the same time that it gives the information required by regulation 229D.

Example

Alex is a financial adviser who works for a bank.

Charlotte asks Alex for some financial advice about term deposits and other investment options offered by the bank.

Alex gives Charlotte all of the information required by regulations 229D and 229E at the same time (before the advice is given). Alex was able to give all of the information at the same time because Alex knew all of it by the time the nature and scope of the advice were known.

- (5) Subclause (4) does not limit regulation 229D(4) and (5).

229F Information that must be given if complaint received

- (1) A financial advice provider (**P**), or a person engaged by P to give advice to P's clients on P's behalf, who receives a complaint must give to the complainant—
- (a) an overview of P's internal complaints process; and
 - (b) the following information about P's dispute resolution scheme:
 - (i) a statement to the effect that the complainant has access to a free, independent dispute resolution service, and that service may help to investigate or resolve the complaint if it is not resolved to the complainant's satisfaction using P's internal complaints process; and
 - (ii) the name of the dispute resolution scheme that P is a member of; and
 - (iii) the scheme's contact details to make a complaint.
- (2) The information must be given no later than 2 working days after a complaint is received or, if it is not practicable to do so, as soon as practicable after that time.
- (3) However, the information need not be given if the complaint is earlier resolved to the complainant's satisfaction.
- (4) In this regulation and Schedule 21A, a **complaint** is an expression of dissatisfaction relating to P's financial advice service to which a response or a resolution is explicitly or implicitly expected (including dissatisfaction with any advice given by P or on P's behalf).

- (5) In this regulation, **dispute resolution scheme** has the meaning set out in clause 1(1) of Schedule 21A.

229G Disclosures relating to advice not required if client has current information

- (1) The purpose of this regulation is to prevent a client from being overburdened by repetition of information that they have already received.
- (2) A person who is required to give particular information in accordance with regulation 229D or 229E does not have to give that information if—
- (a) the client has previously been given the information; and
 - (b) there has been no material change to the information since the client was given it (when considered as a whole together with any other information the client has been given under regulation 229D or 229E).

Example (continued from regulations 229D and 229E(2))

Three years after Alice gives Claire mortgage advice, Claire's fixed mortgage rate is due to expire. Claire and Alice arrange a meeting to review her home loan arrangements and assess whether any changes need to be made.

The only change that has been made to the information set out in clauses 5 and 6 of Schedule 21A since Claire received it 3 years ago is that there has been a fee increase.

Alice must give Claire the updated information about the fees. Alice can do this by giving Claire the updated fees information set out in clause 5(2)(b) of Schedule 21A or an explanation of the change to the fees (see regulation 229I(4)).

- (3) However, if particular information is not given to a client in reliance on this regulation,—
- (a) the client may request that information; and
 - (b) A must give the information to the client as soon as practicable after receiving the request.

Example (continued from subclause (2))

Alice does not otherwise have to give Claire any of the other information set out in clause 5 of Schedule 21A because there has been no change to that information. However, if Claire asks to be reminded about the lenders that Alice gives advice about, Alice must provide the information even if it remains the same.

229H General requirements for form and manner of disclosure

- (1) A provider or other person that is required to comply with any provision of regulations 229C to 229G (A) must ensure that any information that they make available or give under those regulations—
- (a) is presented in a clear, concise, and effective manner; and
 - (b) if it is presented with other information, is given prominence; and

- (c) if it is presented in writing, is in a format, font, and type size that are easily readable; and
 - (d) is made available or given free of charge.
- (2) A must have regard to any stated purpose of a regulation referred to in sub-clause (1) when complying with that regulation.
- (3) A may otherwise make information available or give information in the form and manner they reasonably consider appropriate, having regard to any stated purpose of the regulation.

229I Additional requirements for form and manner of disclosure relating to advice

- (1) This regulation applies if a person (A) is required to give information under regulation 229D or 229E.
- (2) If A gives the information in a form other than in writing, A must ensure that the client has been told that the information is available in writing on request.
- (3) A must, if requested, give the information in writing.
- (4) If a client has previously been given particular information and there has been a change to that information, A may give the client—
- (a) an updated version of the information; or
 - (b) an explanation of what has changed (instead of the information in full).
- (5) A must ensure that the form or manner of giving the information adequately identifies, or allows for identification of, the financial advice provider who is giving, or will give, the advice.

