

House of Representatives  
Supplementary Order Paper

Tuesday, 22 June 2010

Financial Service Providers (Pre-Implementation  
Adjustments) Bill

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*Proposed amendments*

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

*Clause 3*

To omit this clause (lines 13 to 16 on page 11).

*New clause 5AA*

To insert the following clause after *clause 5* (after line 6 on page 12):

**5AA Commencement**

Section 2 is amended by adding the following subsection:

- “(3) Despite subsection (1), sections **8 to 15** (as enacted by the Financial Advisers Amendment Act **2010**) come into force on the day after the date on which the Financial Advisers Amendment Act **2010** receives the Royal assent.”

*Clause 5A*

*Subclause (1)(a)*: to omit this paragraph (lines 9 and 10 on page 12) and substitute the following paragraph:

- (a) omitting “financial advice,” in the first place where it appears and substituting “financial adviser and broking services”:

*Subclause (1)(c)*: to omit “revoking” (line 12 on page 12) and substitute “repealing”.

*Subclause (2): new subsection (2)(b)(ii)*: to omit “financial advisers dealing directly” (lines 27 and 28 on page 12) and substitute “certain financial advisers who deal”.

*Clause 6(1)*

*New definition of **bonus bonds***: to omit this definition (lines 19 and 20 on page 13) and substitute the following definition:

“**bonus bond** means a unit in an approved unit trust within the meaning of section 3(1) of the Finance Act (No 2) 1990

*New definition of **broker obligation***: to insert after the definition of **broker** (after line 21 on page 13) the following definition:

“**broker obligation** means an obligation of a broker under this Act or the regulations

*Paragraph (d) of the definition of **call building society share or call credit union share***: to omit “issuer” (line 2 on page 14) and substitute “building society or credit union”.

*Definition of **credit union***: to omit “2(1)” (line 17 on page 14) and substitute “2”.

*Definition of **exempt provider***: to omit this definition (lines 21 to 30 on page 14) and substitute the following definition:

“**exempt provider** means—

“(a) a person to whom both of the following 2 subparagraphs apply (an **overseas financial adviser**):

“(i) the person is not ordinarily resident in New Zealand (within the meaning of section 4 of the Crimes Act 1961) and does not have a place of business in New Zealand; and

“(ii) no financial adviser services provided by the person are received by retail clients in New Zealand; and

“(b) a person who is exempted under **section 148** of this Act or the regulations from the obligation to register by virtue of providing financial adviser services; and

“(c) a person who is excluded from the application of the FSP Act under **section 7(2) and (3)** of that Act or who is exempted, under the FSP Act, from the obligation to register (unless the exclusion or exemption is limited so that it does not apply in respect of financial adviser services)

*Definition of **financial service***: to omit “within **section 7(2)(a) to (j)** of that Act” (line 33 on page 14) and substitute “to whom **section 7(2) or (3)** of that Act applies”.

*New definition of **incorporated law firm***: to insert the following definition after the definition of **financial service** (after line 33 on page 14):

“**incorporated law firm** has the meaning given by section 6 of the Lawyers and Conveyancers Act 2006

*Definition of **nominated representative***: to omit this definition (lines 7 to 11 on page 15) and substitute the following definition:

“**nominated representative** means an individual who has been nominated by a QFE or by a partner entity in accordance with **section 74** and whose nomination has not been terminated under that section

*Paragraph (b) of definition of **product provider***: to omit “as defined in” (lines 23 and 24 on page 15) and substitute “within the meaning of”.

*Paragraph (d) of the definition of **product provider***: to omit “in the case of any other financial product specified by the regulations” (lines 28 and 29 on page 15) and substitute “in any other case”.

*Definition of **registered legal executive***: to omit “Incorporation” (lines 7 and 8 on page 16) and substitute “Incorporated”.

*Definition of **trustee corporation***: to omit “the Public Trust, the Maori” (line 33 on page 16) and substitute “Public Trust, the Māori”.

*Clause 6(2)*

To insert “**advertisement**,” after “the definitions of” (line 1 on page 17).

To omit “**qualifying financial entity, and security**” (line 5 on page 17) and substitute “**financial adviser service, qualifying financial entity, registered, and security**”.

*New definition of **advertisement***: to insert the following definition above the definition of **approved dispute resolution scheme** (after line 6 on page 17):

“**advertisement** means a form of communication that is to be, or has been, distributed to a person and—

“(a) in relation to a financial adviser service,—

“(i) refers to a financial adviser or financial adviser service or is reasonably likely to induce persons to seek a financial adviser service; and

“(ii) is authorised or instigated by, or on behalf of, a financial adviser, a QFE, or a member of a QFE group, or prepared with the co-operation of, or by arrangement with, a financial adviser, a QFE, or a member of a QFE group; and

“(b) in relation to a broker service,—

“(i) refers to a broker or broking service or is reasonably likely to induce persons to seek a broking service; and

“(ii) is authorised or instigated by, or on behalf of, a broker or prepared with the co-operation of, or by arrangement with, a broker

*Paragraphs (b) and (c) of the definition of **category 2 product***: to omit these paragraphs (lines 33 and 34 on page 17) and substitute the following paragraphs:

“(b) a bonus bond; or

“(c) a call building society share; or

**Paragraph (a) of the definition of conduct obligation:** to insert after “financial adviser” (line 18 on page 18), “, a QFE, or a member of a QFE group”.

**Paragraph (a) of the definition of disclosure obligation:** to insert after “financial adviser” (line 23 on page 18), “, a QFE, or a member of a QFE group”.

