

House of Representatives

Supplementary Order Paper

Tuesday, 16 March 2010

Financial Service Providers (Pre-Implementation Adjustments) Bill

Proposed amendments

Hon Simon Power, in Committee, to move the following amendments:

New clauses 5A and 5B

To insert the following clauses after *clause 5* (after line 6 on page 4):

5A Purpose of Act

(1) Section 3 is amended by inserting “the provisions governing financial advisers under” after “The purpose of”.

(2) Section 3 is amended by adding the following subsection as subsection (2):

“(2) The purpose of the provisions governing brokers under this Act is to—

“(a) require disclosure by brokers, so ensuring that clients can make informed decisions about whether to use a broker to handle the clients’ transactions; and

“(b) assist in the protection of money and property held by brokers on behalf of clients.”

5B Overview of Act

Section 4 is amended by inserting the following paragraph after paragraph (c):

“(ca) **Part 3A** (brokers’ disclosure and conduct obligations):”.

Clause 6(1)

To insert the following definitions after the definition of **bonus bonds** (after line 11 on page 4):

“**broker** has the meaning set out in **section 77A**

“**broking service** has the meaning set out in **section 77B**”.

To insert the following definitions after the definition of **call building society share** (after line 26 on page 4):

“**client money** means money received from, or on account of, a client in relation to acquiring, holding, or disposing of financial products

“**client property** means property received from, or on account of, a client in relation to acquiring, holding, or disposing of financial products”.

To insert the following definition after the definition of **insurance product** (after line 27 on page 4):

“**investment management decision** has the meaning set out in **section 11A**”.

To insert the following definition after the definition of **nominated representative** (after line 30 on page 4):

“**product provider** means—

- “(a) the issuer, in the case of a security:
- “(b) the creditor, in the case of a consumer credit contract (as defined in section 11 of the Credit Contracts and Consumer Finance Act 2003):
- “(c) the insurer, in the case of an insurance product, including a term life insurance policy:
- “(d) the person specified by regulations, in the case of any other financial product specified by the regulations”.

Clause 6(2)

To insert “**client, conduct obligation, disclosure obligation, entity,**” after “**category 2 product,**” (line 8 on page 5).

To insert the following definitions after the definition of **category 2 product** (after line 33 on page 5):

“**client**—

- “(a) means, in relation to a financial adviser service, the person for whom the financial adviser service is performed:
- “(b) in relation to a broking service,—
 - “(i) means the person on whose behalf the financial product is acquired or disposed of or the client money or client property is held; but
 - “(ii) excludes the product provider

“**conduct obligation** means,—

- “(a) in relation to a financial adviser, the obligation described in section 32:
- “(b) in relation to a broker, the obligation described in **section 77J**

“**disclosure obligation** means,—

- “(a) in relation to a financial adviser, the obligation described in section 21:

- “(b) in relation to a broker, the obligation described in **section 77D**
“entity includes a body corporate and an unincorporated body,
but does not include an individual”.

Clause 6(3)

To omit this subclause (lines 8 to 10 on page 6) and substitute the following subclause:

- (3) Section 5 is amended by repealing the definitions of **investment transaction** and **trust account**.

New clauses 7A and 7B

To insert the following clauses after *clause 7* (after line 13 on page 6):

7A What is financial adviser service

Section 10 is amended by repealing paragraph (b) and substituting the following paragraph:

- “(b) makes an investment management decision; or”.

7B New section 11A inserted

The following section is inserted after section 11:

“11A When person makes investment management decisions

- “(1) A person (A) makes an investment management decision if A—
“(a) decides which financial products to acquire or dispose of on behalf of a client (B); and
“(b) in doing so is acting under an authority granted to A (or A’s employer or principal) to manage some or all of B’s holdings of financial products.
“(2) In determining whether A has that authority, it does not matter if B has the right to be consulted on, or to countermand, A’s decisions.”