229J Information given or supplied by provider

- (1) This regulation applies if a person (A) is—
- (a) engaged by a financial advice provider (P) to give advice to P's clients on P's behalf; and
 - (b) required by regulations 229D to 229G to give information to a person (C).
- (2) It is sufficient compliance with A's duty for P to give the information to C directly on A's behalf.

13 Cross-heading above regulation 238 replaced

Replace the cross-heading above regulation 238 with:

Subpart 6—Holding and application of investor funds and property by
derivatives issuers

14 New Schedule 21A inserted

After Schedule 21, insert the Schedule 21A set out in the Schedule of these regulations.

Schedule New Schedule 21A inserted

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Schedule 21A Information to be disclosed when giving regulated financial advice to retail clients

rr 229C–229F

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Part 1

Preliminary provisions

1 Interpretation

(1) In this schedule,—

commission or other incentive has the meaning set out in clause 2(3)

complaint has the meaning set out in regulation 229F(4)

conflict of interest has the meaning set out in clause 2(2)

dispute resolution scheme means the approved dispute resolution scheme (as defined in section 50 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008) of which the financial advice provider is a member in accordance with section 48 of that Act

person connected with the giving of the advice has the meaning set out in section 431K(3) of the Act

publicly disciplined has the meaning set out in clause 3(4)

reliability event has the meaning set out in clause 3(1).

- (2) In this schedule, a limitation or restriction is **material** if a reasonable client would expect the limitation or restriction to, or to be likely to, materially influence a client in deciding whether to seek or obtain advice from a financial advice provider.

2 Meanings of conflict of interest and commission or other incentive

- (1) This clause defines what is meant by a conflict of interest and a commission or other incentive in relation to advice given by a person (**A**) to a client of a financial advice provider (**P**).
- (2) A **conflict of interest**, in relation to advice, means any interest of A, P, or another person connected with the giving of the advice that a reasonable client would expect to, or to be likely to, materially influence the advice given by A.
- (3) A **commission or other incentive** is a commission, benefit, or other incentive (whether monetary or non-monetary and whether direct or indirect)—
- (a) that is given to A, P, or another person connected with the giving of the advice as a consequence of A giving the advice or the client acting on the advice (for example, by acquiring a financial advice product); and
 - (b) that a reasonable client would expect to, or to be likely to, materially influence the advice given by A.

3 Meanings of reliability event and publicly disciplined

- (1) A **reliability event** has happened to a person if—
- (a) the person has, in the 5 years immediately before the date on which the information is required to be given, been publicly disciplined; or
 - (b) the person has, in the 5 years immediately before the date on which the information is required to be given, been the subject of a successful civil or criminal proceeding or regulatory action (whether in New Zealand or overseas) in relation to the contravention, or involvement in the contravention, of any—
 - (i) financial markets legislation; or
 - (ii) overseas law that regulates the supply of any financial service, any dealing in financial products, or the management of an entity; or
 - (c) the person has, in the 5 years immediately before the date on which the information is required to be given, been convicted of a crime involving dishonesty; or
 - (d) if the person is a financial advice provider or a financial adviser, the person has, in the 4 years immediately before the date on which the information is required to be given,—
 - (i) been discharged from bankruptcy (whether in New Zealand or overseas); or

- (ii) been discharged from the no asset procedure under subpart 4 of Part 5 of the Insolvency Act 2006 (or a similar procedure under a law of an overseas jurisdiction).
- (2) The following applies in relation to a reliability event under subclause (1)(b):
 - (a) information about the reliability event is only required to be given under that paragraph if a reasonable client would expect the information to, or to be likely to, materially influence a client in deciding whether to seek or obtain advice from a financial advice provider (or from any of its financial advisers or nominated representatives):
 - (b) in the case of a regulatory action other than a criminal or civil proceeding, the information about the reliability event does not need to be given under that paragraph if it is confidential and is not reasonably available to the public.
- (3) Subclause (2)(a) is subject to subclause (2)(b).
- (4) A person has been **publicly disciplined** if—
 - (a) the person has been the subject of disciplinary action under clause 46 of Schedule 5 of the Act or section 101(3) of the Financial Advisers Act 2008; and
 - (b) the disciplinary committee has publicly notified the action under clause 47(3) of Schedule 5 of the Act or section 101(6) of the Financial Advisers Act 2008 in a way that included making the person's name available to the public; and
 - (c) the decision to take the disciplinary action has not been overturned on appeal.