**New definition of financial adviser service:** to insert the following definition after the definition of **entity** (after line 33 on page 18):

“**financial adviser service** has the meaning set out in **section 9**”

**New definition of registered:** to insert the following definition after the definition of **QFE** (after line 10 on page 19):

“**registered** means registered under the FSP Act in respect of a financial adviser service, and **registration** has a corresponding meaning”

*Clause 6(3)*

To insert after “definitions of” (line 32 on page 19) “**authorised advertisement**,”.

*Clause 6A: heading*

To omit “**5H**” (line 35 on page 19 and substitute “**5G**”.

*Clause 6A: new section 5A(1)*

**Paragraph (a):** to omit “whether on payment of a charge or not” (lines 3 and 4 on page 20) and substitute “whether or not on payment of a charge”.

**Paragraph (c)(ii):** to omit “(within the meaning of section 5B(2) of the Securities Markets Act 1988)” (lines 13 to 15 on page 20).

*Clause 6A: new section 5C*

**Subsection (1)(f):** to omit “or” (line 21 on page 21) and substitute “and”.

**Subsection (2):** to omit “would apply” (line 33 on page 21) and substitute “applies”.

*Clause 6A: new section 5D*

**Heading to new section 5D:** to omit “**is eligible investor**” (line 4 on page 22) and substitute “**are eligible investors**”.

**Subsection (1)(c):** to omit “an authorised financial adviser, QFE, or other type of financial adviser or broker” (lines 19 and 20 on page 22) and substitute “a financial adviser, a QFE, or a broker”.

**Subsection (2):** to omit this subsection (lines 22 to 25 on page 22) and substitute the following subsection:

“(2) A certification may be specific to a particular service or class of services or may be general (but is effective only in relation to services provided after all of the requirements of **subsection (1)(a) to (c)** are met).

*Clause 6A: new section 5E*

*Subsection (1)*: to omit “An authorised financial adviser, QFE, or other type of financial adviser or broker” (lines 30 and 31 on page 22) and substitute “A financial adviser, a QFE, or a broker”.

*Subsection (1)(b)*: to omit “; and” (line 37 on page 22) and substitute “or that further information or investigation is required as to whether or not the certification is correct.”

*Subsection (1)(c)*: to omit this paragraph (lines 1 to 4 on page 23).

*Clause 6A: new section 5EA*

To insert the following section after *new section 5E* (after line 14 on page 23):

**“5EA Revocation of certification**

- “(1) A client who is an eligible investor may revoke a certification, in relation to a financial adviser or broker to whom the certification has been given, by giving the financial adviser or broker a signed notification to that effect.
- “(2) A revocation is effective only in relation to services provided after it is given.

*Clause 6A: new section 5F*

To add the following subsection (after line 26 on page 23):

- “(5) This section does not apply if a person is a wholesale client by reason of being an eligible investor.

*Clause 6A: new section 5FA*

To insert the following section after *new section 5F* (after line 26 on page 23):

**“5FA Giving revocation of certification or notification of opt out**

- “(1) A revocation of a certification under **section 5EA** or a notification under **section 5F** is sufficiently given to a financial adviser or broker if—
  - “(a) provided to the financial adviser or broker; or
  - “(b) delivered or posted to the financial adviser or broker at the person’s business address stated on the register under the FSP Act or (if not registered) the person’s last known place of business in New Zealand; or
  - “(c) sent by fax or email to the person’s fax number or email address stated on the register under the FSP Act.
- “(2) The revocation or notification is treated as received by the person no later than 7 days after it is posted or 2 days after it is faxed or emailed, unless the person to whom it is posted or sent proves that it was not received (otherwise than through fault on the person’s part).

*Clause 6A: new section 5H*

To omit this section (lines 11 to 21 on page 24).

*Clause 7: new section 8(2)*

To omit “**sections 20D to 20F**” (lines 16 and 17 on page 28) and substitute “**sections 20CA to 20F** for how the Act’s requirements apply”.

*Clause 7: new section 9*

*Subsection (1)*: to omit “business” (line 21 on page 28) and substitute “a business”.

*Subsection (4)*: to omit “**or 14**” (line 34 on page 28) and substitute “**, 14, or 148** or in the regulations”.

*Clause 7: new section 11*

To omit “including his or her investment needs” (line 28 on page 29) and substitute “which must include his or her investment needs”.

To add the following subsection as subsection (2) (after line 31 on page 29):

- “(2) A service may be an investment planning service regardless of whether the analysis and identification is of the individual’s particular financial situation and goals or of the financial situations and goals attributable to the class of persons that the individual is identified as coming within.

*Clause 7: new section 13*

*Subsection (1)*: to add after “financial service” (line 10 on page 30) “or does not have, as its principal activity, the provision of another financial service”.

*New subsection (1A)*: to insert the following subsection after subsection (1) (after line 10 on page 30):

- “(1A) In addition, a service is not a financial adviser service if—
- “(a) it is provided in connection with providing credit under a credit contract; and
  - “(b) both the service and the credit are provided as an incidental part of another business that is not otherwise a financial service or does not have, as its principal activity, the provision of another financial service.

*Subsection (2)*: to omit the example (lines 14 to 16 on page 30).

*Subsection (3)*: to omit “**(1)(a)**” (line 20 on page 30) and substitute “**(1)**”.

*Clause 7: new section 14*

*Subsection (1)(a)*: to omit “giving financial advice” (line 26 on page 30) and substitute “providing a relevant service”.

*Subsection (1)(b)*: to omit “giving financial advice” (line 27 on page 30) and substitute “providing a relevant service”.

*Subsection (1)(c)*: to omit “giving financial advice” (line 29 on page 30) and substitute “providing a relevant service”.

*Subsection (1)(e)*: to insert “a” before “Crown organisation” in the first place where it appears (line 5 on page 31).

*Subsection (1)(e)*: to insert “the” before “Crown organisation” in the second and third places where it appears (lines 8 and 12 on page 31).