Clause 8: new subclauses (1AA) to (1AD)

To insert the following subclauses before *subclause (1)* (after line 15 on page 6):

- (1AA) The heading to section 12 is amended by omitting “**or transaction**” and substituting “**or decision**”.
- (1AB) Section 12(d), (e), (f), (g), (l), (m), (n), (o), and (u) are amended by omitting “making an investment transaction” in each place where it occurs and substituting in each case “making an investment management decision”.
- (1AC) Section 12(d), (e), (f), and (g) are amended by omitting “or transaction” in each place where it occurs and substituting in each case “or decision”.
- (1AD) Section 12 is amended by repealing paragraphs (i) and (j) and substituting the following paragraph:

- “(i) any person making an investment management decision in the course of an appointment (of that person or that person’s employer) by a product provider to undertake the investment management functions of the product provider in relation to the relevant financial product.”.

Clause 8: new subclause (1B)

To insert the following subclause after *subclause (1)* (after line 17 on page 6):

- (1B) Section 12(n) is amended by omitting “or the transaction” and substituting “or the decision”.

Clause 8(3): new section 12(q)(ii)

To omit “investment transaction” (line 33 on page 6) and substitute “investment decision”.

New clauses 9A and 9B

To insert the following clauses after *clause 9* (after line 31 on page 7):

9A Individual who is authorised financial adviser

Section 15 is amended by repealing paragraph (b) and substituting the following paragraph:

- “(b) make an investment management decision in relation to a category 1 product; or”.

9B Individual who is registered

Section 16 is amended by repealing paragraph (b) and substituting the following paragraph:

- “(b) make an investment management decision in relation to a category 2 product.”

Clause 10: new section 17

To omit “an investment transaction” (lines 5 and 6 on page 8) and substitute “an investment management decision”.

New clause 10A

To insert the following clause after *clause 10* (after line 25 on page 9):

10A Disclosure by authorised financial adviser

Section 23(2)(j) is repealed.

Clause 12

To omit this clause (lines 1 to 7 on page 10) and substitute the following clause:

12 Section 36 repealed

Section 36 is repealed.

New clauses 12A and 12B

To insert the following clauses after *clause 12* (after line 7 on page 10):

12A Authorised financial adviser must not recommend or receive money for acquisition of securities if offer for subscription illegal

- (1) The heading to section 38 is amended by omitting “**or receive money for**”.
- (2) Section 38(1) is amended by omitting “, and must not receive money from a person in respect of the acquisition of securities,”.

12B Sections 39 to 44 repealed

Sections 39 to 44 are repealed.

New clause 13A

To insert the following clause after *clause 13* (after line 14 on page 10):

13A Commission must approve or decline application for authorisation

- (1) Section 55(1)(b) is amended by omitting “transaction” and substituting “management decision on behalf of a client”.
- (2) Section 55 is amended by inserting the following subsection after subsection (3):
“(3A) Those terms and conditions may relate to any provision of a broking service by the applicant, as well as to the financial adviser services.”

New clauses 18A and 18B

To insert the following clauses after *clause 18* (after line 34 on page 11):

18A New Part 3A inserted

The following Part is inserted after Part 3:

“Part 3A

“Brokers’ disclosure and conduct obligations

“Who is broker and what is broking service

“77A Who is broker

- (1) A **broker** is an individual or an entity who carries on a business of providing or offering to provide a broking service (whether or not the business is the provider’s only business or the provider’s principal business).
- (2) If a broking service is provided by an employee in the course of the business of his or her employer, the employer (and not the employee) is the broker.

“77B What is broking service

- “(1) A **broking service** is the receipt, holding, or payment of client money or client property by a person acting on behalf of a client.
- “(2) The mere transmission of a non-negotiable instrument payable to another person is not a broking service.

