



Securities Markets (Investment Advisers and Brokers) Regulations 2007

Anand Satyanand, Governor-General

Order in Council

At Wellington this 3rd day of December 2007

Present:

His Excellency the Governor-General in Council

Pursuant to section 49C(1) of the Securities Markets Act 1988, 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 made after consultation with the Securities Commission, makes the following regulations.

Contents

	Page
1 Title	2
2 Commencement	2
3 Interpretation	2
4 Exemption for telephone investment advice	2
5 Conditions of exemptions in regulation 4	3
6 Exemption for investment advice by lawyer or chartered accountant that is necessary incident of professional advice	3
7 Exemption for disclosure under sections 41D and 41E in certain cases	3
8 Additional disclosure in respect of fees and remuneration	4

9	Exemption from disclosure of associated person's interest or relationship	5
10	How information disclosed in disclosure statement must be set out	5
11	Exemption for advice in relation to term life insurance policy	5
12	Meaning of bank term deposit	6

Regulations

1 Title

These regulations are the Securities Markets (Investment Advisers and Brokers) Regulations 2007.

2 Commencement

These regulations come into force on 29 February 2008.

3 Interpretation

In these regulations, unless the context otherwise requires,—

Act means the Securities Markets Act 1988

chartered accountant has the same meaning as in section 2 of the Institute of Chartered Accountants of New Zealand Act 1996

lawyer has the same meaning as in section 6 of the Lawyers and Conveyancers Act 2006 except that, before section 6 comes into force, **lawyer** means a barrister or solicitor as defined in section 2 of the Law Practitioners Act 1982

term life insurance policy has the same meaning as in regulation 2A of the Securities Regulations 1983.

4 Exemption for telephone investment advice

In the case of investment advice that is given over the telephone to a member of the public,—

- (a) the investment adviser giving the advice is exempted from the requirement in section 41J(1) of the Act that the requisite disclosure must be made in a disclosure statement; and
- (b) if the investment adviser has previously given the recipient of the advice a disclosure statement that is out of date at the time of the telephone advice, the investment

adviser is exempted from disclosing the matters required to be disclosed under section 41M(3).

5 Conditions of exemptions in regulation 4

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

- (a) before giving the telephone advice to the member of the public, the investment adviser verbally discloses to that person the matters that must be disclosed under—
 - (i) sections 41B to 41F of the Act or, if section 41M applies, section 41M(3)(b); and
 - (ii) these regulations; and
- (b) not more than 5 working days after giving the telephone advice to the member of the public, the investment adviser sends to that person a disclosure statement that—
 - (i) complies with section 41J of the Act; and
 - (ii) discloses the matters required to be disclosed under—
 - (A) sections 41B to 41F of the Act or, if section 41M applies, section 41M(3)(b); and
 - (B) these regulations.

6 Exemption for investment advice by lawyer or chartered accountant that is necessary incident of professional advice

A lawyer or chartered accountant who gives investment advice to a member of the public is exempted from the requirement of disclosure in section 41A(1) of the Act if—

- (a) the lawyer or the chartered accountant gives the investment advice in that person's professional capacity; and
- (b) the investment advice is a necessary incident of the professional legal advice that the lawyer gives, or the professional accounting advice that the chartered accountant gives, to that member of the public.

7 Exemption for disclosure under sections 41D and 41E in certain cases

- (1) This regulation applies when investment advice is given to a person (A) but—

- (a) the investment advice is not given in relation to a specific investment; and
 - (b) the investment adviser giving the advice reasonably believes that the disclosure of information otherwise required under section 41D or 41E or both is not material to A in light of the general nature of the advice.
- (2) In any case to which this regulation applies, an investment adviser is exempt from disclosure under section 41D or 41E or both, subject to the conditions in subclause (3).
- (3) The exemption in subclause (2) is subject to the conditions that, if the investment adviser subsequently gives specific investment advice to A for which disclosure is required under section 41D or 41E,—
- (a) except in the case of telephone investment advice,—
 - (i) the investment adviser must make the relevant disclosure before giving the investment advice; and
 - (ii) the disclosure must be made in accordance with section 41J; or
 - (b) in the case of telephone investment advice, the investment adviser must comply with regulation 5.