Part 2

Information that must be available or be given

4 Information that must be publicly available

- (1) A financial advice provider (**P**) must make the following information publicly available in accordance with regulation 229C:

Licence status and conditions

- (a) one of the following (as applicable):
 - (i) a statement to the effect that P holds a licence issued by the FMA to provide a financial advice service; or
 - (ii) a statement—
 - (A) to the effect that P is authorised by a licence issued by the FMA to provide a financial advice service; and
 - (B) setting out the name of the licensee; or

- (iii) a statement to the effect that P is exempt from the requirement to hold a licence issued by the FMA to provide a financial advice service:
- (b) a brief summary of the effect of each condition of the licence that limits or restricts the advice that may be given by P or a person giving advice on P's behalf:
Nature and scope of financial advice service
- (c) the types of financial advice products in relation to which advice is given:
- (d) if P gives advice in relation to financial advice products from particular product providers only,—
 - (i) a statement to that effect; and
 - (ii) either—
 - (A) the names of the product providers; or
 - (B) a description that adequately identifies, or allows for identification of, the particular product providers:
- (e) a brief explanation of any material limitations or restrictions on the scope of financial advice services that P gives, or that are given on P's behalf (*see* clause 1(2)):
Fees, expenses, or other amounts payable
- (f) if P's clients will or may have to pay, in relation to the giving of advice, any fees, expenses, or other amounts to P or another person connected with the giving of the advice, a brief explanation of when, or in what circumstances, those amounts will or may be payable:
Conflicts of interest and commissions or other incentives
- (g) if any conflict of interest (other than a commission or other incentive) currently exists or is likely to arise in the future in relation to advice given to P's clients,—
 - (i) a brief description of the nature of each conflict of interest; and
 - (ii) a brief explanation of the steps that have been or will be taken to manage each conflict of interest:
- (h) if any commission or other incentive will or may be given in relation to advice given to P's clients,—
 - (i) a brief explanation of when, or in what circumstances, they will or may be given; and
 - (ii) a brief explanation of the steps that have been or will be taken to manage the conflicts of interest:
Complaints process
- (i) an explanation of how to make a complaint:

- (j) an overview of P’s internal complaints process:
Dispute resolution process
- (k) in relation to P’s dispute resolution scheme,—
 - (i) a statement to the effect that a complainant has access to a free, independent dispute resolution service, and that service may help investigate or resolve the complaint if it is not resolved to the complainant’s satisfaction using P’s internal complaints process; and
 - (ii) the name of the dispute resolution scheme that P is a member of; and
 - (iii) the scheme’s contact details to make a complaint:
Duties information
- (l) a statement to the effect that P and any person giving advice on P’s behalf is bound by the duties in sections 431I, 431K, 431L, and 431M of the Act to—
 - (i) meet the standards of competence, knowledge, and skill set out in the code of conduct; and
 - (ii) give priority to the client’s interests; and
 - (iii) exercise care, diligence, and skill; and
 - (iv) meet the standards of ethical behaviour, conduct, and client care set out in the code of conduct.
- (2) An explanation required under subclause (1)(h)(i) may describe commissions or other incentives that are of a similar kind as a class, and need not itemise each separate commission or other incentive.

Example

P is an insurance adviser and receives commissions from insurance companies if P’s clients purchase insurance policies.

P’s explanation might say “We receive commissions from the insurance companies about whose policies we give advice. If you decide to take out insurance, the insurer will pay a commission to your financial adviser. The amount of the commission is based on the amount of the premium.”

- (3) The statement required under subclause (1)(l) does not need to refer to the sections of the Act or recite the precise words of the Act so long as it gives an adequate statement of their general effect.

5 Information that must be given when nature and scope of advice known

- (1) A person who gives advice (**A**) must give the following information to a client of a financial advice provider (**P**) in accordance with regulation 229D:

Nature and scope of financial advice service

- (a) the types of financial advice products the advice will be given about:

