



Financial Markets Conduct (Conduct of Institutions) Amendment Regulations 2023

Cindy Kiro, Governor-General

Order in Council

At Wellington this 6th day of June 2023

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 sections 546(4), 549, and 550 of that Act.

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Regulations

- 1 Title**
These regulations are the Financial Markets Conduct (Conduct of Institutions) Amendment Regulations 2023.
- 2 Commencement**
These regulations come into force on 31 March 2025.
- 3 Principal regulations**
These regulations amend the Financial Markets Conduct Regulations 2014.

4 New regulation 14A inserted (Financial product includes contract of insurance)

After regulation 14, insert:

14A Financial product includes contract of insurance

For the purposes of paragraph (b)(i) of the definition of financial product in section 18 of the Act, a contract of insurance is declared to be a financial product for the purposes of every provision of Part 2 of the Act.

5 New regulation 183A and cross-heading inserted

After regulation 183, insert:

Terms and conditions of exemption for Lloyd's underwriters

183A Terms and conditions of exemption for Lloyd's underwriters

The exemption in section 389(4)(a) of the Act is subject to the terms and conditions set out in Part 1 of Schedule 21D.

6 New regulations 237B to 237J and cross-headings inserted

After regulation 237A, insert:

Conduct of financial institutions: services that are not relevant services

237B Relevant service does not include certain services provided to retail client controlled by wholesale client

- (1) For the purposes of paragraph (b) of the definition of relevant service in section 446F(1) of the Act, the following services are not relevant services:
- (a) a service referred to in section 446F(1)(a)(iii) of the Act where the only retail clients that receive or will receive the service are persons that are controlled by 1 or more wholesale clients:
 - (b) acting as an intermediary for a service referred to in paragraph (a).
- (2) In this regulation,—

controlled has the same meaning as in clause 48 of Schedule 1 of the Act

wholesale client has the same meaning as in section 49(2) of the Financial Service Providers (Registration and Dispute Resolution) Act 2008.

Conduct of financial institutions: providing information on request

237C How information about fair conduct programme must be provided to person who requests it

- (1) This regulation applies when a financial institution provides information under section 446H(1)(b) of the Act to a person who requests the information.

- (2) For the purposes of section 446H(4) of the Act, the information must be provided to the person by giving it to them or delivering or sending it to their address.

Conduct of financial institutions: incentives

237D Incentives regulations

- (1) Regulations 237E to 237H prescribe matters for the purposes of sections 446K and 446L of the Act, which require financial institutions and their intermediaries to comply with regulations relating to incentives.
- (2) In this regulation, regulations 237E to 237H, and Part 9 of Schedule 1,—
- associated product** has the meaning set out in section 446F(2) of the Act
- immediate manager** means a relevant employee’s immediate manager or supervisor (by whatever name called)
- incentive** has the meaning set out in section 446M of the Act
- intermediary** has the meaning set out in section 446Q of the Act
- involved** has the meaning set out in section 446Q(3) and (4) of the Act
- prohibited incentive** has the meaning set out in regulation 237E(1)
- relevant employee** means a person referred to in regulation 237G(2)(a) or 237H(2)(a)
- relevant service** has the meaning set out in section 446F(1) of the Act.

237E What is prohibited incentive

- (1) An incentive is a **prohibited incentive**, in relation to relevant services or associated products, if a person’s entitlement to the incentive, or the nature or value of the incentive, is determined or calculated in any way by a direct reference to a target or other threshold that relates to the volume or value of the services or products.

Examples of prohibited incentive

Example 1

The employee of a life insurer is offered a \$1,000 bonus for selling at least 100 life policies in a 3-month period. The bonus is a prohibited incentive because the employee’s entitlement to the bonus is determined by way of a direct reference to a sales target.

Example 2

An employee (**A**) receives an annual bonus calculated on a sliding scale. The bonus is calculated as the aggregate of 0.5% of A’s base salary for the first \$10 million in customer funds invested in a particular product based on A’s recommendations, 0.75% for amounts over \$10 million, and 1.00% for amounts over \$20 million. The bonus is a prohibited incentive because it is determined by reference to thresholds directly referencing the volume of the relevant services or associated products sold.

