

Financial Services Law Reform in New Zealand (Part II)

Sydney
12 November 2008

Introduction

Three areas to cover:

1. New financial services legislation:

- Financial Service Providers (Registration and Dispute Resolution) Act 2008 (**FSP Act**);
- Financial Advisers Act 2008 (**FA Act**); and
- Reserve Bank of New Zealand Amendment Act 2008 (**RBNZ Act**).

2. Trans-Tasman securities offerings regulations.

3. Government deposit guarantee scheme.

New financial services legislation – FSP Act

- Substantially unchanged from Bill discussed at last year’s seminar.
- Very broadly:
 - anyone in the business of providing a “financial service” must be registered;
 - “financial service” defined very broadly (see last year’s slides);
 - where an entity is a registered FSP, its employees don’t need to be registered;
 - anyone providing a FS to the public must belong to an approved dispute resolution scheme (**ADRS**); and
 - new concept of “responsible financial service provider”.

New financial services legislation – FSP Act

- Most significant change is new territorial scope provision. FSP Act “applies to the provision in New Zealand of a financial service by a person who is in New Zealand”.
- Still unclear when it will come into force. Unlikely before 2010.

New financial services legislation – FA Act

- Significant changes from Bill discussed at last year’s seminar.
- “Financial advisers” are individuals, not entities.
- A person who, in the course of their business:
 - gives financial advice (which is a recommendation, opinion, or guidance relating to trading a “financial product”); or
 - makes an investment transaction (which is an investment on behalf of another person relating to trading a “financial product”); or
 - provides a financial planning service.

New financial services legislation – FA Act (contd)

- Two types of “financial products”:
 - category 1 products: complex products, such as futures contracts, real property, securities (other than call or term deposits); and
 - category 2 products: more simple products, such as call and term deposits, non-investment insurance products and consumer credit contracts.

New financial services legislation – FA Act (contd)

- What are the restrictions on what financial advisers can do?
 - registered individuals can give financial advice or make an investment transaction in relation to a category 2 product;
 - registered and authorised individuals can give financial advice or make an investment transaction in relation to a category 1 product; and
 - individuals employed by a qualifying financial entity (**QFE**) can give financial advice or make an investment transaction in relation to a category 2 product.

New financial services legislation – FA Act (contd)

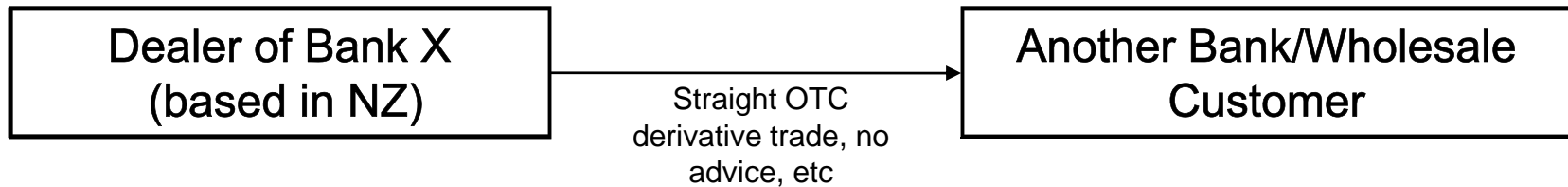
- So what does registration and authorisation involve?
 - *registration*: relatively simple process, applicant must not be disqualified (e.g., by virtue of criminal convictions); and
 - *authorisation*: more complicated process, involves application to Securities Commission, must meet standards specified in code of conduct.
- Conduct and disclosure obligations imposed on financial advisers.
- Conduct obligations include:
 - exercise of due care, diligence and skill;
 - no misleading/deceptive conduct; and
 - compliance with code (*authorised* financial advisers only).

New financial services legislation – FA Act (contd)

- Complaints about an authorised financial adviser may be laid with Securities Commission.
- Disclosure obligations include delivery of disclosure statement to customer (before or immediately after service performed). Disclosure statement to include:
 - adviser's experience;
 - details of criminal convictions and disciplinary proceedings;
 - fees; and
 - potential conflict of interests.

New financial services legislation – FA Act (contd)

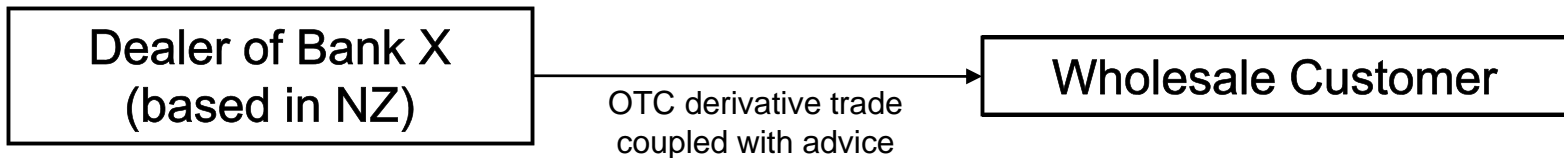
Scenario (1)



Dealer not a “financial adviser”, so doesn’t need authorisation. But Bank X must be registered under FSP Act, as entering into derivatives is a “financial service”.