*Subsection (1)(j):* to omit “giving financial advice” (line 34 on page 31) and substitute “providing a relevant service”.

*Subsection (1)(k):* to omit “giving financial advice” (line 36 on page 31) and substitute “providing a relevant service”.

*Subsection (1)(l):* to omit “giving financial advice” (line 1 on page 32) and substitute “providing a relevant service”.

*Subsection (1)(n):* to omit this paragraph (lines 12 to 15 on page 32) and substitute the following paragraph:

- “(n) a person providing a relevant service in the course of carrying on a business of dealing in futures contracts within the scope of an authorisation under section 38(1)(a) of the Securities Markets Act 1988 or an approval under section 38(1)(b) of that Act:

*Subsection (1)(p):* to insert “relevant” before “service” (line 30 on page 32).

*Subsection (1)(q):* to insert “relevant” before “service” (line 35 on page 32).

*Subsection (2):* to omit “would apply” (line 2 on page 33) and substitute “applies”.

*Subsection (3):* to omit “**relevant services** means services” (line 3 on page 33) and substitute “**relevant service** means a service”.

*Clause 7: new section 15(1)*

To omit this subsection (lines 9 to 16 on page 33) and substitute the following subsection:

- “(1) A financial adviser service is a **personalised service** if—
  - “(a) it is given to, or in respect of, a named client or a client that is otherwise readily identifiable by the financial adviser; and
  - “(b) either—
    - “(i) the financial adviser has taken into account the client’s particular financial situation or goals (or any 1 or more of them) in providing the service; or
    - “(ii) a client would, in the circumstances in which the service is provided, reasonably expect the financial adviser to take into account the client’s particular financial situation or goals (or any 1 or more of them).

*Clause 7: new section 16*

To omit this section (line 25 on page 33 to line 2 on page 34) and substitute the following section:

“**16 Types of financial adviser**

Under this Act, there are the following types of financial adviser:

- “(a) an authorised financial adviser:

- “(b) an individual who is registered but not authorised:
- “(c) a QFE adviser:
- “(d) a QFE or any other entity that is registered but does not have QFE status:
- “(e) any other person (whether an individual or an entity) who is an exempt provider.

*Clause 7: new section 18*

To add the following subsection as subsection (2) (after line 36 on page 34):

- “(2) **Subsection (1)(a)(ii)** is subject to any limitation on the scope of services that may be provided by the QFE adviser under the terms and conditions for the QFE under **section 67A** or a determination under **section 75B(4)**.

*Clause 7: new section 19(d)*

To omit “a person to whom **paragraph (a)** of the definition of exempt provider applies” (lines 8 and 9 on page 35) and substitute “an overseas financial adviser (see **paragraph (a)** of the definition of exempt provider in section 5)”.

*Clause 7: heading to new section 20*

To omit “**may**” (line 10 on page 35) and substitute “**is permitted to**”.

*Clause 7: new section 20C(1)*

To add “or a partner entity” (line 12 on page 36).

*Clause 7: new section 20CA*

To insert above *new section 20D* (after line 16 on page 36) the following section:

**“20CA Application of FSP Act to employees etc**

Any person required, by this Act, to register to provide a financial adviser service must be treated, under the FSP Act, as being in the business of providing a financial service for the purposes of that Act (even if the person does not carry on that business).

*Clause 7: new section 20D*

To omit “need not be” (line 19 on page 36) and substitute “is exempt from the obligation under section 48 of the FSP Act to be”.

*Clause 7: new section 20E*

To omit this section (line 27 on page 36 to line 2 on page 37).

*Clause 11*

*Heading:* to omit “**to 25**” (line 1 on page 38) and substitute “**to 26**”.

To omit “sections 21 to 25” (line 2 on page 38) and substitute “sections 21 to 26”.

*Clause 11: new section 21*

*Subsection (2):* to omit “for” (line 10 on page 38) and substitute “to”.



To add the following subsection (after line 10 on page 38):

- “(3) Contravention of a disclosure obligation may give rise to an offence (*see* section 117).

*Clause 11: new section 25*

*Heading to new section 25:* to omit this heading (line 28 on page 39) and substitute the following heading: “**QFE must make disclosure before personalised service provided to retail client**”.

*Subsection (1):* to omit “the Act or the regulations” (line 32 on page 39) and substitute “this Act and the regulations”.

*Subsection (2)(c):* to omit “the QFE’s” (line 3 on page 40).

*Subsection (2)(e):* to insert “or member of the QFE group” after “QFE” (line 6 on page 40).

*Subsection (3):* to omit “for the purposes of this section” (line 7 on page 40).

*New clause 11AA*

To insert the following clause after clause 11 (after line 8 on page 40):

**11AA Disclosure by 2 or more financial advisers in joint disclosure statement**

Section 31(2)(c) is repealed and the following paragraph substituted:

- “(c) be—  
    “(i) provided to the client; or  
    “(ii) delivered or sent to the client at the client’s last known address or an address (including an electronic address) specified by the client for that purpose.”

*Clause 11A: new section 33*

To omit this section (lines 25 to 35 on page 40) and substitute the following section:

**“33 Financial adviser must exercise care, diligence, and skill**

“(1) A financial adviser, when providing a financial adviser service, must exercise the care, diligence, and skill that a reasonable financial adviser would exercise in the same circumstances.”

“(2) In determining the degree of care, diligence, and skill that a reasonable financial adviser would exercise, the following matters must be taken into account (without limitation):

- “(a) the nature and requirements of the financial adviser’s client or (if it is a class service) of the clients intended to receive the service; and  
“(b) the nature of the service provided and the circumstances in which the service is provided; and  
“(c) the type of financial adviser.”

*Clause 12: new section 36:*

*Heading to new section 36:* to omit “**class retail services**” (line 15 on page 41) and substitute “**class services to retail clients**”.