- (2) However, an incentive is not a **prohibited incentive** if—
- (a) the person’s entitlement to the incentive, or the nature or value of the incentive,—
- (i) is determined or calculated on a linear basis (that is, on a per service or per product basis); and
- (ii) is not determined or calculated in any way by a direct reference to a target or other threshold that relates to the volume or value of the relevant services or associated products; or
-
- Example of incentive that is not prohibited (linear basis only)**
- An employee (**A**) is paid a commission for each insurance contract that A arranges, calculated as 5% of the first year’s premium for the contract. The percentage does not depend on any target or threshold (that is, the percentage does not change based on the volume or value of contracts).
- The incentive is not prohibited because it is determined or calculated on a linear basis only (that is, on a per service or per product basis as a fixed percentage of the premium).
-
- (b) the person’s entitlement to the incentive, or the nature or value of the incentive, is determined or calculated in any way by a direct reference to a target or other threshold that relates to the volume or value of relevant services or associated products provided to wholesale clients only (and in no way relates to the volume or value of relevant services or associated products provided to retail clients); or
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- Example of incentive that is not prohibited (wholesale only)**
- An employee (**A**) of an intermediary receives 5% of transaction income generated if A generates over \$100,000 of transaction income from wholesale clients in a 3-month period. The transaction income includes income generated from financial products issued by financial institutions.
- The incentive is not prohibited because it does not in any way relate to transaction income from retail clients.
-
- (c) the incentive is offered or given in the circumstances set out in subclause (3).
- (3) The circumstances are that—
- (a) the incentive is offered or given by a person (**A**) that—
- (i) is an intermediary; and
- (ii) is a financial advice provider; and
- (iii) is not a financial institution; and
- (b) the incentive is offered or given to a relevant employee (**B**) of A under regulation 237H(2)(a); and
- (c) B’s entitlement to the incentive, or the nature or value of the incentive,—

- (i) is determined or calculated on a linear basis (that is, on a per service or per product basis); and
 - (ii) is also determined or calculated in any way by only one direct reference to a target or other threshold that relates to the volume or value of the relevant services or associated products; and
- (d) B is also entitled to receive from A a monetary benefit that is not an incentive; and
- (e) the monetary benefit is paid for B being involved in the provision of the same relevant services or associated products as those to which the incentive relates.

Example

An employee of a financial advice provider has a base salary of \$50,000. In addition, the employee receives a commission of 5% of every dollar's worth of all sales in a quarter if the employee hits a target of \$100,000 in a quarter.

The \$100,000 target is the only target that relates to the volume or value of the relevant services or associated products.

The employee's sales for a quarter are \$200,000. The commission is \$10,000 (5% of \$200,000).

The commission is not a prohibited incentive.

237F Clarifications about direct references to targets or other thresholds

- (1) Subclause (2) applies if—
- (a) an immediate manager's entitlement to an incentive, or the nature or value of an immediate manager's incentive, is determined or calculated in any way by reference to the performance of 1 or more relevant employees; and
 - (b) that performance is assessed in any way by a direct reference to a target or other threshold that relates to the volume or value of relevant services or associated products.
- (2) For the purposes of regulation 237E(1), the immediate manager's entitlement, or the nature or value of the incentive, must be treated as being determined or calculated by way of a direct reference to a target or other threshold that relates to the volume or value of relevant services or associated products.
- (3) For the purposes of regulation 237E(1), a person's entitlement to an incentive, or the nature or value of a person's incentive, is not determined or calculated by reference to a target or other threshold that relates to the volume or value of relevant services or associated products merely because—

- (a) the entitlement, nature, or value is determined or calculated by reference to a target or other threshold that relates to market share, profit, or any other similar measure of financial performance; or

Example

A manager is entitled to a bonus if a company's net profit exceeds \$5 million. The volume or value of services or products that the company sells affects the company's profit, but this does not mean that the incentive is determined or calculated by reference to a target or other threshold that relates to the volume or value of services or products.

- (b) an incentive is subject to a limit or cap.

Example

An employee receives \$100 for every home loan that they sell, up to a maximum of \$2,500 a quarter. The \$100 amount is a linear-based incentive that is not prohibited. The \$2,500 limit or cap does not change that result.

