

**Reprint
as at 15 March 2021**



**Financial Advisers (Australian Licensees) Exemption
Notice 2011
(SR 2011/238)**

Financial Advisers (Australian Licensees) Exemption Notice 2011: revoked, on 15 March 2021, by section 97(3)(a) of the Financial Services Legislation Amendment Act 2019 (2019 No 8).

Pursuant to section 148 of the Financial Advisers Act 2008, the Financial Markets Authority gives the following notice (to which is appended a statement of reasons of the Financial Markets Authority).

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Notice

1 Title

This notice is the Financial Advisers (Australian Licensees) Exemption Notice 2011.

2 Commencement

This notice comes into force on 1 July 2011.

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.

This notice is administered by the Financial Markets Authority.

3 Revocation

This notice is revoked on the close of 31 May 2021.

Clause 3: replaced, on 28 June 2013, by clause 4 of the Financial Advisers (Australian Licensees) Exemption Amendment Notice 2013 (SR 2013/287).

Clause 3: amended, on 24 February 2018, by clause 4 of the Financial Advisers (Australian Licensees) Exemption Amendment Notice 2018 (LI 2018/7).

4 Interpretation

(1) In this notice, unless the context otherwise requires,—

Act means the Financial Advisers Act 2008

ASIC means the Australian Securities and Investments Commission

Australian licensee means a person to whom all of the following apply:

- (a) the person holds a current Australian financial services licence granted by ASIC under the Corporations Act that licenses or authorises the person to provide financial product advice to retail clients; and
- (b) the person is in the business of providing a financial service in Australia; and
- (c) the person has no place of business in New Zealand; and
- (d) the person has notified FMA, in writing, that it wishes to rely on this exemption and has provided to FMA the documents listed in clause 6(d)

Australian personalised services for a retail client means financial adviser services to which all of the following apply:

- (a) the services are personalised services received by a retail client in New Zealand and one of the following applies:
 - (i) the client's name either—
 - (A) is on the client list that is provided to FMA under clause 6(d)(iii) at the time when the Australian licensee notifies FMA that it wishes to rely on this exemption; or
 - (B) has been notified to FMA under clause 6(h)(iii); or
 - (ii) the client became a client of the Australian licensee when the client was physically in Australia; or
 - (iii) the client became a client of the Australian licensee when the client was physically in New Zealand, but did not become a client as a result of conduct that was intended to induce or solicit retail clients in New Zealand to use any personalised financial adviser service, or conduct that was likely to have that effect, engaged in by the Australian licensee or its specified representatives; and
- (b) the services are provided from outside New Zealand through a specified representative; and

- (c) the services are equivalent to, or no more than, the services that the Australian licensee is licensed or authorised to provide to Australian clients in Australia

Corporations Act means the Corporations Act 2001 of the Commonwealth of Australia

FMA means the Financial Markets Authority

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

specified representative means an individual to whom all of the following apply:

- (a) the individual is a representative (as defined in the Corporations Act) of the Australian licensee; and
 - (b) FMA has been notified in accordance with clause 6(d)(ii) or (h)(ii) by the Australian licensee that the individual is its specified representative; and
 - (c) the individual provides or will provide Australian personalised services for a retail client on behalf of an Australian licensee from a place of business in Australia; and
 - (d) the individual has no place of business in New Zealand; and
 - (e) the individual is not a registered financial adviser or an authorised financial adviser or a QFE adviser under the Act.
- (2) Any term or expression that is defined in the Act and used, but not defined, in this notice has the same meaning as in the Act.

5 Exemptions

- (1) An Australian licensee is exempt, in respect of Australian personalised services for a retail client, from sections 17(1), 20B, and 22 of the Act.
- (2) A specified representative of an Australian licensee is exempt, in respect of Australian personalised services for a retail client, from sections 17(1), 20B, and 22 of the Act and from sections 11 and 12 of the FSPA in relation to the provision of those services.

6 Conditions of exemptions

The exemptions in clause 5 are subject to the following conditions:

- (a) the Australian licensee must be registered as a financial service provider under the FSPA; and
- (b) the Australian licensee must be a member of a dispute resolution scheme in New Zealand in accordance with section 48 of the FSPA, and under that scheme must be responsible for the actions of its specified representatives in providing Australian personalised services for a retail client; and

- (c) the Australian licensee and each of its specified representatives must have submitted to the non-exclusive jurisdiction of the New Zealand courts, and must have appointed a New Zealand agent to accept service of process, in respect of Australian personalised services for a retail client under this exemption notice; and
- (d) the Australian licensee must have provided to FMA—
 - (i) written notice that the Australian licensee wishes to rely on this exemption; and
 - (ii) the names of, and contact information in respect of, each of its specified representatives at the time that it gives the notice under subparagraph (i); and
 - (iii) a copy of the New Zealand retail client list of the Australian licensee at the time it gives its notice under subparagraph (i), showing those clients who have notified the Australian licensee that they have a residential address in New Zealand; and
- (e) the Australian licensee must ensure that its specified representatives are adequately trained and competent under Australian law to provide Australian personalised services for a retail client; and
- (f) the Australian licensee must have provided written disclosure (which may be via email) to the New Zealand retail client (before, or, if not practicable before, as soon as practicable after, the Australian personalised services for a retail client are provided to the client in New Zealand) containing prominent statements and information to the following effect:
 - (i) that the specified representative acting on behalf of the Australian licensee is exempt from the requirement to be registered as a financial service provider under the FSPA and from the requirement to be an authorised financial adviser under the Act in respect of the financial adviser services; and
 - (ii) that the specified representative and the Australian licensee are regulated by ASIC under Australian laws, which differ from New Zealand laws (in particular the disclosure obligations); and
 - (iii) that the Australian licensee is a member of a dispute resolution scheme in New Zealand, and under that scheme is responsible for the actions of its specified representatives in providing Australian personalised services for a retail client; and
 - (iv) the details of that scheme; and
 - (v) that the Australian licensee and the specified representative have submitted to the non-exclusive jurisdiction of the New Zealand courts in respect of Australian personalised services for a retail client under this exemption notice; and