To omit “—” (line 17 on page 41) and substitute “comply with any 1 or more of the following requirements that apply under the regulations (if any):”.

*Paragraph (a):* to omit “(if required by regulations)” (line 18 on page 41).

*Paragraph (a):* to omit “; and” (line 20 on page 41) and substitute “:”.

*Paragraph (b):* to omit “an authorised financial adviser or registered financial adviser to financial advice; and” (lines 26 to 28 on page 41) and substitute “financial advice by an authorised financial adviser or individual registered financial adviser.”.

*Clause 12C: new section 45A*

*Heading:* to omit “**must**” (line 8 on page 42) and substitute “**may**”.

*Subsection (1):* to omit “must” (line 12 on page 42) and substitute “may”.

*Subsection (4):* to omit this subsection (lines 5 and 6 on page 43).

*Clause 13: new section 47(1)*

To omit this subsection (lines 28 to 31 on page 43) and substitute the following subsection:

- “(1) A QFE or a member of a QFE group must not, in acting through an employee, agent, or nominated representative, engage in conduct in relation to a financial adviser service that is misleading or deceptive or likely to mislead or deceive.

*Clause 13B: new section 55*

*Subsection (1):* to add the following paragraph (after line 30 on page 44):

- “(d) providing, in any case that is specified in the regulations for the purposes of this paragraph, services of the kind referred to in **paragraph (a) or (b)** or both, but in relation to any category 2 product, specified category 2 products, or specified classes of category 2 products.

*New subsection (6):* to add the following subsection (after line 10 on page 45):

- (6) **Subsection (1)(d)** does not limit or affect anything in **section 18**.

*Clause 13C: new section 58(4)*

*Paragraph (a):* to insert, after “with the” (line 18 on page 46), “Act, the terms and condition of authorisation, and the”.

*Paragraph (b):* to omit “with those standards” (lines 20 and 21 on page 46).

*Clauses 13D and 13E*

To omit these clauses (lines 23 to 36 on page 46 and lines 1 to 15 on page 47).

*Clause 14: new section 65(2)*

To omit “related” (line 30 on page 48) and substitute “connected”.

*Clause 14: new section 66*

*Subsection (1)(c)(ii):* to insert “(other than any broker obligations)” (line 17 on page 49) after “the regulations”.

*Subsection (2):* to omit “financial adviser” (lines 25 and 26 on page 49).

*Clause 14: new section 67*

*Subsection (4):* to omit “, by written determination,” (lines 8 and 9 on page 50).

*Subsection (4):* to add “; or” (line 13 on page 50) and also to add the following paragraph (after line 13 on page 50):

“(c) is an exempt provider.

*Subsections (5) and (6):* to omit these subsections (lines 14 to 27 on page 50) and substitute the following subsection:

“(5) Even though an entity is eligible under **subsection (4)**, the Commission may decline to approve the entity for any reason, including, without limitation,—

“(a) the absence of a direct connection between the entity and the QFE or any of its partner entities; or

“(b) concerns specified under **section 67A(2)** that cannot be adequately addressed by the imposition of terms and conditions under **section 67A(4)**.

*Clause 14: new section 67A*

To insert the following section after *new section 67* (after line 30 on page 50):

**“67A Associated entities may be subject to special terms and condition in certain cases**

“(1) This section applies if—

“(a) an application for QFE status asks for the approval of an entity as an associated entity; but

“(b) the Commission has concerns about the provision of personalised services in relation to certain category 1 products by individuals who would, following the approval of the entity, be the entity’s QFE advisers.

“(2) The Commission may specify its concerns in a notice to the applicant or applicants.

“(3) The Commission must specify in the notice a reasonable period for the applicant or applicants to respond in writing and must ask the applicant or applicants to satisfy the Commission that the QFE advisers of the proposed associated entity are able to, and will, provide financial adviser services in relation to the category 1 product concerned with the appropriate level of professionalism and competence.

“(4) After considering the entity’s response, the Commission may make its approval of the entity as an associated entity subject to special terms and conditions, which form part of the terms and conditions specified under **section 67(2)**.

- “(5) The terms and conditions referred to in **subsection (4)** may, without limitation, relate to—
- “(a) the kinds of financial adviser services that may be provided by or on behalf of the associated entity:
  - “(b) any conditions and restrictions that are to apply to the provision of those services:
  - “(c) the way in which the QFE is to supervise the associated entity.

*Clause 14: new section 71*

*Subsection (3):* to insert after “**67(3) to (5)**” (line 5 on page 52) “and section **67A**”.

*Subsection (4):* to omit this subsection (lines 6 to 8 on page 52).

*Clause 14: new section 74(3)*

To omit this subsection (lines 10 to 12 on page 53) and to substitute the following subsection:

- (3) The nomination of an individual as nominated representative is terminated if the entity that nominated the individual—
  - (a) gives written notice to the individual and to the Commission to that effect; or
  - (b) as a result of the termination of QFE status, ceases to be a QFE or part of a QFE.

*Clause 14: new section 75(3)(a)*

To omit “substantial” (line 25 on page 53) and substitute “material”.

*Clause 14: new section 75A(1)(a)*

To insert after “expires” (line 17 on page 54) “ and the QFE fails for 60 clear days after that expiry to apply for renewal of QFE status”.

*Clause 14: new section 75B(4)*

To omit “a QFE adviser may not provide a personalised financial adviser service to a retail client directly” (lines 8 to 10 on page 55) and substitute “the QFE advisers may not provide personalised services to retail clients”.

*Clause 14: new section 75C(4)*

To omit “date on which the QFE status is due to expire” (lines 23 and 24 on page 55) and substitute “close of the 60th day after the date on which the period for which QFE status has been granted expires”.