237G Financial institution must not offer or give prohibited incentives

- (1) For the purposes of section 446K of the Act, a financial institution must not offer or give a prohibited incentive to a person referred to in subclause (2).
- (2) The persons are—
- (a) an employee (a **relevant employee**) of the financial institution who—
- (i) is involved in the provision of the financial institution's relevant services or associated products; and
- (ii) in the course of that involvement, has direct contact with 1 or more consumers or persons who act on behalf of 1 or more consumers (for example, face-to-face contact or contact by telephone, letter, email, or other electronic communication); or
- (b) the immediate manager of a relevant employee; or
- (c) an intermediary that is involved in the provision of the financial institution's relevant services or associated products; or
- (d) an agent of the financial institution that is involved in the provision of the financial institution's relevant services or associated products.

237H Intermediary must not offer or give prohibited incentives

- (1) For the purposes of section 446L of the Act, an intermediary must not offer or give a prohibited incentive to a person referred to in subclause (2) in connection with the provision of a financial institution's relevant services or associated products.
- (2) The persons are—
- (a) an employee (a **relevant employee**) of the intermediary who—

- (i) is involved in the provision of the financial institution's relevant services or associated products; and
- (ii) in the course of that involvement, has direct contact with 1 or more consumers or persons who act on behalf of 1 or more consumers (for example, face-to-face contact or contact by telephone, letter, email, or other electronic communication); or
- (b) the immediate manager of a relevant employee; or
- (c) another intermediary that is involved in the provision of the financial institution's relevant services or associated products; or
- (d) an agent of the intermediary that is involved in the provision of the financial institution's relevant services or associated products.

Conduct of financial institutions: Lloyd's

237I Requirements for fair conduct programmes of Lloyd's managing agents

Part 2 of Schedule 21D prescribes matters for the purposes of section 446V(3)(b)(i) of the Act.

237J How information about fair conduct programmes of Lloyd's managing agents must be made publicly available

Part 3 of Schedule 21D prescribes matters for the purposes of section 446V(3)(b)(ii) of the Act.

7 Schedule 1 amended

In Schedule 1,—

- (a) insert the Part set out in Schedule 1 of these regulations as the last Part; and
- (b) make all necessary consequential amendments.

8 New Schedule 21D inserted

After Schedule 21C, insert the Schedule 21D set out in Schedule 2 of these regulations.

Schedule 1

New Part 9 inserted into Schedule 1

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Part 9

Provisions relating to Financial Markets Conduct (Conduct of Institutions) Amendment Regulations 2023

53 Application of incentives regulations

- (1) Regulations 237D to 237H apply to prohibited incentives offered, given, or otherwise payable on or after the commencement of this clause (the **commencement**).
- (2) Subclause (1) applies even if the incentive is offered, given, or otherwise payable under an agreement referred to in clause 98(2) of Schedule 4 of the Act.
- (3) *See* clause 98(3) of Schedule 4 of the Act, which provides that nothing in these regulations applies to an incentive that is given, paid, or payable before the commencement or that a person has become entitled to before the commencement.
- (4) Clause 98(4)(b) of Schedule 4 of the Act does not apply to a right to terminate or cancel an agreement that would otherwise be exercisable by a person (A) who, but for regulations 237D to 237H, would be entitled to receive a prohibited incentive if—
 - (a) the parties to the agreement have expressly or impliedly agreed that the provision of the incentive is essential to A; or
 - (b) the effect of regulations 237D to 237H will be—
 - (i) substantially to reduce the benefit of the agreement to A; or
 - (ii) in relation to A, to make the benefit or burden of the agreement substantially different from that agreed to.

Guidance note

Clause 98 of Schedule 4 of the Act allows incentives regulations to apply to existing agreements.

