

Reprint
as at 15 March 2021



Financial Markets Conduct (Unlisted Market) Regulations 2015 (LI 2015/253)

Jerry Mateparae, Governor-General

Order in Council

At Wellington this 27th day of October 2015

Present:

His Excellency the Governor-General in Council

Pursuant to section 545(1)(m) of the Financial Markets Conduct Act 2013, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council and on the recommendation of the Minister of Commerce and Consumer Affairs made in accordance with sections 545(3), 549, and 550 of that Act, makes the following regulations.

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Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.
Note 4 at the end of this reprint provides a list of the amendments incorporated.

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

Regulations

1 Title

These regulations are the Financial Markets Conduct (Unlisted Market) Regulations 2015.

2 Commencement

These regulations come into force on 1 December 2015.

3 Interpretation

- (1) In these regulations, unless the context otherwise requires,—

Act means the Financial Markets Conduct Act 2013

approved provider means a person who—

- (a) is registered under the Financial Service Providers (Registration and Dispute Resolution) Act 2008 for a regulated client money or property service; and
- (b) holds, or is authorised to provide a service under, a licence that covers financial advice services

audited financial statements means financial statements of the issuing group that have been prepared in accordance with generally accepted accounting practice and that have been audited by a qualified auditor

EMS means Efficient Market Services Limited

issuer means an issuer that is, or that has applied to be, a party to an agreement with EMS providing for the issuer's financial products to be approved for trading on Unlisted

material enforcement action means any material enforcement action taken by EMS against any approved provider or issuer participating on Unlisted, and includes, but is not limited to, the issuing of a warning or trading suspension

rules means the market rules for Unlisted

Unlisted means the financial product market operated by EMS under that name

Unlisted Internet site means the Internet site maintained by, or on behalf of, EMS in respect of Unlisted, including for the purposes of operating Unlisted online.

- (2) Any term or expression that is defined in the Act or the Financial Markets Conduct Regulations 2014 and used, but not defined, in these regulations has the same meaning as in the Act or those regulations.

Regulation 3(1) **approved broker**: revoked, on 15 March 2021, by regulation 42(1) of the Financial Markets Conduct Amendment Regulations 2020 (LI 2020/315).

Regulation 3(1) **approved provider**: inserted, on 15 March 2021, by regulation 42(1) of the Financial Markets Conduct Amendment Regulations 2020 (LI 2020/315).

Regulation 3(1) **material enforcement action**: amended, on 15 March 2021, by regulation 42(2) of the Financial Markets Conduct Amendment Regulations 2020 (LI 2020/315).

4 Exemption in respect of licensing of markets for trading financial products

- (1) Unlisted is exempt from the operation of subpart 7 of Part 5 of the Act.
- (2) Unlisted is therefore a prescribed exempt market for the purpose of section 312(1)(c) of the Act.

5 Conditions of exemption

The exemption in regulation 4 is subject to the following conditions:

Conditions related to Unlisted

- (a) EMS must not hold out that it has a financial product market licence or that the operation of Unlisted is authorised by a financial product market licence; and
- (b) EMS must ensure that the Unlisted Internet site contains at all reasonable times a reasonably prominent warning statement that, to the satisfaction of the FMA, states that Unlisted is not a licensed market and specifies the investor protection mechanisms in Part 5 of the Act that do not apply to Unlisted; and
- (c) EMS must promptly advise the FMA if EMS has any reasonable grounds to believe that any approved provider or issuer participating on Unlisted has breached Part 2 of the Act; and
- (d) EMS must advise the FMA of any material enforcement action taken against any approved provider or issuer participating on Unlisted immediately upon the action being taken; and
- (e) EMS must inform the Minister and the FMA immediately if EMS becomes aware or has reasonable grounds to believe that—
 - (i) EMS is, or is likely to become, subject to an insolvency event; or
 - (ii) a director or senior manager of EMS, or any of the key personnel of EMS, is adjudicated bankrupt or is likely to be adjudicated bankrupt (whether in New Zealand or overseas); and
- (f) EMS must inform the Minister before there is a sale of all or a substantial part of the assets of EMS, or a merger, a consolidation, or an acquisition of EMS, or any change of ownership of more than 50% of the voting rights in EMS; and
- (g) EMS must provide an annual report to the Minister each August that—
 - (i) summarises aggregate trade volumes and values on Unlisted, on a per issuer basis; and
 - (ii) contains a list of approved providers and issuers participating on Unlisted (including any changes during the period to which the report relates); and