*Clause 14: new section 75F*

*Subsection (1):* to add after “conduct obligation” (line 14 on page 57) “or any obligation under **section 76 or 77** (the **obligation**)”.

To omit *subsections (4) and (5)* and substitute the following subsections:

- “(4) The direction may—
  - “(a) direct the QFE or any partner entity, or both, to comply with the obligation:

- “(b) stipulate any steps that the QFE or any partner entity, or both, must take in order to comply with the obligation:
- “(c) require the QFE to report to the Commission within 28 days of the date of the direction stating how and by when the Commission’s direction will be implemented.
- “(5) A QFE or a partner entity that fails to comply with a direction by the Commission commits an offence (*see* **section 132**).

*Clause 14: new section 76(1)(d)*

To omit “related company” (line 35 on page 58) and substitute “related body corporate”.

*Clause 14: new section 76(1)(e)*

To omit “authorised:” (line 5 on page 59) and substitute “authorised; and”.

*Clause 14: new section 76(1)(h)*

To omit “**section 72**” (line 18 on page 59) and substitute “**section 75F**”.

*Clause 17: new section 77A(2)*

To insert before “in the case of” (line 23 on page 61) “for how the Act’s requirements apply” .

*Clause 17: new section 77C*

To omit this section (lines 1 to 11 on page 62).

*Clause 17: new section 77D*

*Subsection (1)(a):* to omit “a broking service” (line 19 on page 62) and substitute “a relevant service”.

*Subsection (1)(b):* to insert before “Crown organisation” in the first place where it appears (line 21 on page 62) “a” .

*Subsection (1)(b):* to omit “the Public” (lines 21 and 22 on page 62) and substitute “Public”.

*Subsection (1)(b):* to insert “the” before “Crown organisation” in the second and third place where it appears (lines 24, 28, and 29 on page 62).

*Subsection (1)(c):* to omit this paragraph (lines 31 to 35 on page 62) and substitute the following paragraphs:

- “(c) an operator of a designated settlement system under section 156N of the Reserve Bank of New Zealand Act 1989 providing a relevant service by the receipt, holding, payment, or transfer of money or property in accordance with the rules of that settlement system:
- “(ca) a person providing a relevant service in the course of carrying on the business of dealing in futures contracts within the scope of an authorisation under section 38(1)(a) of the Securities Markets Act 1988 or an approval under section 38(1)(b) of that Act:

*Subsection (1)(d)*: to omit “a broking service” (line 36 on page 62) and substitute “a relevant service”.

*Subsection (1)(e)*: to insert “relevant” before “service” (line 1 on page 63).

*Subsection (2)*: to omit “would apply” (line 6 on page 63) and substitute “applies”.

*New subsection (3)*: to add the following subsection (after line 6 on page 63):

“(3) In this section, **relevant service** means a service that, but for **subsection (1)**, would be a broking service.

*Clause 17: new section 77E*

*Subsection (1)*: to omit “**77G**” (line 11 on page 63) and substitute “**77F**”.

*New subsection (3)*: to add the following subsection (after line 13 on page 63):

“(3) Contravention of a disclosure obligation may give rise to an offence (*see* section 117).

*Clause 17: new section 77F(b)*

To omit “doing so” (line 21 on page 63) and substitute “receiving client money or client property from or on behalf of the client”.

*Clause 17: new section 77K(1)*

To omit “**77V**” (line 4 on page 65) and substitute “**77U**”.

*Clause 17: new section 77K(3)*

To omit “**77V**” (line 7 on page 65) and substitute “**77U**”.

*Clause 17: new section 77L*

To omit this section (lines 13 to 20 on page 65) and substitute the following section:

“**77L Broker must exercise care, diligence, and skill**

“(1) A broker must, when providing a broking service, exercise the care, diligence, and skill that a reasonable broker would exercise in the same circumstances.

“(2) In determining the degree of care, diligence, and skill that a reasonable broker would exercise, the following matters must be taken into account (without limitation):

“(a) the nature and requirements of the broker’s client; and

“(b) the nature of the service provided and the circumstances in which the service is provided.

*Clause 17: new section 77M(2)*

To omit this subsection (lines 26 and 27 on page 65) and substitute the following subsection:

“(2) Contravention of this section may give rise to an offence (*see* **section 118**).

*Clause 17: new section 77N(2)*

To omit this subsection (lines 32 and 33 on page 65) and substitute the following subsection:

“(2) Contravention of this section may give rise to an offence (*see* **section 119**).

*Clause 17: new section 77O(2)*

To omit this subsection (lines 6 and 7 on page 66) and substitute the following subsection:

“(2) Contravention of this section may give rise to an offence (*see* **section 120**).

*Clause 17: new section 77P(2)*

To omit this subsection (lines 17 and 18 on page 66) and substitute the following subsection:

“(2) Contravention of this section may give rise to an offence (*see* **section 134A**).

*Clause 17: new section 77Q(2)*

To omit this subsection (lines 31 and 32 on page 66) and substitute the following subsection:

“(2) Contravention of this section may give rise to an offence (*see* **section 134B**).

*Clause 17: new section 77R(2)*

To omit this subsection (lines 3 and 4 on page 67) and substitute the following subsection:

“(2) Contravention of this section may give rise to an offence (*see* **section 134C**).

*Clause 17: new section 77S*

*Subsection (1)*: to omit “trust accounts” (line 10 on page 67) and substitute “trust account”.

*Subsection (4)*: to omit this subsection (lines 22 and 23 on page 67) and substitute the following subsection:

“(4) Contravention of any of **subsections (1) to (3)** may give rise to an offence (*see* **section 134D**).

*Clause 17: new section 77T(2)*

To omit this subsection (lines 32 and 33 on page 67) and substitute the following subsection:

“(2) Contravention of this section may give rise to an offence (*see* **section 134E**).