Schedule 2

New Schedule 21D inserted

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Schedule 21D

Matters relating to Lloyd's, Lloyd's underwriters, and Lloyd's managing agents

rr 183A, 237I, 237J

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1 Interpretation

In this schedule,—

Lloyd's coverholder means a person that—

- (a) has been authorised by a Lloyd's managing agent to enter into Lloyd's products in accordance with the terms of a binding authority; and
- (b) is incorporated or registered in New Zealand

Lloyd's products, in relation to a Lloyd's managing agent, means the consumer insurance contracts or other contracts of insurance in respect of which the agent acts as a managing agent as referred to in section 446V(2) of the Act

Lloyd's underwriters, in relation to a Lloyd's managing agent, means the 1 or more Lloyd's underwriters (within the meaning of section 6 of the Act) that the Lloyd's managing agent acts on behalf of

relevant obligation means an obligation imposed on Lloyd's, a Lloyd's underwriter, or a Lloyd's managing agent under Part 6 of the Act or these regulations.

Part 1**Terms and conditions of exemption in section 389(4)(a) of Act for Lloyd's underwriters****2 Lloyd's must give FMA initial report about business in New Zealand**

- (1) Lloyd's must give the FMA a report that contains the following information:
 - (a) a list of the Lloyd's managing agents, and a list of the Lloyd's coverholders, that are involved in providing Lloyd's products; and
 - (b) a description of the types of contracts referred to in section 446V(2) of the Act that the Lloyd's coverholders are involved in providing; and
 - (c) an estimate of the number of consumers that are covered by those contracts; and
 - (d) a description of the distribution methods by which Lloyd's managing agents provide those contracts to consumers.
- (2) The report must be—
 - (a) given to the FMA within 3 months after the commencement of this clause; and
 - (b) prepared as at the date on which this clause comes into force.

3 Lloyd's or Lloyd's managing agent must report contraventions and changes of circumstance

- (1) This clause applies if Lloyd's or a Lloyd's managing agent believes that—

- (a) Lloyd's, a Lloyd's underwriter, or a Lloyd's managing agent has contravened, may have contravened, or is likely to contravene a relevant obligation in a material respect; or
 - (b) a material change of circumstances has occurred, may have occurred, or is likely to occur in relation to a Lloyd's managing agent.
- (2) Lloyd's or the Lloyd's managing agent must send a report to the FMA as soon as practicable after it forms the belief.
- (3) The report must contain details of the belief and the grounds for the belief.
- (4) In this clause, **material change of circumstances**, in relation to a Lloyd's managing agent, means a change that adversely affects the Lloyd's managing agent's capacity to act in an effective manner as a managing agent as referred to in section 446V(2) of the Act.

4 Lloyd's or Lloyd's managing agent must report matters relating to insolvency and relevant proceedings or actions

- (1) If any of the following occurs, Lloyd's or a Lloyd's managing agent must, as soon as practicable, send a report containing details of the matter to the FMA:
- (a) Lloyd's or the Lloyd's managing agent becomes aware or has reasonable grounds to believe that—
 - (i) there is a material risk that there are insufficient funds available to pay a valid claim of a consumer under a Lloyd's product; or
 - (ii) a Lloyd's managing agent is, or it is likely that a Lloyd's managing agent will become, subject to an insolvency event; or
 - (b) Lloyd's or the Lloyd's managing agent becomes aware that a relevant proceeding or action has been commenced or taken against any of the following:
 - (i) Lloyd's:
 - (ii) a Lloyd's underwriter:
 - (iii) a Lloyd's managing agent.
- (2) However, Lloyd's or the Lloyd's managing agent is not required to send a report containing details of a relevant proceeding or action if it believes on reasonable grounds that the relevant proceeding or action relates to a contravention or breach that is minor or technical only.

5 Record keeping

- (1) Lloyd's must establish, implement, and maintain effective written policies and processes that require each Lloyd's managing agent (**A**) to—
- (a) create and maintain records that enable A to demonstrate A's compliance with the following:

- (i) the duty to establish, implement, and maintain an effective fair conduct programme;
- (ii) the duty to take all reasonable steps to comply with that fair conduct programme;
- (b) ensure that those records are created and maintained in a manner and a form (which may be electronic) that will—
 - (i) ensure that the integrity of the information is maintained; and
 - (ii) enable the FMA to readily inspect and review those records.
- (2) The records must include a copy of A's fair conduct programme.

6 Fit and proper policies or processes for managing agents' directors and senior managers

Lloyd's must establish, implement, and maintain effective written policies and processes for ensuring that the directors and senior managers of each Lloyd's managing agent are fit and proper persons to hold their respective positions.