“77C When transactions by certain persons are not providing broking service

A person does not provide a broking service in the following cases:

- “(a) a lawyer or incorporated law firm providing a broking service in the course of professional practice in providing legal services if the broking is a necessary incident of legal practice; or
- “(b) a conveyancing practitioner providing a broking service in the course of professional practice in providing conveyancing services if the broking is a necessary incident of conveyancing practice; or
- “(c) a chartered accountant providing a broking service in the course of professional practice as a chartered accountant if the broking is a necessary incident of professional accounting practice; or
- “(d) a tax agent providing a broking service in the course of professional practice as a tax agent if the broking is a necessary incident of professional tax agency; or
- “(e) a real estate agent providing a broking service in the course of the agent’s occupation as a real estate agent if the broking is a necessary incident of working as a real estate agent; or
- “(f) a designated settlement system under section 156N of the Reserve Bank of New Zealand Act 1989, and any operator of that system, receiving, holding, or paying client money or client property in accordance with the rules of the settlement system; or
- “(g) a Crown organisation or an employee of a Crown organisation providing a broking service in the course of its functions; or
- “(h) the Reserve Bank of New Zealand (the **Reserve Bank**), a member of the board of the Reserve Bank, or an employee of the Reserve Bank providing a broking service in the course of the functions of the Reserve Bank; or
- “(i) an employee receiving, holding, or paying money or property of his or her employer in the course of his or her employment; or

- “(j) an employer, or an employee of the employer, providing assistance to a person who is an employee of the employer with the implementation of a decision to acquire or dispose of a financial product made available through the person’s workplace; or
- “(k) a company or an employee of a company providing a broking service, in the course of the company’s business, on behalf of no person other than a related company; or
- “(l) any other person or class of persons specified in the regulations providing a broking service in circumstances specified in the regulations.

“Brokers’ disclosure obligations

“77D What is disclosure obligation

A disclosure obligation under this Part is an obligation to make disclosure under or in accordance with **sections 77E to 77I**.

“77E Broker must make disclosure before receiving client money or client property from ultimate client

- “(1) A broker must make disclosure to a client, in accordance with this Act and the regulations, before (or if not practicable before, as soon as practicable after) receiving client money or client property from the client.
- “(2) **Subsection (1)** does not apply to a broker that receives the client money or client property from another broker.

“77F Disclosure by broker

- “(1) A broker must disclose the information prescribed by regulations.
- “(2) For the purposes of this section, regulations may prescribe disclosure in relation to any or all of the following matters:
 - “(a) in relation to the broker and, if the broker is an entity, each principal officer—
 - “(i) criminal convictions:
 - “(ii) disciplinary proceedings:
 - “(iii) adverse findings by a court or the Commission:
 - “(iv) bankruptcy or other insolvency proceedings:
 - “(b) procedures for handling client money or client property:
 - “(c) fees:
 - “(d) indemnity insurance:
 - “(e) dispute resolution arrangements:
 - “(f) location of business premises:
 - “(g) telephone, email, and fax details.
- “(3) Regulations may prescribe the form of disclosure.

“77G Disclosure must not be misleading, deceptive, or confusing

Disclosure under a disclosure obligation must not be misleading, deceptive, or confusing at the time that the disclosure is made.

“77H Disclosure of additional information

- “(1) Disclosure of the matters that must be disclosed under a disclosure obligation may be accompanied by the disclosure of additional information.
- “(2) Additional disclosure that accompanies disclosure under a disclosure obligation must not be misleading, deceptive, or confusing at the time it is made.

“77I No compliance with disclosure obligation if disclosure out of date

- “(1) Previous disclosure does not discharge a broker from a disclosure obligation if the previous disclosure is out of date when the client money or client property is received by the broker.
- “(2) The previous disclosure is out of date if,—
- “(a) since the date of the disclosure, there has been a material change in any matter that must be disclosed; and
 - “(b) a reasonable person in the position of the client would consider that the change would materially affect any of the following decisions by the client:
 - “(i) to proceed with the broking service by the broker in question (**B**):
 - “(ii) to postpone or countermand the performance of a broking service by B.

*“Brokers’ conduct obligations***“77J What is conduct obligation**

A conduct obligation under this Part is an obligation under **sections 77K to 77S**.

“77K Broker must exercise care, diligence, and skill

A broker must, when providing a broking service, exercise the care, diligence, and skill that a reasonable broker would exercise in the same circumstances, taking into account, but without limitation,—

- “(a) the nature and requirements of the client; and
- “(b) the nature of the services performed for the client.