*Clause 17: new section 77U(2)*

To omit “has against the client money” (line 12 on page 68) and substitute “or client property has against the client money or client property”.

*Clause 18*

*Heading to clause 18:* to omit “**Part 4 heading**” (line 16 on page 69) and substitute “**Heading to Part 4**”.

*Clause 19*

To omit “subsection” (line 20 on page 69) and substitute “subsections”.

To add the following subsection (after line 23 on page 69):

- “(5) Despite subsection (1), the code may provide for different minimum standards for individuals training to be authorised financial advisers.”

*Clause 22: new section 114*

*Subsection (1):* to omit “when not permitted to do so under **section 18**” (lines 16 and 17 on page 71) and substitute “set out in **section 18** when not permitted to do so under that section and **section 17**”.

*Subsection (2):* to omit “when not permitted to do so under **section 19 or 20**” (lines 22 and 23 on page 71) and substitute “set out in **section 19 or 20** when not permitted to do so under those sections and **section 17**”.

*Clause 22: heading to new section 115*

To insert after “**financial planner,**” (line 33 on page 71) “**investment planner,**”.

*Clause 22: new section 116*

To omit this section (lines 4 to 8 on page 72).

*New clause 22A*

*Heading above clause 23:* to omit this heading (lines 9 and 10 on page 72) and substitute the following clause:

**22A Heading above section 117 amended**

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

*Clause 25*

*Heading:* to omit “**134**” and substitute “**134AA**” (line 20 on page 73).

To add the following section after *new section 134* (after line 13 on page 75):

**“134AA Defence to offences relating to entities in QFE groups**

An entity, being the QFE of a QFE group or a partner entity, has a defence to an offence under any of **sections 129 to 134** if the entity proves that the entity—

- “(a) was not involved in the contravention that constitutes the offence; and
- “(b) took all reasonable steps to ensure that the members of the QFE group complied with the requirements of this Act.”

*Clause 26*

To omit this clause (lines 14 to 17 on page 75).



*Clause 27A: new section 137F(3)*

To insert after the definition of **aggrieved person** (after line 35 on page 79) the following definition:

“**associated person** has the same meaning as in section 2(2) of the Securities Markets Act 1988

*Clause 27A: new section 137O(1)(a)(iii)*

To omit this subparagraph (lines 1 and 2 on page 86) and substitute the following paragraph:

(b) may also give notice to any other person of those matters.

*Clause 27B*

To omit “section 49, 61, 73”(line 3 on page 87) and substitute “section 49, 61, **75F**”.

*Clause 27BA: new section 147A(3)(e)*

To omit “the Act” (lines 32 and 33 on page 87) and substitute “this Act”.

*Clause 27C: new section 148*

*Subsection (2)(a):* to omit “cost” (line 33 on page 89) and substitute “costs”.

*Subsection (3)(b):* to omit “cost” (line 13 on page 90) and substitute “costs”.

*Clause 28: new section 154*

*Subsection (1):* to omit “**(3) and (4)**” (line 32 on page 92) and substitute “**(4) to (8)**”.

*Subsection (1)(a):* to omit “or product or class of persons, services, documents,” (lines 33 and 34 on page 92) and substitute “information or product or class of persons, services, documents, information,”.

*Subsection (1):* to insert the following paragraph after **paragraph (d)** (after line 5 on page 93):

“(da) defining investment-linked contract of insurance, land investment product, and cash or term portfolio investment entity:

*Subsection (1):* to insert the following paragraph after **paragraph (f)** (after line 12 on page 93):

“(fa) specifying, for the purposes of **section 55(1)(d)**, cases in which an authorisation under that paragraph may be granted:

*Subsection (1):* to insert the following paragraph after **paragraph (h)** (after line 19 on page 92):

“(ha) prescribing requirements relating to class services provided to retail clients for the purposes of **section 36**:

*Subsection (1):* to insert the following paragraphs after **paragraph (n)** (after line 7 on page 94):

(na) providing that, subject to any conditions stated in the regulations, transitional or savings provisions

prescribed by the regulations that relate to the implementation of this Act or the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (in addition to any other transitional provisions in those Acts) apply during the whole or any part of the transitional implementation period ending on 30 June 2013:

- (nb) providing that, subject to any conditions stated in the regulations, specified provisions of this Act or the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (including definitions), or provisions of other Acts amended by this Act or the Financial Service Providers (Registration and Dispute Resolution) Act 2008, do not apply, or apply with modifications or additions, or both, during the whole or any part of the transitional implementation period ending on 30 June 2013:

To add the following subsections (after line 31 on page 94):

- “(6) The Minister must not recommend the making of regulations under **paragraphs (na) or (nb) of subsection (1)** unless the Minister is satisfied that the regulations—
- “(a) are necessary or desirable for the orderly implementation of this Act or the Financial Service Providers (Registration and Dispute Resolution) Act 2008; and
- “(b) are consistent with the purposes of this Act or of the Financial Service Providers (Registration and Dispute Resolution) Act 2008.
- “(7) **Paragraphs (na) and (nb) of subsection (1)** expire, and are repealed, on the close of 30 June 2013.
- “(8) Any regulations made under **paragraphs (na) or (nb) of subsection (1)** that are in force on 30 June 2013 expire, and are revoked, on the close of that day.”

*New clause 28A*

To insert the following clause after clause 28 (after line 31 on page 94):

**28A New section 157 substituted**

Section 157 is repealed and the following section substituted:

**“157 Territorial scope**

- “(1) This Act applies to a financial adviser service or broking service received by a client in New Zealand, regardless of where the person providing the service is resident, is incorporated, or carries on business.
- “(2) **Sections 33, 34, 49, 77L, 77M, 77W, and 118** also extend to any financial adviser service or broking service received by a client outside New Zealand if it is provided by a person who is ordinarily resident in New Zealand (within the meaning of

section 4 of the Crimes Act 1961) or is incorporated or has a place of business in New Zealand.”