- (iii) states the number of shares of each issuer participating on Unlisted, and the overall value of each issuer, as at the date of the report; and
- (iv) contains a list of any complaints received, and any disciplinary actions taken, in respect of Unlisted or any approved provider or issuer participating on Unlisted; and
- (h) EMS must keep, to the satisfaction of the FMA, a record of each transaction that occurs on Unlisted; and
- (i) EMS must promptly provide, on request by the FMA or the Takeovers Panel, any information within EMS's possession or control about Unlisted, or about any approved provider or issuer participating on Unlisted, or about any activity carried out on Unlisted, that the FMA or the Takeovers Panel considers necessary or desirable to request for the purposes of performing its functions; and
- (j) EMS must co-operate with the FMA and the Takeovers Panel in the exercise of any of their powers to investigate dealings or conduct in relation to financial products on Unlisted; and

Conditions related to Unlisted rules

- (k) EMS must ensure that a copy of the rules is available for public inspection, free of charge and during normal office hours, at the head office of EMS and is published on the Unlisted Internet site at all reasonable times; and
- (l) the rules must provide that all sales and purchases of financial products on Unlisted are required to be executed by, or actioned through the agency of, an approved provider; and
- (m) the rules must require an approved provider, in respect of each participating investor, to obtain, before acting for the first time after 1 December 2015 on that investor's instructions to trade on Unlisted, an acknowledgement from the investor that the investor knows that Unlisted is an unlicensed market and that the investor protection mechanisms in Part 5 of the Act do not apply to Unlisted; and
- (n) EMS must inform the FMA before making any change to the rules; and

Conditions relating to Unlisted rules about financial statements of issuers

- (o) the rules must provide that all issuers must, at the time of entering into an agreement with EMS providing for the issuer's financial products to be approved for trading on Unlisted, make publicly available, on an Internet site maintained by or on behalf of the issuer, at all reasonable times, one of the following:
 - (i) audited financial statements for the issuing group's most recent accounting period; or

- (ii) if there is no relevant period under subparagraph (i) but a member of the issuing group has commenced business and has acquired an asset or has incurred a debt on or before the date of entering into an agreement with EMS providing for the issuer's financial products to be approved for trading on Unlisted, audited financial statements for the issuing group for the period from the date of commencement of business and ending on a stated date that is not more than 4 months before the date of entering into an agreement with EMS providing for the issuer's financial products to be approved for trading on Unlisted; and
- (p) the rules must provide that all issuers must, while the financial products of the issuer are approved for trading on Unlisted, make publicly available, on an Internet site maintained by or on behalf of the issuer, at all reasonable times, annual audited financial statements for the issuing group's most recently completed accounting period.

Regulation 5(c): amended, on 15 March 2021, by regulation 43(1) of the Financial Markets Conduct Amendment Regulations 2020 (LI 2020/315).

Regulation 5(d): amended, on 15 March 2021, by regulation 43(1) of the Financial Markets Conduct Amendment Regulations 2020 (LI 2020/315).

Regulation 5(g)(ii): amended, on 15 March 2021, by regulation 43(2) of the Financial Markets Conduct Amendment Regulations 2020 (LI 2020/315).

Regulation 5(g)(iv): amended, on 15 March 2021, by regulation 43(1) of the Financial Markets Conduct Amendment Regulations 2020 (LI 2020/315).

Regulation 5(i): amended, on 15 March 2021, by regulation 43(1) of the Financial Markets Conduct Amendment Regulations 2020 (LI 2020/315).

Regulation 5(l): amended, on 15 March 2021, by regulation 43(1) of the Financial Markets Conduct Amendment Regulations 2020 (LI 2020/315).

Regulation 5(m): amended, on 15 March 2021, by regulation 43(1) of the Financial Markets Conduct Amendment Regulations 2020 (LI 2020/315).

Michael Webster,
Clerk of the Executive Council.

Reprints notes

1 *General*

This is a reprint of the Financial Markets Conduct (Unlisted Market) Regulations 2015 that incorporates all the amendments to those regulations as at the date of the last amendment to them.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Financial Markets Conduct Amendment Regulations 2020 (LI 2020/315): Part 3