“77L Broker must not engage in misleading or deceptive conduct

- “(1) A broker must not engage in conduct in relation to the provision of a broking service that is misleading or deceptive or likely to mislead or deceive.
- “(2) A person who knowingly or recklessly contravenes **subsection (1)** commits an offence (*see section 118*).

“77M Advertisement of broking services must not be misleading, deceptive, or confusing

- “(1) A broker must not advertise a broking service in a way that is misleading, deceptive, or confusing.
- “(2) A person who knowingly or recklessly contravenes **subsection (1)** commits an offence (*see section 119*).

“77N Restriction on use of term sharebroker

- “(1) In any advertising or promotional material, the term sharebroker must not be used in connection with a person unless the person, or the person’s employer, is a member of a registered exchange.
- “(2) A person who contravenes **subsection (1)** commits an offence (*see section 120*).

“77O Broker must not receive client money if offer for subscription illegal

- “(1) A broker (A) must not receive client money or client property from a person for the acquisition of securities if—
- “(a) when the securities were or are offered for subscription, the offer was or is illegal; and
 - “(b) the illegality has not been remedied; and
 - “(c) A knows or ought to know that, when the securities were or are offered for subscription, the offer was or is illegal.
- “(2) A person who contravenes **subsection (1)** commits an offence (*see section 134A*).

“77P Broker must pay client money into separate trust account

- “(1) A broker who receives client money or client property, in his, her, or its capacity as a broker,—
- “(a) must hold the client money or client property, or ensure the client money or client property is held, on trust for the client; and
 - “(b) must ensure that the client money is paid promptly into a bank in New Zealand (or into any other prescribed entity) to a trust account of the broker or of a related person or entity specified in the regulations.

“(2) A person who contravenes **subsection (1)** commits an offence (*see* **section 134B**).

“(3) This section does not apply to a broker within the meaning of the Insurance Intermediaries Act 1994 in relation to any money to which section 14 or 15 of that Act applies.

“77Q Broker must account for client money and client property

“(1) A broker who receives or holds client money and client property on trust for a client must account properly, or ensure that account is properly made, to the client for that client money or client property.

“(2) A person who contravenes **subsection (1)** commits an offence (*see* **section 134C**).

“77R Broker must keep records of client money and client property

“(1) A broker who receives or holds client money on trust for a client must keep, or ensure that there are kept, trust account records that disclose clearly the position of the client money in the trust accounts.

“(2) A broker who receives or holds client property on trust for a client must keep, or ensure that there are kept, records that—
“(a) identify the client property; and
“(b) show the date when the client property was received; and
“(c) if the client property has been disposed of, show where the client property was disposed of and to whom.

“(3) A broker must keep the records required by this section, or ensure that they are kept, in a manner that enables those records to be conveniently and properly audited or inspected.

“(4) A person who contravenes any of **subsections (1) to (3)** commits an offence (*see* **section 134D**).

“(5) This section does not apply to a broker within the meaning of the Insurance Intermediaries Act 1994 in relation to any money to which section 14 or 15 of that Act applies.

“77S Restrictions on use of client money and client property

“(1) A person must not use or apply client money or client property received or held on trust for a client by a broker in any way except—

“(a) as expressly directed by the client; or

“(b) in accordance with **section 77P** (which relates to payment of client money into a trust account).

“(2) A person who contravenes **subsection (1)** commits an offence (*see* **section 134E**).

“(3) This section does not apply to a broker within the meaning of the Insurance Intermediaries Act 1994 in relation to any money to which section 14 or 15 of that Act applies.

“**77T Protection of client money and client property held on trust**

“(1) The client money or client property that is received or held by a broker on trust for a client—

“(a) is not available for the payment of the debts of any other creditor of the broker; and

“(b) is not liable to be attached or taken in execution under the order or process of any court at the instance of another creditor of the broker.