7 Outsourcing agreements

- (1) Lloyd's must establish, implement, and maintain effective written policies and processes that require each Lloyd's managing agent (**A**) to be satisfied, in relation to each outsourcing agreement, that the outsourcing provider is, and remains, capable of effectively performing its functions under the agreement.
- (2) In this clause, **outsourcing agreement**, in relation to A, means an agreement for 1 or more activities relating to A acting as referred to in section 446V(2) of the Act to be carried out by a person other than A.

8 Business continuity

Lloyd's must establish, implement, and maintain effective written policies and processes that require each Lloyd's managing agent (**A**) to have adequate business continuity plans designed to—

- (a) address events that pose a significant risk of disruption to A's ability to effectively act as a managing agent as referred to in section 446V(2) of the Act; and
- (b) if any disruption occurs, enable the timely restoration of that ability.

9 Critical technology systems

- (1) Lloyd's must establish, implement, and maintain effective written policies and processes that require each Lloyd's managing agent (**A**) to take all reasonable steps to ensure that A operates its critical technology systems (if any) in a manner that maintains the security, integrity, reliability, and availability of those systems.
- (2) If Lloyd's or A believes that an event has occurred in relation to A's critical technology systems that presents a significant risk of disruption to, or has in

fact disrupted, A's ability to effectively act as a managing agent as referred to in section 446V(2) of the Act, Lloyd's or A must send a report to the FMA—

- (a) as soon as practicable after it forms the belief; but
 - (b) in any event, no later than 72 hours after it forms the belief.
- (3) The report must contain details of the belief and Lloyd's or A's grounds for the belief.
- (4) In this clause, **critical technology system** means a technology system maintained by, or on behalf of, A that enables A to effectively act as a managing agent as referred to in section 446V(2) of the Act.

10 Lloyd's must take all reasonable steps to ensure policies and processes are complied with

If Lloyd's is required to establish, implement, and maintain effective written policies and processes under this Part, Lloyd's must take all reasonable steps to ensure that the Lloyd's managing agents and other persons to whom the policies and processes apply comply with those policies and processes.

Part 2

Requirements for fair conduct programmes of Lloyd's managing agents

11 Application of this Part

This Part applies to a Lloyd's managing agent to the extent that it acts as a managing agent as referred to in section 446V(2) of the Act.

12 Minimum requirements

- (1) A Lloyd's managing agent must ensure that its fair conduct programme complies with all requirements prescribed in this clause.
- (2) The fair conduct programme must include effective policies, processes, systems, and controls for—
- (a) enabling the Lloyd's underwriters and the Lloyd's managing agent to meet all of their legal obligations to consumers, including under the Act, the Fair Trading Act 1986, the Credit Contracts and Consumer Finance Act 2003, and the Consumer Guarantees Act 1993; and
 - (b) designing, and managing the provision of, the Lloyd's products to consumers, including by—
 - (i) providing for the methods by which the Lloyd's products are provided to consumers (**distribution methods**) to operate in a manner that is consistent with the fair conduct principle; and

- (ii) regularly reviewing whether the distribution methods are operating in a manner that is consistent with the fair conduct principle; and
- (iii) ensuring that any deficiencies identified under subparagraph (ii) are remedied within a reasonable time; and
- (iv) regularly reviewing the Lloyd's products that are provided to consumers on an ongoing basis to determine whether they are likely to continue to meet the requirements and objectives of those consumers (when viewed as a group); and
- (v) regularly reviewing whether enhancements or improvements in the Lloyd's products should be made available to those consumers (when viewed as a group); and
- (vi) ensuring that any enhancements or improvements identified under subparagraph (v) are made available within a reasonable time; and
- (c) identifying, monitoring, and managing risks associated with conduct that fails to comply with the fair conduct principle, including—
 - (i) having clearly defined roles, responsibilities, and accountability arrangements in relation to identifying, monitoring, and managing those risks; and
 - (ii) requiring records to be maintained that are sufficient to allow an assessment to be made of the Lloyd's managing agent's compliance with the fair conduct principle; and
 - (iii) requiring regular and comprehensive reporting about those risks, and about failures to comply with the fair conduct principle, to the board or other governing body of the Lloyd's managing agent; and
- (d) identifying conduct that fails to comply with the fair conduct principle and taking reasonable steps to mitigate any actual or potential adverse effects of the failure; and
- (e) requiring the Lloyd's managing agent's employees and agents to follow the procedures or processes that are necessary or desirable to support the Lloyd's managing agent's compliance with the fair conduct principle; and
- (f) requiring initial and regular ongoing training for each of those employees on the following matters to the extent that the training is relevant to their work in providing the Lloyd's products to consumers:
 - (i) the Lloyd's products in respect of which the employee carries out work; and
 - (ii) the fair conduct programme and the procedures or processes referred to in paragraph (e) that the employee must follow; and

