

Reprint
as at 15 March 2021



**Financial Service Providers (Exemptions) Regulations
2010**
(SR 2010/423)

Anand Satyanand, Governor-General

Order in Council

At Wellington this 22nd day of November 2010

Present:

His Excellency the Governor-General in Council

Pursuant to sections 44(1)(ab) and 79(1)(a) of the Financial Service Providers (Registration and Dispute Resolution) Act 2008, 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 in accordance with section 44(1A) of that Act, and on the recommendation of the Minister of Consumer Affairs in accordance with section 79(1A) 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.

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Regulations

1 Title

These regulations are the Financial Service Providers (Exemptions) Regulations 2010.

2 Commencement

These regulations come into force on 1 December 2010.

3 Interpretation

In these regulations, unless the context otherwise requires,—

Act means the Financial Service Providers (Registration and Dispute Resolution) Act 2008

angel organisation means an incorporated or unincorporated body that—

- (a) is established for the purpose of facilitating the provision of capital by investors (either alone or in combination) to innovative or start-up businesses; and
- (b) does not itself directly provide capital to those businesses

cash means New Zealand or foreign currency in notes or coins or both

Crown organisation means a Crown entity (as defined in section 7(1) of the Crown Entities Act 2004), a department (as defined in section 2(1) of the Public Finance Act 1989), or a government-related organisation (as defined in section 4 of the Crown Organisations (Criminal Liability) Act 2002

facility means a means of payment (including a means that is intangible property, a contract, an arrangement, a term of a contract or arrangement, or a combination of any or all of these, whether or not it also includes a physical device such as a debit card)

Lloyd's means the society of that name incorporated by the Imperial Act known as the Lloyd's Act 1871

make non-cash payments means to make payments, or cause payments to be made, other than by the physical delivery of cash

non-financial service business means a person whose only or principal business is the provision of goods or services that are not financial services

provide includes to offer to provide

relevant service means any conduct referred to in any of paragraphs (a) to (n) of section 5(1) of the Act

user, in respect of a facility, means the person who is entitled to use the facility to make payments (for example, by using the debit card in accordance with its terms) and not the person who receives the payments.

Regulation 3 **relevant service**: amended, on 15 March 2021, by regulation 4 of the Financial Service Providers (Exemptions) Amendment Regulations 2020 (LI 2020/317).

Part 1

Exemptions from application of Act

4 Exemption for directors of promoters

[Revoked]

Regulation 4: revoked, on 15 March 2021, by regulation 5 of the Financial Service Providers (Exemptions) Amendment Regulations 2020 (LI 2020/317).

4A Exemption for overseas providers that do not promote services in New Zealand

A person (P) is exempt from the application of the Act in respect of a relevant service if—

- (a) P has no place of business in New Zealand; and
- (b) P does not distribute any communications to the public in New Zealand or any section of the public in New Zealand for the purpose of promoting the supply of the service to persons in New Zealand; and
- (c) P is not required to hold, or be authorised under, a licence to provide the service; and
- (d) P is not required to be registered under the Act in relation to the service by or under any other Act; and
- (e) P is not required to be a member of an approved dispute resolution scheme in relation to the service by or under any other Act; and
- (f) in the case of a service referred to in section 390 of the Financial Markets Conduct Act 2013, P does not hold, and is not authorised under, a licence that covers the service.

Regulation 4A: inserted, on 15 March 2021, by regulation 6 of the Financial Service Providers (Exemptions) Amendment Regulations 2020 (LI 2020/317).

4B Exemption for Australian offeror for services relating to offer under mutual recognition regime

- (1) An Australian offeror is exempt from the application of the Act in respect of a relevant service provided in relation to financial products that are offered under a recognised offer.
- (2) In this regulation, **Australian offeror**, **financial products**, and **recognised offer** have the same meanings as in regulation 256 of the Financial Markets Conduct Regulations 2014.

Regulation 4B: inserted, on 15 March 2021, by regulation 6 of the Financial Service Providers (Exemptions) Amendment Regulations 2020 (LI 2020/317).

5 Exemption for financial services provided to related entities

- (1) A body corporate is exempt from the application of the Act in respect of a relevant service provided to—
 - (a) a related entity; or
 - (b) a limited partnership if the body corporate and the general partner are related bodies corporate.
- (2) In this regulation, a body corporate is **related** to an entity or another body corporate if it is related to it within the meaning of section 12(2) of the Financial Markets Conduct Act 2013, where, if subclause (1)(a) applies, a reference to “another body corporate” is taken to be a reference to “an entity”.

- (3) In this regulation, **entity** has the meaning given in section 6(1) of the Financial Markets Conduct Act 2013.

Regulation 5: replaced, on 1 December 2014, by regulation 4 of the Financial Service Providers (Exemptions) Amendment Regulations 2014 (LI 2014/336).