“(2) Nothing in **section 77S** or this section takes away or affects any lawful lien or claim that a broker who holds client money has against the client money.

“(3) This section does not apply to a broker within the meaning of the Insurance Intermediaries Act 1994 in relation to any money to which section 14 or 15 of that Act applies.

“Conduct by employees or agents of brokers

“**77U Conduct by employees or agents of brokers**

For the purposes of the disclosure obligations and conduct obligations under this Part,—

“(a) receipt, holding, or payment of client money or client property, and other conduct, by a person (**A**) is treated as being done by another person (**B**) if—

“(i) A is a director, employee, or agent of B and A is acting within the scope of A’s actual or apparent authority; or

“(ii) A is acting at the direction or with the consent or agreement (whether express or implied) of a director, employee, or agent of B given within the scope of the actual or apparent authority of that director, employee, or agent:

“(b) if it is necessary to show the state of mind of B, it is sufficient to show that a director, employee, or agent of B (acting within the scope of the actual or apparent authority of that director, employee, or agent) had that state of mind.

“Commission’s direction in respect of breach of disclosure or conduct obligation

“77V Commission may give broker direction in respect of breach of disclosure or conduct obligation

- “(1) This section applies if the Commission has reason to believe that a broker is in breach of a disclosure or conduct obligation under this Part.
- “(2) The Commission may give the broker notice of his or her alleged breach and, if the Commission does give a notice of breach, the Commission must also give the broker a reasonable opportunity to respond.
- “(3) If the Commission concludes, after considering the broker’s response, that the broker is in breach, the Commission may give the broker a direction in writing.
- “(4) The direction may—
- “(a) direct the broker to comply with the disclosure or conduct obligation:
 - “(b) stipulate any steps that the broker must take in order to comply with the obligation:
 - “(c) require the broker to report to the Commission within 28 days of the date of the direction stating how and when the Commission’s direction will be implemented.
- “(5) A broker who fails to comply with a direction by the Commission commits an offence (*see* **section 134F**).
- “(6) Nothing in this section precludes the Commission from exercising any of its other powers under this Act against a broker.”

18B Part 4 heading amended

The heading to Part 4 is amended by inserting “**and brokers**” after “**financial advisers**”.

New clauses 24A to 24F

To insert the following clauses after *clause 24* (after line 22 on page 13):

24A Heading above section 117 amended

The heading above section 117 is amended by omitting “*financial advisers and QFEs*” and substituting “*financial advisers, QFEs, and brokers*”.

24B Failure to make disclosure under or in accordance with disclosure obligation

Section 117(b) is amended by omitting “a QFE” and substituting “an entity”.

24C Heading above section 118 amended

The heading above section 118 is amended by adding “*and brokers*”.

24D New sections 118 to 120 substituted

Sections 118, 119, and 120 are repealed and the following sections substituted:

“118 Offence of misleading or deceptive conduct by financial adviser or broker

A person who knowingly or recklessly contravenes section 34(1) or **section 77L** commits an offence and is liable on summary conviction to a fine,—

“(a) in the case of an individual, not exceeding \$100,000:

“(b) in the case of an entity, not exceeding \$300,000.

“119 Offence of misleading, deceptive, or confusing advertisement by financial adviser or broker

A person who knowingly or recklessly contravenes section 35(1) or **section 77M** commits an offence and is liable on summary conviction to a fine,—

“(a) in the case of an individual, not exceeding \$100,000:

“(b) in the case of an entity, not exceeding \$300,000.

“120 Offence of contravening restrictions on use of term sharebroker

A person who contravenes **section 77N** commits an offence and is liable on summary conviction to a fine,—

“(a) in the case of an individual, not exceeding \$100,000:

“(b) in the case of an entity, not exceeding \$300,000.”

24E Offence of recommending or receiving money in connection with offer of securities when subscription illegal

The heading to section 121 is amended by omitting “**or receiving money in connection with**”.

24F Sections 122 to 125 repealed

Sections 122 to 125 are repealed.

