

**Reprint
as at 15 March 2021**



**Financial Markets Conduct (Offers of Financial Products
Through Authorised Financial Advisers Supplying
Personalised DIMS) Exemption Notice 2020**

(LI 2020/234)

Financial Markets Conduct (Offers of Financial Products Through Authorised Financial Advisers Supplying Personalised DIMS) Exemption Notice 2020: revoked, on 15 March 2021, by clause 3.

Pursuant to sections 556 and 561(2) of the Financial Markets Conduct Act 2013, the Financial Markets Authority, being satisfied of the matters set out in section 557 of that Act, gives the following notice.

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Notice

1 Title

This notice is the Financial Markets Conduct (Offers of Financial Products Through Authorised Financial Advisers Supplying Personalised DIMS) Exemption Notice 2020.

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.

2 Commencement

This notice comes into force on 6 November 2020.

3 Revocation

This notice is revoked on 15 March 2021.

4 Interpretation

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

Act means the Financial Markets Conduct Act 2013

AFA means a person who is an authorised financial adviser within the meaning of section 5 of the Financial Advisers Act 2008.

- (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 Exemption for offers of financial products through authorised financial advisers

An offeror of financial products to a person (**A**) is exempted from the disclosure requirements of Part 3 of the Act if—

- (a) the offer is through an AFA who is permitted to provide personalised DIMS under the Financial Advisers Act 2008; and
- (b) the AFA decides whether to acquire the financial products on behalf of A in the course of supplying a personalised DIMS under the Financial Advisers Act 2008 to A.

6 Offers not regulated offers

An offer of financial products that would, but for this notice, be a regulated offer is not a regulated offer if—

- (a) the only investors who are able, under the terms of the offer, to acquire the products are investors to whom disclosure under Part 3 of the Act is not required; and
- (b) all of the investors who acquire the products under the offer are investors to whom disclosure under Part 3 of the Act is not required (whether as a result of clause 5 or otherwise).

Dated at Auckland this 27th day of August 2020.

Nick Kynoch,
General Counsel.

Statement of reasons

This notice comes into force on 6 November 2020 and continues the exemptions in the Financial Markets Conduct (Offers of Financial Products Through Authorised Financial Advisers Supplying Personalised DIMS) Exemption Notice 2015, which is revoked at the close of 5 November 2020.

This notice applies to offers of financial products through authorised financial advisers (**AFA**s) under the Financial Advisers Act 2008 who are providing discretionary investment management services (**DIMS**) that are personalised DIMS.

The notice exempts persons making those offers from compliance with the disclosure requirements in Part 3 of the Financial Markets Conduct Act 2013 (the **FMC Act**).

The notice also provides that the offers exempted by this notice are not regulated offers under the FMC Act provided that the only investors who are able to acquire, and who do acquire, the products are investors to whom disclosure under Part 3 of the FMC Act is not required.

This means that other requirements of the FMC Act, or other Acts, that apply to regulated offers (such as the governance and financial reporting requirements) will not apply to the offer. Any other financial market conduct obligations the entity may have, including obligations under Part 2 of the FMC Act, are not affected.

In effect, this notice puts offers made through AFAs providing personalised DIMS in the same position as offers made through persons who are licensed under Part 6 of the FMC Act to provide DIMS. Offers made through the latter persons are exempted from the disclosure requirements in Part 3 of the FMC Act by clause 7 of Schedule 1 of the FMC Act.

When the Financial Services Legislation Amendment Act 2019 comes fully into force, all DIMS will be covered by the FMC Act, so the exemption granted by this notice for personalised DIMS will no longer be required. That Act will come fully into force on 15 March 2021 (*see* the Financial Services Legislation Amendment Act Commencement Order 2020). This notice is therefore revoked on that date.

The Financial Markets Authority (the **FMA**), after satisfying itself as to the matters set out in section 557 of the FMC Act, considers it appropriate to grant the exemption because—

- offers of financial products made through AFAs providing personalised DIMS under the Financial Advisers Act 2008 should be treated in a similar manner to offers of financial products made through DIMS licensees, given the similar assessment criteria and process for both AFAs under the Financial Advisers Act 2008 and DIMS licensees under the FMC Act;
- offerors should be able to offer financial products through an AFA providing a personalised DIMS under the Financial Advisers Act 2008 without having regard to whether that AFA's client is a wholesale or retail investor, as the investment decision to acquire the financial products is made by the AFA, and the AFA is a finance professional with the necessary skills and qualifications to

make the investment decisions to acquire that product on behalf of the retail investor.

As such, the FMA is satisfied that the granting of the exemption is desirable in order to promote the purposes of the Act.

Specifically, the notice will—

- enable offerors to avoid the unnecessary compliance costs of complying with the requirements of the FMC Act that apply to offers to retail investors if the offer is made through AFAs providing personalised DIMS under the Financial Advisers Act 2008; and
- enable AFAs to avoid the unnecessary cost of assessing whether their clients are capable of taking part in unregulated offers; and
- promote the informed participation in the financial markets of offerors, retail investors, and AFAs providing personalised DIMS under the Financial Advisers Act 2008 by clarifying that the status of the AFA's client (whether wholesale or retail) is not relevant in this context.

The exemption requires that offers must be made through an AFA who is authorised to provide personalised DIMS under the Financial Advisers Act 2008 and who decides whether to acquire financial products in the course of supplying a personalised DIMS under that Act. This ensures that the person making the investment decision to acquire the financial product (being, in this case, the AFA) is an appropriate person to make that decision. The FMA is satisfied, therefore, that the extent of the exemption is not broader than is reasonably necessary to address the matters that gave rise to it.

Issued under the authority of the Legislation Act 2012.
Date of notification in *Gazette*: 31 August 2020.

Reprints notes

1 *General*

This is a reprint of the Financial Markets Conduct (Offers of Financial Products Through Authorised Financial Advisers Supplying Personalised DIMS) Exemption Notice 2020 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 Markets Conduct (Offers of Financial Products Through Authorised Financial Advisers Supplying Personalised DIMS) Exemption Notice 2020 (LI 2020/234): clause 3