6 Exemption for sole adviser practice

[Revoked]

Regulation 6: revoked, on 15 March 2021, by regulation 7 of the Financial Service Providers (Exemptions) Amendment Regulations 2020 (LI 2020/317).

7 Exemption for individual trustees

- (1) An individual trustee or individual superannuation trustee who is in the business of providing a financial service in that capacity is exempt from the application of the Act in respect of those services.
- (2) However, the exemption applies only if the trustees of the trust, or the superannuation trustees of the superannuation scheme, are collectively registered as an unincorporated body.

8 Exemption for loyalty schemes

- (1) A person is exempt from the application of the Act in respect of a relevant service provided in the course of providing a loyalty scheme.
- (2) A **loyalty scheme** is a facility by which a person may make non-cash payments and to which all the following apply:
- (a) the facility is issued under a scheme the sole or main purpose of which is to promote the purchase of goods from, or the use of services of, 1 or more non-financial service businesses; and
 - (b) a member of the scheme is allocated credits under the facility (however described and whether or not a monetary value is expressly attributed to the credits) as a result of the purchase of goods from, or the use of services of, the non-financial service business or businesses (the **stored value**); and
 - (c) the stored value—
 - (i) can be used to make a non-cash payment for goods or services, or to obtain some other benefit, only from 1 or more non-financial service businesses; but
 - (ii) cannot be withdrawn in cash.

9 Exemption for gift cards and other gift facilities

- (1) A person is exempt from the application of the Act in respect of a relevant service provided in the course of providing a gift facility.
- (2) A **gift facility** is a facility by which a person may make non-cash payments and to which all of the following apply:

- (a) the facility is promoted or marketed only as a gift product; and
- (b) the amount that is credited as being the value of the facility (the **stored value**)—
 - (i) is determined at the time of the issue of the facility; and
 - (ii) can be used to make a non-cash payment for goods or services only from 1 or more non-financial service businesses; and
 - (iii) cannot be increased, or used and re-credited, after the issue of the facility (unless it is because of the reversal of a payment made under the facility in the case of a refund or because of a correction of an error); and
 - (iv) cannot be withdrawn in cash (unless it is the withdrawal of the remaining full amount of the stored value after the making of 1 or more non-cash payments under the facility and the provider has reasonably determined that that amount is unlikely to be able to be used conveniently under the facility).

10 Exemption for credit provided, on interim basis, by non-financial service business

A non-financial service business is exempt from the application of the Act in respect of the provision of credit under credit contracts to its customers if—

- (a) the credit is provided in order to facilitate the provision of goods or services to those customers; and
- (b) the non-financial service business, in the ordinary course of its business, assigns the credit contracts to another person within 1 working day of providing the credit.

11 Exemption for Lloyd's underwriters

- (1) An underwriting member of Lloyd's is exempt from the application of the Act in respect of any insurance business carried on by the member in that capacity.
- (2) However, the exemption applies only if the underwriting member is a member of—
 - (a) an approved dispute resolution scheme or the reserve scheme; or
 - (b) a group of underwriting members of Lloyd's that collectively are members of an approved dispute resolution scheme or the reserve scheme.

12 Exemption for members of angel organisations

- (1) A person (A) who is a member of an angel organisation is exempt from the application of the Act in respect of financial advice services provided to—
 - (a) any other member of the angel organisation; or
 - (b) any member of any other angel organisation.
- (2) However, the exemption applies only if—

- (a) the angel organisation of which A is a member is registered; and
- (b) A is named on a list of members kept by that angel organisation and (if reasonably requested) provided to the Registrar; and
- (c) all of the members of the angel organisation referred to in subclause (1)(a) or (b) (as the case may be) to whom the service is provided are wholesale clients (within the meaning of clause 4 of Schedule 5 of the Financial Markets Conduct Act 2013).

Regulation 12: replaced, on 15 March 2021, by regulation 8 of the Financial Service Providers (Exemptions) Amendment Regulations 2020 (LI 2020/317).

13 Exemption for New Zealand Police

The New Zealand Police is exempt from the application of the Act.

14 Exemption for National Provident Fund and Annuitas Management Limited

- (1) The board of trustees of the National Provident Fund is exempt from the application of the Act.
- (2) Annuitas Management Limited is exempt from the application of the Act in respect of any financial services it provides—
 - (a) to the board of trustees of the National Provident Fund, to the Government Superannuation Fund Authority, or to any other Crown organisation; or
 - (b) on behalf of any person in paragraph (a) (unless that person is not itself exempt from the application of the Act in respect of those services).

14A Exemption for The Tindall Foundation

- (1) The Tindall Foundation is exempt from the application of the Act in respect of a financial service referred to in section 5(e) of the Act.
- (2) However, the exemption applies only if The Tindall Foundation—
 - (a) is exempted from the application of all of the provisions of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009; and
 - (b) does not provide credit under a consumer credit contract (as defined in section 11 of the Credit Contracts and Consumer Finance Act 2003).