- (g) checking that each of those employees has completed that training and has a reasonable understanding of the matters that have been covered by that training; and
 - (h) managing or supervising each of those employees to ensure that they are supporting the Lloyd's managing agent's compliance with the fair conduct principle, and monitoring whether those persons are giving that support, including by—
 - (i) obtaining reasonable assurance that each employee is competent to carry out the range of work for which they will be, or are, employed (in relation to the Lloyd's products); and
 - (ii) setting conduct expectations for those persons; and
 - (iii) establishing robust and transparent procedures or processes for dealing with misconduct by those persons; and
 - (iv) monitoring whether consumers have been treated by those persons in a manner that is consistent with the fair conduct principle; and
 - (i) designing and managing incentives to mitigate or avoid the actual or potential adverse effects of incentives on the interests of consumers, so far as is reasonably practicable; and
 - (j) communicating with consumers about the Lloyd's products in a timely, clear, concise, and effective manner; and
 - (k) ensuring that there are in place methods for regularly reviewing, and systematically identifying deficiencies in, the effectiveness of the programme; and
 - (l) ensuring that any deficiencies identified are promptly remedied.
- (3) In considering what policies, processes, systems, and controls are effective for the purposes of this clause, regard must be had to the following:
- (a) the nature, size, and complexity of the New Zealand businesses of the Lloyd's underwriters; and
 - (b) the Lloyd's products; and
 - (c) the methods by which the Lloyd's products are provided to consumers; and
 - (d) the types of consumers the Lloyd's managing agent deals with, including consumers in vulnerable circumstances; and
 - (e) the types of intermediaries that are involved in the provision of the Lloyd's products, including the nature and extent of the following:
 - (i) their involvement; and
 - (ii) their legal obligations in connection with that involvement (for example, under subpart 5A of Part 6 of the Act in the case of financial advice providers); and

- (f) the types of agents that are engaged to carry out work in relation to the Lloyd's products, including the nature and extent of that work and of the authority of those agents.

Part 3

How information about fair conduct programmes of Lloyd's managing agents must be made publicly available

13 How information about fair conduct programme must be made publicly available

- (1) A Lloyd's managing agent (A) must ensure that the information about its fair conduct programme that is set out in subclause (2) is—
- (a) made available on an Internet site maintained by, or on behalf of, A or Lloyd's; and
 - (b) made available on an Internet site maintained by, or on behalf of, each Lloyd's coverholder authorised by A in respect of the Lloyd's products (unless the Lloyd's coverholder does not have an Internet site); and
 - (c) provided to any person who requests the information.
- (2) The information is a summary of key matters about the fair conduct programme that is in sufficient detail to assist consumers to—
- (a) be reasonably aware of how A will comply with the fair conduct principle; and
 - (b) make informed decisions about dealings and interactions with A in relation to Lloyd's products; and
 - (c) understand how to make a complaint about the Lloyd's products.
- (3) The information must be available on an Internet site under subclause (1)(a) or (b) at all reasonable times in a way that ensures that the information, or a link to the information, is prominently displayed on—
- (a) the Internet site; or
 - (b) a webpage of the Internet site that contains specific information about the provision of Lloyd's products in New Zealand.
- (4) The information must be provided under subclause (1)(c)—
- (a) by giving it to the person or delivering or sending it to their address; and
 - (b) as soon as practicable but, in any event, within 5 working days after A receives the request; and
 - (c) free of charge.

Rachel Hayward,
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 31 March 2025, amend the Financial Markets Conduct Regulations 2014 (the **principal regulations**).