*Clause 29: new section 168(1)*

To omit “section 14” (line 5 on page 95) and substitute “**section 17**”.

*Clause 31*

To omit this clause (lines 5 to 10 on page 96).

*Clause 34(2)*

New definition of **broking service**: to omit “**sections 77B and 77C**” (lines 12 and 13 on page 97) and substitute “**section 77B**”.

New definition of **chartered accountant**: to insert the following definition after the definition of **broking service** (after line 13 on page 97):

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

*Paragraph (a) of new definition of contract of insurance*: to omit “includes” (line 15 on page 97) and substitute “means every contract of insurance including”.

*New definitions of conveyancing practitioner and incorporated law firm* to insert the following definitions after the definition of **contract of insurance** (after line 18 on page 97):

“**conveyancing practitioner** has the meaning given by section 6 of the Lawyers and Conveyancers Act 2006

“**incorporated law firm** has the meaning given by section 6 of the Lawyers and Conveyancers Act 2006

*Definition of licensed service*: to omit “, registered (other than under this Act), authorised, or otherwise approved by a licensing authority” (lines 25 to 27 on page 97).

*Clause 34*

The following subsection is added (after line 34 on page 97):

- (3) The definition of **financial adviser service** in section 4 is amended by omitting “sections 10 and 12” and substituting “**section 9**”.

*Clause 34B(2)*

*New paragraph (i)*: to omit this paragraph (lines 4 to 9 on page 98) and substitute the following paragraphs:

“(i) participating in an offer of securities to the public in either of the following capacities (within the meaning of those terms under section 2(1) of the Securities Act 1978):

“(i) as an issuer of the securities:

“(ii) as a promoter:

“(ib) acting in any of the following capacities (within the meaning of those terms under section 2(1) of the Se-

curities Act 1978) in respect of securities offered to the public:

- “(i) as a trustee:
- “(ii) as a unit trustee:
- “(iii) as a superannuation trustee:
- “(iv) as a manager.”

*Clause 35: new section 7*

*Subsection (1)(k):* to omit this paragraph (lines 34 and 35 on page 99) and substitute the following paragraph:

- “(k) any person exempted, under regulations made under this Act or by or under any other enactment, from the application of this Act or from the requirement to register under this Act (to the extent of the relevant exemption).

*Clause 35A: new section 8A(a)*

To omit “or is incorporated or carrying on business in New Zealand” (lines 9 and 10 on page 100) and substitute “or has a place of business in New Zealand”.

*Clause 35D: new paragraph (c)*

To omit this paragraph (line 33 on page 100 to line 7 on page 101) and substitute:

- “(c) if a licensing enactment requires the person to be a licensed provider, the person is, or will be (on and from commencing to be in the relevant business), a licensed provider.”

*Clause 36*

*Subsection (1):* to omit this subsection (lines 14 to 17 on page 101) and substitute the following subsection:

- (1) Section 15(1)(e) is amended by inserting “or levy” after “fee”.

*Subsection (2):* to omit this subsection (lines 18 and 19 on page 101) and substitute the following subsection:

- (2) Section 15(2) is amended by omitting “prescribed information required” and substituting “information required, by or under the licensing enactment.”.

*Clause 36A: new subparagraph (ia)*

To omit “class or classes” (line 23 on page 101) and substitute “type or types”.

*Clause 36B*

To omit this clause (line 25 on page 101 to line 12 on page 102).

*Clause 36C*

To omit this clause (lines 13 to 35 on page 102).

*Clause 36D: new paragraph (a)(ii)*

To omit this paragraph (lines 9 to 11 on page 103) and substitute the following subparagraph:

- “(ii) the provider is in a business of providing a financial service for which the provider is not registered; or

*Clause 36E*

*Subsection (1):* to omit *new paragraph (b)* (lines 20 to 23 on page 103) and substitute the following paragraph:

- “(b) is not in the business of providing a financial service (at any time after the expiry of 3 months after registration); or

*Subsection (2):* to omit this subsection (lines 24 to 27 on page 103) and substitute the following subsection:

- (2) Section 18(1)(d) is amended by inserting “or levy” after “confirmation fee”.

*Clause 36F*

To omit this clause (lines 28 to 32 on page 103) and substitute:

**36F Reregistration of financial service provider**

Section 22(1)(b) is amended by inserting “or levy” after “confirmation fee”.

*Clause 36G: new subparagraph (BA)*

To omit “class or classes” (line 1 on page 104) and substitute “type or types”.

*Clause 36H: new paragraph (ba)*

To omit “class or classes” (line 7 on page 104) and substitute “type or types”.

*New clause 36I*

To add the following clause after *clause 36H* (after line 8 on page 104):

**36I Annual confirmation**

Section 28(2)(a) is amended by adding “and any levy payable by the provider”.

*Clause 37*

*Subsection (1):* to omit this subsection (lines 10 and 11 on page 104).

*Subsection (2):* to omit this subsection (lines 12 to 18 on page 104) and substitute the following subsection:

- (2) Section 29 is amended by repealing paragraph (e) and substituting the following paragraph:
  - “(e) regulations made under this Act require the Registrar to do so in circumstances specified by the regulations.”

*Clause 37B: new subclause (1A)*

To insert after subclause (1) (after line 24 on page 104) the following subclause:

- (1A) Section 44(1) is amended by inserting the following paragraph above paragraph (a):
- “(aa) declaring a class of contract to be a contract of insurance for the purposes of this Act.”.

*Clause 37B(2): new paragraph (ac)*

To omit this paragraph (lines 30 to 32 on page 104).

*Clause 37B(3)*

*New subsection (1A):* to omit “**(1)(b)**” (line 2 on page 105) and substitute “**(1)(ab)**”.