Regulation 14A: inserted, on 1 December 2014, by regulation 5 of the Financial Service Providers (Exemptions) Amendment Regulations 2014 (LI 2014/336).

14B Exemption for creditors involved in securitisation, etc, where transfer of rights under consumer credit contract on or after 6 June 2015

- (1) A person (the **new creditor**) is exempt from the application of the Act in respect of providing a financial service of being a creditor under a credit contract in cases where—

- (a) the new creditor becomes a creditor under the contract by reason only of a transfer of the kind referred to in section 26A(1) of the Credit Contracts and Consumer Finance Act 2003 (the **2003 Act**) that takes effect on or after 6 June 2015; and
 - (b) section 26A of the 2003 Act does not apply in the case of the transfer by virtue of regulation 19 of the Credit Contracts and Consumer Finance Regulations 2004 (the **2004 Regulations**); and
 - (c) regulation 20 of the 2004 Regulations applies.
- (2) If the new creditor is exempt under subclause (1) in respect of a credit contract (the **relevant contract**) but a disqualifying event occurs after the transfer, the exemption in respect of the relevant contract ends at the close of the tenth working day after the day on which the new creditor becomes aware, or ought reasonably to have become aware, of the disqualifying event.
- (3) For the purposes of subclause (2), each of the following is a **disqualifying event**:
- (a) a right of the new creditor in respect of a debtor or guarantor is exercised or enforced, or a debtor or guarantor is contacted by or on behalf of the new creditor in relation to the exercise or enforcement of such a right, otherwise than by or through the contract manager acting under the management contract:
 - (b) a duty of the new creditor in respect of a debtor or guarantor is performed, or a debtor or guarantor is contacted by or on behalf of the new creditor in relation to the performance of such a duty, otherwise than by or through the contract manager acting under the management contract:
 - (c) the term of the management contract ends or that contract ends in some other way:
 - (d) condition D in regulation 20(5) of the 2004 Regulations ceases to be met (reading references in that regulation to the disclosure deadline as references to all times after the disclosure deadline):
 - (e) a complaint is made to an approved dispute resolution scheme of which the contract manager is a member and the contract manager fails to comply with—
 - (i) the rules of the scheme as they apply to the complaint (including as referred to in regulation 20(5)(b)(ii) of the 2004 Regulations); or
 - (ii) any resolution of the complaint binding on the contract manager (including as referred to in that regulation):
 - (f) a person has a complaint that no approved dispute resolution scheme can resolve (despite condition D in regulation 20(5) of the 2004 Regulations) where that is the case solely because the new creditor is not a member of

- any such scheme in respect of being a creditor under the relevant contract.
- (4) Subclause (3)(a) and (b) applies (without limitation) in relation to rights and duties under the relevant contract, a guarantee, a security interest, or an enactment.
 - (5) Subclause (3)(b) does not apply if an enactment prevents the performance of the duty being done, or the contact being made, by or through the contract manager acting under the management contract.
 - (6) In subclause (3)(e) and (f), **complaint** means a complaint in relation to the providing of any financial service connected with the relevant contract.
 - (7) If the new creditor transfers (whether by assignment or operation of law) all of the new creditor's rights under the relevant contract to another person,—
 - (a) subclause (3) applies, for the purpose of determining whether a disqualifying event occurs at or after the time that the transfer by the new creditor takes effect, as if paragraphs (a) to (e) of that subclause were deleted; but
 - (b) the exemption in respect of the relevant contract ends if, after the time that the transfer by the new creditor takes effect, there is a transfer (whether by assignment or operation of law) to the new creditor of any rights under the relevant contract.
 - (8) In subclauses (3) to (7), terms that are defined in regulation 19 or 20 of the 2004 Regulations have the meaning given in that regulation and, in subclause (4), **security interest** has the meaning given in section 5 of the 2003 Act.
 - (9) If an exemption (including an exemption under this subclause or regulation 14C(2)) ends under subclause (7)(b) or regulation 14C(7),—
 - (a) a new exemption is given to the new creditor in respect of the financial service of being a creditor under the relevant contract if—
 - (i) section 26A of the 2003 Act does not apply in the case of the transfer to the new creditor referred to in subclause (7)(b) or regulation 14C(7) by virtue of regulation 19 of the 2004 Regulations; and
 - (ii) regulation 20 of the 2004 Regulations applies; and
 - (b) subclauses (2) to (8) and this subclause apply to the new exemption as they apply to an exemption under subclause (1).

Regulation 14B: inserted, on 6 June 2015, by regulation 4 of the Financial Service Providers (Exemptions) Amendment Regulations 2015 (LI 2015/84).