New clauses 26A and 26B

To insert the following clauses after *clause 26* (after line 30 on page 13):

26A New heading and sections 134A to 134F inserted

The following heading and sections are inserted after section 134:

*“Offences: broking services only***“134A Offence of receiving client money if offer for subscription illegal**

A person who contravenes **section 77O** commits an offence and is liable on summary conviction to a fine,—

- “(a) in the case of an individual, not exceeding \$100,000:
- “(b) in the case of an entity, not exceeding \$300,000.

“134B Offence of contravening requirement to pay client money into separate trust account

A person who contravenes **section 77P** commits an offence and is liable on summary conviction to a fine,—

- “(a) in the case of an individual, not exceeding \$5,000:
- “(b) in the case of an entity, not exceeding \$25,000.

“134C Offence of failing to account for client money and client property

A person who contravenes **section 77Q** commits an offence and is liable on summary conviction to a fine,—

- “(a) in the case of an individual, not exceeding \$5,000:
- “(b) in the case of an entity, not exceeding \$25,000.

“134D Offence in relation to records of client money and client property

A person who contravenes any of **section 77R(1) to (3)** commits an offence and is liable on summary conviction to a fine,—

- “(a) in the case of an individual, not exceeding \$5,000:
- “(b) in the case of an entity, not exceeding \$25,000.

“134E Offence of breaching restrictions on use of client money and client property

A person who contravenes **section 77S** commits an offence and is liable on summary conviction to a fine,—

- “(a) in the case of an individual, not exceeding \$5,000:
- “(b) in the case of an entity, not exceeding \$25,000.

“134F Offence of failing to comply with Commission’s direction

A person who fails to comply with a direction of the Commission given under **section 77V** commits an offence and is liable on summary conviction to a fine,—

- “(a) in the case of an individual, not exceeding \$5,000:
- “(b) in the case of an entity, not exceeding \$25,000.”

26B Right of appeal

Section 138(1)(a)(iv) is amended by omitting “or 73” and substituting “, 73, or **77V**”.

New clause 27A

To insert the following clause after *clause 27* (after line 2 on page 14):

27A New section 148 substituted

Section 148 is repealed and the following section substituted:

“148 Commission may grant exemptions

“(1) Subject to **subsection (2)**, the Commission may, in its discretion and on the terms and conditions (if any) that it thinks fit, by notice in the *Gazette* exempt—

“(a) any person or class of persons, any decision or class of decisions, or any class of financial advice (for example, financial advice given by telephone) from compliance with 1 or more of the disclosure obligations for financial advisers:

“(b) any person or class of persons or any transaction or class of transactions from compliance with 1 or more of the disclosure obligations or conduct obligations for brokers.

“(2) The Commission must be satisfied, before it grants an exemption, that the cost of compliance with the relevant obligation would—

“(a) be unreasonable; or

“(b) not be justified by the benefit of compliance.”

Clause 28

To omit this clause (lines 3 and 4 on page 14) and substitute:

28 General regulations

(1) Section 154(1)(a) is repealed and the following paragraph substituted:

“(a) specifying a person as a product provider in relation to a financial product other than a security, consumer credit contract (as defined in section 11 of the Credit Contracts and Consumer Finance Act 2003), or insurance product (*see* section 5):”.

(2) Section 154(1) is amended by inserting the following paragraphs after paragraph (i):

“(ia) for the purpose of determining when a person does not provide a broking service under **section 77C**, specifying a person or class of persons and the circumstances in which they do not perform a broking service:

“(ib) prescribing the information that must be disclosed by a broker and the form of disclosure (*see* **section 77F**), including when and in what circumstances disclosure

may be made jointly (with other brokers or financial advisers, or by 1 person in different capacities) and the form of joint disclosure:

- “(ic) prescribing the following matters in relation to **Part 3A**:
 - “(i) the duties of brokers in relation to their trust accounts (including who may be a related person or entity for the purposes of **section 77P**) and other provisions regulating their establishment and use:
 - “(ii) provisions regulating the keeping, inspection, and audit of trust account records or other records in connection with the receipt, holding, and payment of client money and client property, and prescribing the duties in relation to those records:
 - “(iii) any other requirements necessary or desirable to ensure that trust accounts are duly kept and that persons on whose behalf client money and client property is held by brokers are informed of the client money and client property held and of the transactions made in connection with it.”