- (vi) the contact details of the agent appointed under paragraph (c) to accept service of process in New Zealand; and
- (g) the Australian licensee and its specified representatives must provide disclosure to the New Zealand retail client in accordance with the relevant Australian regulatory requirements as if the services were provided to an Australian retail client; and
- (h) the Australian licensee must notify FMA as soon as practicable of the following, where it is relevant to the services that the Australian licensee provides under this exemption:
 - (i) any change to its Australian financial services licence (including termination); and
 - (ii) any change to its specified representatives; and
 - (iii) if a specified representative has transferred from another Australian licensee to the Australian licensee, any clients previously notified to FMA under paragraph (d)(iii) by the other Australian licensee in respect of that specified representative and to whom the Australian licensee wishes to provide services under this exemption; and
 - (iv) any exemptions or relief under Australian laws that it obtains; and
- (i) the Australian licensee must notify FMA as soon as practicable of any material enforcement action or disciplinary action taken by ASIC or any other overseas regulatory authority against the Australian licensee or any of its specified representatives; and
- (j) the Australian licensee must maintain procedures to identify and record the address of its clients at the time that they become clients and to show when clients advise the Australian licensee that they have moved to New Zealand; and
- (k) the Australian licensee must provide FMA within 15 working days of receipt of a request from FMA with an updated New Zealand client list showing the information specified in paragraphs (h)(iii) and (j); and
- (l) the Australian licensee or its specified representatives must not, at any time after the date that the Australian licensee notifies FMA that it wishes to rely on this exemption, engage in—
 - (i) conduct that is intended to induce or solicit retail clients in New Zealand to use any personalised financial adviser service; or
 - (ii) conduct that is likely to have that effect.

Clause 6(k): amended, on 28 June 2013, by clause 5 of the Financial Advisers (Australian Licensees) Exemption Amendment Notice 2013 (SR 2013/287).

Dated at Wellington this 28th day of June 2011.

Sean Hughes,
Chief Executive.

Statement of reasons

Note: the following statement of reasons should be read in conjunction with the statement of reason(s) appended to:

- Financial Advisers (Australian Licensees) Exemption Amendment Notice 2018
- Financial Advisers (Australian Licensees) Exemption Amendment Notice 2013

This exemption notice comes into force on 1 July 2011 and expires on 30 June 2013.

The exemption is granted to permit Australian-regulated financial services firms to provide financial adviser services into New Zealand on an offshore basis.

The effect is that persons who hold current Australian financial services licences granted by the Australian Securities and Investments Commission, and their specified representatives under Australian law, are exempted from the following provisions of New Zealand law to the extent that they provide personalised services from Australia to New Zealand retail clients and have no place of business in New Zealand:

- section 17(1) of the Financial Advisers Act 2008 (the **Act**). In the case of Australian licensees, the broad effect is that this exempts the entity from acting only through registered or authorised individual advisers. In the case of specified representatives, the broad effect is that this exempts the entity's individual advisers from having to be registered or authorised:
- in the case of both Australian licensees and specified representatives, section 20B of the Act (restrictions on holding out as financial planner or investment planner):
- in the case of both Australian licensees and specified representatives, section 22 of the Act (financial adviser must make disclosure before providing personalised service to retail client):
- in the case of specified representatives, sections 11 and 12 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (broadly, this exempts the entity's individual advisers from having to be registered, and from the prohibition on holding out as being in the business of providing financial service unless registered).

FMA considers that it is appropriate to grant the exemption as a temporary measure to assist Australian-regulated financial advisers to provide personalised services to certain clients whilst long-term mutual arrangements for trans-Tasman recognition are being considered.

FMA is satisfied that the elements of section 148(2)(b) of the Act are fulfilled in relation to the exemption, as follows:

- the relevant services are subject to the regulations of an overseas jurisdiction; and
- the protection of the New Zealand public is unlikely to be prejudiced because of—
 - the protections offered under the Australian financial service providers regulatory regime;
 - FMA's relationship with ASIC, the regulator of Australian financial advisers, which involves sharing of information and co-operation arrangements;
 - the scope of the exemption being limited to certain categories of New Zealand clients and certain services;
 - the conditions imposed including notices to New Zealand clients, so that they are aware of the nature of the exemption, and disclosure being made as if the clients were based in Australia;
 - the requirement that Australian licensees must be registered on the New Zealand financial service providers register and be members of a New Zealand dispute resolution scheme; and
- the exemption is of limited duration, is to address rigidities in the law, is framed in such a way that it is no broader than is reasonably necessary to address the matters that gave rise to the exemption, and is granted as a class exemption so that potential candidates in similar situations will benefit from the same treatment.

Note: the preceding statement of reasons should be read in conjunction with the statement of reason(s) appended to:

- Financial Advisers (Australian Licensees) Exemption Amendment Notice 2018
- Financial Advisers (Australian Licensees) Exemption Amendment Notice 2013

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*: 30 June 2011.

Reprints notes

1 *General*

This is a reprint of the Financial Advisers (Australian Licensees) Exemption Notice 2011 that incorporates all the amendments to that notice as at the date of the last amendment to it.

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 Services Legislation Amendment Act 2019 (2019 No 8): section 97(3)(a)

Financial Advisers (Australian Licensees) Exemption Amendment Notice 2018 (LI 2018/7)

Financial Advisers (Australian Licensees) Exemption Amendment Notice 2013 (SR 2013/287)