14C Exemption for creditors involved in securitisation, etc, where transfer of rights under consumer credit contract before 6 June 2015

- (1) This regulation applies if a person (the **new creditor**) becomes a creditor under a credit contract (the **relevant contract**) by reason only of a transfer (the **rele-**

- vant transfer**) of the kind referred to in section 26A(1) of the Credit Contracts and Consumer Finance Act 2003 that takes effect before 6 June 2015.
- (2) The new creditor is exempt from the application of the Act in respect of the financial service of being a creditor under the relevant contract if regulation 14B(1) would have exempted the new creditor in that respect had—
 - (a) the relevant transfer taken effect immediately after the beginning of 6 June 2015; and
 - (b) references in regulation 20 of the Credit Contracts and Consumer Finance Regulations 2004 to the disclosure deadline been references to the time immediately after the beginning of 6 June 2015.
 - (3) If a disqualifying event occurs, the exemption under subclause (2) ends at the close of the tenth working day after the day on which the new creditor becomes aware, or ought reasonably to have become aware, of the disqualifying event.
 - (4) Regulation 14B(3) to (8) applies for the purposes of the exemption.
 - (5) For the purposes of subclause (4), in regulation 14B(3)(d), the reference to all times after the disclosure deadline is to be read as a reference to all times after the beginning of 6 June 2015.
 - (6) The new creditor is exempt from the application of the Act in respect of the financial service of being a creditor under the relevant contract if—
 - (a) the relevant transfer is made for the purposes of securitisation or covered bond arrangements or similar arrangements; and
 - (b) before 6 June 2015, the new creditor transfers (whether by assignment or operation of law) all of the new creditor's rights under the relevant contract to another person; and
 - (c) because of the transfer referred to in paragraph (b), the new creditor has no rights under the relevant contract at the beginning of 6 June 2015.
 - (7) If there is a transfer (whether by assignment or operation of law) to the new creditor of any rights under the relevant contract that takes effect after the beginning of 6 June 2015, the exemption under subclause (6) ends at the close of the tenth working day after the day on which the transfer takes effect.

Regulation 14C: inserted, on 6 June 2015, by regulation 4 of the Financial Service Providers (Exemptions) Amendment Regulations 2015 (LI 2015/84).

14D Exemption for lenders using peer-to-peer lending services

- (1) A person is exempt from the application of the Act in respect of the provision of credit under a credit contract entered into by means of a licensed peer-to-peer lending service.
- (2) However, the exemption does not apply to—
 - (a) a provider of the service;
 - (b) a person who—

- (i) is introduced (directly or indirectly) by a provider of the service to each other creditor under the contract; and
- (ii) holds property or exercises rights under the contract for the benefit, or on behalf, of each other creditor.

(3) In this regulation,—

licensed means licensed under section 390 of the Financial Markets Conduct Act 2013

peer-to-peer lending service has the same meaning as in regulation 185 of the Financial Markets Conduct Regulations 2014.

Regulation 14D: inserted, on 15 March 2019, by regulation 4 of the Financial Service Providers (Exemptions) Amendment Regulations 2019 (LI 2019/54).

Part 2

Exemption from obligation to be member of dispute resolution scheme

15 Exemption for low-value non-cash payment facilities

- (1) A financial service provider is exempt from the obligation to be a member of an approved dispute resolution scheme or the reserve scheme under section 48 of the Act in respect of a relevant service (other than the provision of credit under a credit contract) provided in the course of providing a low-value non-cash payment facility.
- (2) However, the exemption applies only if the financial service provider gives written notice to the Registrar that it is relying on an exemption from section 48 of the Act.
- (3) A **low-value non-cash payment facility** is a facility for making non-cash payments to which both of the following apply:
 - (a) the total amount that is available for making non-cash payments, under all facilities of the same class issued by the financial service provider, by any one user of the facility at any one time, does not exceed—
 - (i) \$1,000, in the case of an individual user (unless it is reasonable for the financial service provider to believe that the individual does not hold the facility for personal, domestic, or household use); or
 - (ii) \$15,000, in any other case; and
 - (b) the total amount that is available for making non-cash payments by all users of that class of facility issued by the financial service provider does not exceed \$15 million at any one time.

Rebecca Kitteridge,
Clerk of the Executive Council.

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*: 25 November 2010.

Reprints notes

1 *General*

This is a reprint of the Financial Service Providers (Exemptions) Regulations 2010 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 Service Providers (Exemptions) Amendment Regulations 2020 (LI 2020/317)
Financial Service Providers (Exemptions) Amendment Regulations 2019 (LI 2019/54)
Financial Service Providers (Exemptions) Amendment Regulations 2015 (LI 2015/84)
Financial Service Providers (Exemptions) Amendment Regulations 2014 (LI 2014/336)