The regulations relate to the Financial Markets (Conduct of Institutions) Amendment Act 2022. That Act will amend the Financial Markets Conduct Act 2013 (the **Act**) to require registered banks, licensed insurers, and licensed non-bank deposit takers that provide certain relevant services to—

- obtain a market services licence to act as a financial institution; and
- implement a fair conduct programme that is designed to ensure that they comply with a principle of fair conduct.

These regulations amend the principal regulations to—

- declare contracts of insurance to be financial products for the purposes of Part 2 of the Act. This means, for example, that the prohibitions on misleading or deceptive conduct in that Part apply in relation to contracts of insurance (*see regulation 4*):
- prescribe terms and conditions of the exemption for Lloyd's underwriters in section 389(4)(a) of the Act (*see regulation 5 and new Schedule 21D*). Those terms and conditions include duties for Lloyd's or Lloyd's managing agents relating to the following:
 - reports to the Financial Markets Authority (the **FMA**), for example, reports about contraventions, changes in circumstances, insolvency events, and relevant enforcement proceedings:
 - record keeping:
 - ensuring that directors and senior managers of Lloyd's managing agents are fit and proper persons:
 - outsourcing arrangements:
 - business continuity and critical technology systems:
- provide that the definition of relevant service in the Act does not include certain services provided to retail clients that are controlled by wholesale clients (*see new regulation 237B inserted by regulation 6*). This affects whether a registered bank, a licensed insurer, or a licensed NBDT is a financial institution that must obtain a market services licence and implement a fair conduct programme:

- prescribe how information about fair conduct programmes of financial institutions must be made available on request (*see new regulation 237C* inserted by *regulation 6*):
- prescribe matters for the purposes of sections 446K and 446L of the Act (*see new regulations 237D to 237H* inserted by *regulation 6*). Sections 446K and 446L require financial institutions and their intermediaries to comply with incentive regulations. In summary,—
 - the regulations provide that a financial institution or intermediary must not offer or give a prohibited incentive to certain persons. Those persons include an employee who has direct contact with consumers and the immediate manager of that employee:
 - an incentive is prohibited if a person’s entitlement to the incentive, or the nature or value of the incentive, is determined or calculated in any way by a direct reference to a target or other threshold that relates to the volume or value of the financial services or products that are provided. The regulations provide examples of prohibited incentives and incentives that are not prohibited (for example, an incentive calculated only on a linear basis):
- prescribe requirements for the content of fair conduct programmes of Lloyd’s managing agents and how information about those programmes must be made publicly available (*see new regulations 237I and 237J* inserted by *regulation 6* and *new Schedule 21D*).

Regulation 7 and *Schedule 1* insert a transitional provision to provide for the regulations relating to incentives to apply to an incentive offered, given, or otherwise payable on or after 31 March 2025, even if it is offered, given, or otherwise payable under an existing agreement. This is permitted by a clause to be inserted by section 23 and Schedule 1 of the Financial Markets (Conduct of Institutions) Amendment Act 2022 on 25 July 2023 (*see the Financial Markets (Conduct of Institutions) Amendment Act 2022 Commencement Order 2023*). That clause was enacted as clause 94, but it will be consequentially renumbered as clause 98 under section 23(3)(b) of that Act.

See clause 98(3) of Schedule 4 of the Act, which provides that nothing in the incentives regulations applies to an incentive that is given, paid, or payable before commencement of these regulations or that a person has become entitled to before that commencement.

Regulatory impact statements

The Ministry of Business, Innovation, and Employment produced regulatory impact statements on 13 November 2019 and 1 February 2022 to help inform the decisions taken by the Government relating to the contents of this instrument.

Copies of these regulatory impact statements can be found at—

- <https://www.mbie.govt.nz/dmsdocument/7372-regulatory-impact-statement-regulatory-regime-to-govern-the-conduct-of-financial-institutions-december-2019-pdf>
- <https://www.mbie.govt.nz/dmsdocument/19335-financial-markets-conduct-of-institutions-amendment-bill-further-policy-decisions-regulatory-impact-statement-proactiverelease-pdf>
- <https://treasury.govt.nz/publications/informationreleases/ris>

Issued under the authority of the Legislation Act 2019.

Date of notification in *Gazette*: 8 June 2023.

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