- (3) Section 154(4) is amended by inserting “or (1)(ia)” after “(1)(e)”.

New clauses 34A and 34B

To insert the following clauses after *clause 34* (after line 24 on page 15):

34A Interpretation

Section 4 is amended by inserting the following definitions in their appropriate alphabetical order:

“**broker** has the meaning given by **section 77A** of the Financial Advisers Act 2008

“**broking service** has the meaning given by **sections 77B and 77C** of the Financial Advisers Act 2008”.

34B Meaning of financial service

Section 5 is amended by inserting the following paragraph after paragraph (a):

“(ab) a broking service.”.

New clauses 38A and 38B

To insert the following clauses after *clause 38* (after line 2 on page 17):

38A Duty to co-operate and communicate information in certain circumstances

Section 67 is amended by adding the following paragraph:

“(d) if there is a series of material complaints about a particular broker or class of broker, communicate that fact to the Securities Commission.”

38B Duty to co-operate and communicate information in certain circumstances

Section 76 is amended by adding the following paragraph:

“(d) if there is a series of material complaints about a particular broker or class of broker, communicate that fact to the Securities Commission.”

Explanatory note

This Supplementary Order Paper amends the Financial Service Providers (Pre-Implementation Adjustments) Bill to change the provisions regulating broking services from those currently contained in the Financial Advisers Act 2008 (the **FAA**) so as to enable the FAA to be effectively implemented in relation to entities operating broking services.

In the FAA at present “investment transactions” are regulated as part of the “financial adviser services” provided by financial advisers. As a consequence, only appropriately registered or authorised individuals may perform these transactions, and not entities. The changes set out in this Supplementary Order Paper will enable entities to carry out these transactions under the FAA.

Under these changes—

- “investment transactions” are renamed “broking services” in the FAA and the scope of the services is clarified as being the receipt, holding, and payment of client money and client property by a person acting on behalf of a client (so including the handling of dividends by intermediaries):
- any individual or entity can provide broking services. The Financial Service Providers (Registration and Dispute Resolution) Act 2008 (**FSP Act**) will apply to require individuals or entities in the business of providing broking services to be registered unless exempted. Employees will not need to be separately registered as brokers themselves:
- a *new Part 3A* is inserted in the FAA to contain the provisions regulating brokers. To the extent that financial advisers are also brokers, their broking services will be regulated under this Part. In addition however, the Commission is entitled to include terms and conditions relating to broking services in the authorisation of authorised financial advisers:
- the disclosure and conduct obligations applied to brokers in *new Part 3A* are essentially the same as the obligations that applied previously to investment transactions carried out by financial advisers. However, these obligations are generally applied to the entity or employer that is the broker rather than to the individual employee. Moreover, broking will be regulated only when the broker is handling money or property on behalf

of a client and none of the duties imposed are owed to product providers (as a result of excluding product providers from the definition of client):

- the disclosure obligations applied to brokers are similar to those applying to financial advisers. However, this Part does not require disclosure by brokers to other brokers or to product providers:
 - the conduct obligations for brokers are the same (with some small adjustments) as the general conduct requirements (for example, to take due care) and the money-handling obligations that previously applied to authorised financial advisers carrying out investment transactions:
 - the Securities Commission continues to have the role of enforcing compliance with these obligations and has the power to direct brokers to comply with them. It also has a power of exemption from disclosure or conduct obligations in *new Part 3A*:
 - the previous offences that applied to authorised financial advisers carrying out investment transactions have been adjusted to apply to brokers that are entities as well as individuals:
 - changes are made to the FSP Act to require dispute resolution schemes to share information relating to disputes about brokers with the Securities Commission. This information sharing is intended to assist in monitoring the extent of problems with the handling of client money and client property by brokers.
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