- (b) if some or all of the advice will be given in relation to financial advice products from particular product providers only,—
 - (i) a statement to that effect; and
 - (ii) either—
 - (A) the names of the product providers; or
 - (B) a description that adequately identifies, or allows for identification of, the particular product providers:
 - (c) a brief explanation of any material limitations or restrictions on the nature and scope of the advice that the client will be given (*see* clause 1(2)):
Reliability history
 - (d) if a reliability event has happened to P or to A (if A is a financial adviser or a nominated representative), a statement to the effect that a reliability event has happened, including enough detail to identify each reliability event that has happened, the person the event happened to, and the date on which each event occurred.
- (2) The person must also give the client the following information:
- Identifying information*
- (a) if A is a financial adviser,—
 - (i) a statement that A is a financial adviser; and
 - (ii) a statement that A gives advice on behalf of P; and
 - (iii) A's name, or other information that adequately identifies or allows for identification of A:
- Fees, expenses, or other amounts payable*
- (b) if the client will or may have to pay, in relation to the giving of the advice, any fees, expenses, or other amounts to A, P, or another person connected with the giving of the advice,—
 - (i) a brief explanation of when, or in what circumstances, the amounts will or may become payable; and
 - (ii) either—
 - (A) the amount payable (if known at the time the disclosure is made); or
 - (B) if the amount is not known at the time the disclosure is made, a brief explanation of how the amount will be determined and, if practicable, an estimate of the amount; and
 - (iii) a brief explanation of the terms of payment (if known at the time the disclosure is made):

Conflicts of interest and commissions or other incentives

- (c) if any conflict of interest (other than a commission or other incentive) currently exists or is likely to arise in the future in relation to the advice the client is seeking or given,—
 - (i) a brief description of the nature of each conflict of interest; and
 - (ii) a brief explanation of the steps that have been or will be taken to manage each conflict of interest:
- (d) if any commission or other incentive will or may be given in relation to the advice the client is seeking or given, for each commission or other incentive, a brief explanation or description of the following:
 - (i) when, or the circumstances in which, it will or may be given:
 - (ii) who it would be given by and to whom:
 - (iii) its amount or value (or how that would be determined):
 - (iv) the steps that have been or will be taken to manage the conflicts of interest.

Example

Connor phones Ari, an insurance adviser, to ask about insurance on his home loan.

Ari's explanation might be "We receive commissions from the relevant insurance company if you take out insurance following our advice. The commissions are between 7% and 12% of the first year's premiums of your policy—the amount depends on which insurance company and which insurance policy you choose. However, we follow an advice process that ensures our recommendations are made on the basis of your goals and circumstances."

- (3) If a person other than A is likely to give the advice to the client, then the information set out in subclause (1)(d) and (2) in relation to A must be information relating to that other person instead of A (and may relate to more than 1 person).
- (4) The fact that a reliability event no longer needs to be included in the reliability history information merely because of the passage of time does not constitute a material change to the reliability history information for the purposes of regulation 229E.

6 Information that must be given when advice is given

- (1) A person who gives advice (A) must give the following information to a client of a financial advice provider (P) in accordance with regulation 229E:

Fees, expenses, or other amounts payable

- (a) to the extent not already given under clause 5(2)(b), if the client will or may have to pay, in relation to the giving of the advice, any fees, expenses, or other amounts to A, P, or another person connected with the giving of the advice,—

- (i) when, or in what circumstances, the amounts will or may become payable; and
- (ii) either—
 - (A) the amount payable (if known at the time the disclosure is made); or
 - (B) if the amount is not known at the time the disclosure is made, an explanation of how the amount will be determined and, if practicable, an estimate of the amount; and
- (iii) the terms of payment (if known at the time the disclosure is made):

Example

Alice is engaged by ABC Limited to give advice to Claire about share investments.

Alice previously informed Claire as required by regulation 229D that ABC Limited charges a fee for the financial advice (but was not able to provide details of the fee at that stage).

That information is now known at the time the disclosure is made.

Alice must now provide Claire with details of that fee.

- (b) if the client will or may have to pay fees, expenses, or other amounts in relation to acting on the advice, a statement to that effect:

Conflicts of interest and commissions or other incentives
- (c) to the extent not already given under clause 5(2)(c), if any conflict of interest (other than a commission or other incentive) currently exists or is likely to arise in the future in relation to the advice,—
 - (i) a description of the nature of each conflict of interest; and
 - (ii) a brief explanation of the steps that have been or will be taken to manage each conflict of interest:
- (d) to the extent not already given under clause 5(2)(d), if any commissions or other incentives will or may be given in relation to the advice, for each commission or other incentive,—
 - (i) when, or the circumstances in which, it will or may be given; and
 - (ii) who it would be given by and to whom; and
 - (iii) its amount or value (or how that would be determined); and
 - (iv) a brief explanation of the steps that have been or will be taken to manage the conflicts of interest:

Example (continued from clause 5(2))

Ari emails Connor and advises Connor to take out a full home policy from XYZ Limited.

Ari's explanation might be "We will receive a commission of 10% of the first year's premium from XYZ Limited if you take out this policy."