8 Additional disclosure in respect of fees and remuneration

- (1) In the case of investment advice by an investment adviser in relation to a specific investment, for example, the purchase of specific securities, the investment adviser must also disclose the dollar amount, or a percentage formula, of any fee that will be charged to the member of the public receiving the advice, or any remuneration that the investment adviser will receive, in connection with the advice or a transaction resulting from it.
- (2) Except in the case of telephone investment advice, the disclosure must be made in accordance with section 41J.
- (3) In the case of telephone investment advice, the investment adviser must comply with regulation 5.

9 Exemption from disclosure of associated person's interest or relationship

- (1) This regulation applies to an investment adviser (**A**) who is an employee of, or an independent contractor to, another person (**B**) and gives investment advice in the course of B's business.
- (2) A is exempted from the requirement under section 41E(1) to disclose an interest or relationship that B has if—
 - (a) B has in place an internal information barrier and other procedures necessary to prevent A from knowing of the interest or relationship; and
 - (b) at the time when A gives the investment advice A does not in fact know of the interest or relationship.

10 How information disclosed in disclosure statement must be set out

A disclosure statement must comply with the following requirements:

- (a) the disclosure document must be prominently identified, with a clear heading that includes the term “disclosure statement”; and
- (b) the disclosure statement must express the required information clearly, concisely, and in a manner likely to bring the information to the attention of a reasonable person; and
- (c) the disclosure statement must contain a specific heading relating to each item of the required information; and
- (d) if the disclosure statement is combined with or contained in any other document provided to the member of the public, it must be placed at the beginning or front of the document or documents.

11 Exemption for advice in relation to term life insurance policy

A person who, on any occasion, gives investment advice in relation to a term life insurance policy only, is exempted on that occasion from compliance with any investment advisers' disclosure obligation.

12 Meaning of bank term deposit

- (1) For the purposes of the definition of security in section 2(1) of the Act, **bank term deposit** means a fixed term deposit product offered by a registered bank in New Zealand.
- (2) In subclause (1), **registered bank** has the same meaning as in section 2 of the Reserve Bank of New Zealand Act 1989.

Martin Bell,
for 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 come into force on 29 February 2008. They are made under section 49C(1) of the Securities Markets Act 1988 (the **Act**) as amended by the Securities Markets Amendment Act 2006. The Act allows regulations to be made concerning investment advisers and brokers. Among other things, the Act requires an investment adviser to make certain disclosures before giving investment advice to a member of the public. These regulations—

- contain 5 exemptions which have the effect of relaxing strict compliance with aspects of the disclosure required by the Act (*regulations 4 to 7, 9, and 11*); and
- in the case of investment advice in relation to a specific investment, increase the scope of disclosure by requiring disclosure of the dollar amount, or a percentage formula, of fees and remuneration (*regulation 8*); and
- prescribe standards of clarity and prominence in setting out information in a disclosure statement (*regulation 10*); and
- define the meaning of the term **bank term deposit** (*regulation 12*).

The exemptions

These are found in *regulations 4, 6, 7, 9, and 11*. They are—

- an exemption for telephone advice (*regulation 4*, subject to the conditions set out in *regulation 5*), because full disclosure over the telephone is impractical:

- an exemption for investment advice by a lawyer or a chartered accountant (*regulation 6*), provided that the advice is a necessary incident of professional legal or accounting advice, as the case may be;
- a limited exemption for disclosure of fees and remuneration when advice is not given in relation to a specific investment (*regulation 7*), so that any disclosure of fees and remuneration would be meaningless. In this case, the investment adviser must reasonably believe that the disclosure of the material otherwise required to be disclosed is not material to the client;
- a limited exemption for an investment adviser who is an employee or an independent contractor; the investment adviser need not disclose an interest or relationship of the employer or principal (*regulation 9*). The provisos for the exemption to apply are that the employer or principal has in place a Chinese wall preventing the employee or contractor from knowing about the interest or relationship, and the employee or contractor does not in fact know of the interest or relationship;
- a disclosure exemption for a person who gives investment advice in relation to a term life policy only (*regulation 11*).

Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 6 December 2007.

These regulations are administered by the Ministry of Economic Development.