*Clause 37B*

To add the following subclause (after line 9 on page 105):

- (4) Section 44(3) is amended by inserting “or levy” after “fee”.

*Clause 38A: subclause (2)*

*New subsection (3)(b):* to insert after “the obligation” (after line 7 on page 106) “by or”.

*Clause 38B: new section 49*

*Subsection (2)(e):* to omit “or” (line 35 on page 106) and substitute “and”.

*Subsection (2):* to add the following paragraph (after line 6 on page 107):

- “(h) if the financial service is a financial adviser service or a broking service, a person who is a wholesale client in respect of that service under the Financial Advisers Act 2008.

*Subsection (3):* to omit “director, employee, agent, or other person acting in the course of, and for the purposes of, A’s business to the same extent as it would apply to A” (lines 8 to 10 on page 107) and substitute “controlling owner, director, employee, agent, or other person acting in the course of, and for the purposes of, A’s business to the same extent as it applies to A”.

*Clause 38B: new section 49A*

*Heading:* to omit “**is eligible investor**” (line 25 on page 107) and substitute “**are eligible investors**”.

*Subsection (2):* to omit this subsection (line 35 on page 107 to line 2 on page 108) and substitute the following subsection:

- “(2) A certification may be specific to a particular service or class of services or may be general (but is effective only in relation to services provided after all of the requirements of **subsection (1)(a) to (c)** are met).

*Clause 38B: new section 49B(1)*

*Paragraph (b):* to omit “; and” (line 10 on page 108) and substitute “or that further information or investigation is required as to whether or not the certification is correct.”

*Paragraph (c):* to omit this paragraph (lines 11 to 14 on page 108).

*Clause 38B: new section 49BA*

To insert the following section after section 49B (after line 23 on page 108):

**“49BA Revocation of certification**

- “(1) A client who is an eligible investor may revoke a certification, in relation to a financial service provider to whom the certification has been given, by giving the financial service provider a signed notification to that effect.
- “(2) A revocation is effective only in relation to services provided after it is given.

*Clause 38B: new section 49C*

To add the following subsection (after line 35 on page 108):

- “(5) This section does not apply if a person is a wholesale client by reason of being an eligible investor.

*Clause 38B: new section 49CA*

To insert the following section (after line 35 on page 108):

**“49CA Giving revocation of certification or notification of opt out**

- “(1) A revocation of a certification under **section 49BA** or a notification under **section 49C** is sufficiently given to a financial service provider if—
  - “(a) it is provided to the financial service provider; or
  - “(b) delivered or posted to the financial service provider at the person’s business address stated on the register or (if not registered) the person’s last known place of business in New Zealand; or
  - “(c) sent by fax or email to the person’s fax number or email address stated on the register.
- “(2) The revocation or notification is treated as received by the person no later than 7 days after it is posted or 2 days after it is faxed or emailed, unless the person to whom it is posted or sent proves that it was not received (otherwise than through fault on the person’s part).

*Clause 38B: new section 49D(2)*

To omit “or a complainant” (lines 5 to 6 on page 109).

*Clause 38K: new section 79A(4)*

To omit “adviser” (line 4 on page 114) and substitute “provider”.

*Schedule: item relating to Securities Act 1978*  
To omit this item (lines 3 to 5 on page 115).

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### **Explanatory note**

This Supplementary Order Paper amends the Financial Service Providers (Pre-Implementation Adjustments) Bill to make a number of minor amendments needed to ensure that the Bill is legally effective, consistent, and works appropriately and to correct minor drafting errors. For example,—

- the Bill enables clients to self-certify that they are eligible investors and so become wholesale clients under the Financial Advisers Act 2008 (**FAA**) or Financial Service Providers (Registration and Dispute Resolution) Act 2008 (**FSP Act**). New provisions are inserted to enable clients to revoke that certification and to deal with the timing of receipt of the revocation or a notice opting out of being a wholesale client:
- it is clarified in *new section 11* of the FAA that there can be class investment planning services:
- it is clarified that a financial adviser service relating to providing credit under a credit contract is not within the scope of the FAA if both the advice service and the credit service are provided incidentally to another business that is not otherwise a financial service (*new section 13(1A)* of the FAA):
- the obligation for an authorised financial adviser to report a material breach of the FAA or code to the Securities Commission is removed, although a report of this kind is still permitted and protected by *new section 45A* of the FAA:
- an amendment is made to *new section 15* of the FAA to ensure that a financial adviser service is a **personalised service** if the financial adviser has in fact taken into account the client's particular financial situation or goals, even if a reasonable client would not have expected the financial adviser to have done so in all the circumstances:
- the offence for a QFE adviser to continue to provide financial adviser services if the employer or principal is no longer qualified to do so is removed as it is redundant (because the QFE adviser's own entitlement to provide financial adviser services will cease in this case):
- the Securities Commission is enabled, subject to regulations, to authorise individuals to provide financial adviser services or discretionary investment management services in relation to category 2 products:
- the power of the Securities Commission to ban registered financial advisers is removed; the High Court continues to have the power to ban all types of financial advisers (*see new section 137D*):
- authorised futures dealers are exempted from being brokers under *new section 77D(1)(ca)*:
- the determination of which type of financial service a person comes within under the FSP Act will now be made in the application for registration by,



and subsequent registration of, the financial service provider (rather than through regulations defining the classes of financial service):

- the specific power for an unincorporated body to apply for registration under the FSP Act is removed:
  - amendments are made to enable regulations to be made to deal with any transitional issues with the implementation of the FAA and FSP Act, including not applying particular provisions of either Act in that period, or applying them with modifications (but only until the close of 30 June 2013, at which time both the regulation empowering provisions, and any regulations made under them, expire).
-