Complaints process

- (e) an explanation of how to make a complaint:
- (f) an overview of P's internal complaints process:

Dispute resolution process

- (g) in relation to P's dispute resolution scheme,—
 - (i) a statement to the effect that a complainant has access to a free, independent dispute resolution service, and that service may help investigate or resolve the complaint if it is not resolved to the complainant's satisfaction using P's internal complaints process; and
 - (ii) the name of the dispute resolution scheme that P is a member of; and
 - (iii) the scheme's contact details to make a complaint:

Duties information

- (h) a statement to the effect that the person giving the advice is bound by the duties in sections 431I, 431K, 431L, and 431M of the Act to—
 - (i) meet the standards of competence, knowledge, and skill set out in the code of conduct; and
 - (ii) give priority to the client's interests; and
 - (iii) exercise care, diligence, and skill; and
 - (iv) meet the standards of ethical behaviour, conduct, and client care set out in the code of conduct.
- (2) The following applies if any of the information in subclause (1)(e) to (g) is publicly available:
- (a) A may (instead of giving the information to the client) give the client a statement to the effect that the information is available on an Internet site that is maintained by or on behalf of P; but
 - (b) if the information has materially changed since A previously gave or made available the information to the client, A may rely on paragraph (a) only if the statement under that paragraph is accompanied by an explanation of what has changed.
- (3) The statement required under subclause (1)(h) does not need to refer to the sections of the Act or recite the precise words of the Act so long as it gives an adequate statement of their general effect.
- (4) The fact that A is not the person that the information originally provided under clause 5(1)(d) was about is a material change for the purposes of regulation

229E(2) (and, accordingly, the client must be given an updated version of the information as it relates to A, or receive an explanation of what has changed).

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 on 15 March 2021, are made under the Financial Markets Conduct Act 2013 (the **FMC Act**) and amend the Financial Markets Conduct Regulations 2014 (the **FMC Regulations**) in consequence of amendments being made to the FMC Act by the Financial Services Legislation Amendment Act 2019 (the **FSLA Act**).

New section 431O of the FMC Act (being inserted by the FSLA Act) will require people who give regulated financial advice to make available the information prescribed by regulations, as and when required by the regulations. The amendments made by these regulations require people who give that advice to retail clients to give the information set out in *new Schedule 21A* of the FMC Regulations.

The amendments made by these regulations divide the process of giving financial advice into stages and set out the information that must be made available or given to clients at each stage. In summary, they are—

- public disclosure:
- disclosure when the nature and scope of the advice a client is seeking become known:
- disclosure when advice is given:
- disclosure when a complaint is made.

New regulation 229C requires a financial advice provider to make the information set out in *clause 4 of new Schedule 21A* available to the public. The purpose of requiring this information to be publicly available is to give retail clients access to information that will help them to find a financial advice provider that meets their needs.

New regulation 229D requires a person who gives financial advice to give the information set out in *clause 5 of new Schedule 21A* to a client at the time that the person knows or ought reasonably to know the nature and scope of the advice the client is seeking. The information includes information relating to any limitations or restrictions on the nature and scope of advice that can be given to the client, and details of any fees or conflicts of interest (including commissions or other incentives) that may apply. The purpose of this regulation is to give retail clients information that will help them to make an informed decision about whether to seek advice from a particular person or provider or whether to act on that advice.

New regulation 229E requires a person who gives financial advice to give the information set out in *clause 6 of new Schedule 21A* together with information regarding any material updates to the information set out in *clause 5(1)* of that schedule to a client at the time that advice is given to the client. The information includes further details of any fees or conflicts of interest that may apply. The purpose of this regulation is to give retail clients information that will help them to make an informed decision about whether to act on advice that they have been given.

New regulation 229F requires a financial advice provider, or a person who is engaged by the provider, to give dispute resolution information if a complaint is received.

The information that is given under the regulations must be worded and presented in a clear, concise, and effective manner (*see new regulation 229H*).

The information given under *new regulations 229D and 229E* does not need to be given if the client has already received the relevant information. However, the client has to be informed of any material change. In any case, the information must be given if the client requests it.

Regulatory impact assessment

The Ministry of Business, Innovation, and Employment produced a regulatory impact assessment on 13 February 2019 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—

- <https://www.mbie.govt.nz/assets/1b7f69938a/impact-summary-financial-advice-disclosure-regulations.pdf>
- <http://www.treasury.govt.nz/publications/informationreleases/ria>

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 25 June 2020.

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