New financial services legislation – FA Act (contd)

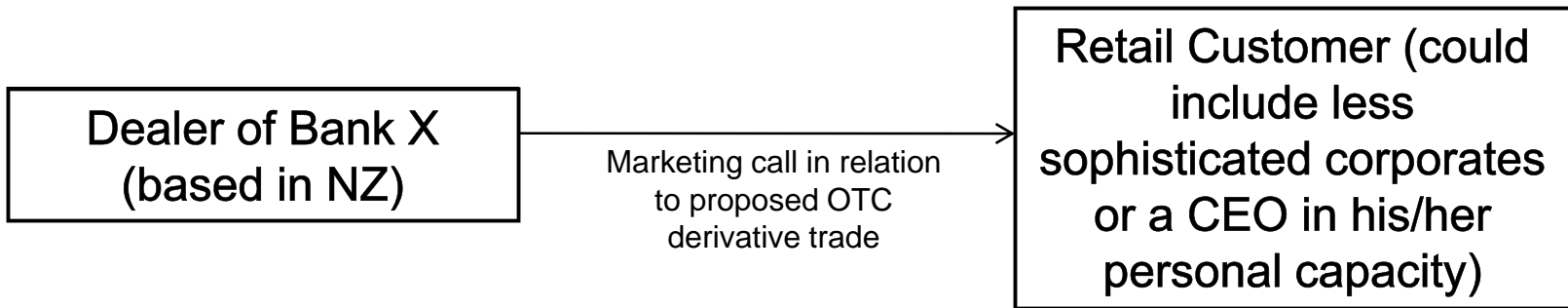
Scenario (2)



Dealer is a “financial adviser” in relation to a category 1 product, so must be both authorised under the FA Act and registered under the FSP Act. Bank X must also be registered under the FSP Act.

New financial services legislation – FA Act (contd)

Scenario (3)



As for Scenario (2). However, in addition, Bank X must be member of an ADRS.

New financial services legislation – FA Act (contd)

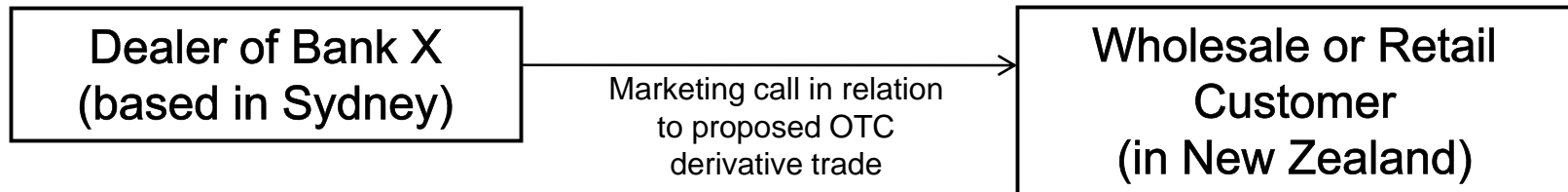
Scenario (4)



FA Act doesn't apply. Carve-out for "a person giving general commentary relating to a financial market if that commentary is not directed to a specific person or persons".

New financial services legislation – FA Act (contd)

Scenario (5)



Dealer is not “a person in New Zealand”. Neither FA Act nor FSP Act applies.

New financial services legislation – RBNZ Act

- Minor changes from Bill discussed at last year's seminar.
- Prudential regulation of non-bank deposit takers (**NBDTs**) by RBNZ .
- NBDTs are persons who (1) borrow from the public, and (2) carry on the business of borrowing and lending money, or providing financial services.

New financial services legislation – RBNZ Act

- Obligations on NBDTs include:
 - credit rating;
 - 2 independent directors;
 - risk management programme;
 - minimum capital requirement;
 - capital ratio;
 - restrictions on related party transactions;
 - liquidity requirements; and
 - whistle blowing obligations (on trustees).

New financial services legislation – RBNZ Act

- Director liability for deposit taker offending (12 months imprisonment or \$100k fine).
- Review after 5 years.
- Credit rating obligation applies from 1/3/10.
- Risk management programme rules apply from 1/9/09.
- Governance rules apply from date to be appointed.
- Rest applies now.

Trans-Tasman Securities Offering Regulations

- Regulations passed in June 2008.
- Australian issuers can offer securities to the public in NZ if:
 - offer is a regulated offer in Australia (i.e., Australian disclosure document required);
 - issuer entitled to offer securities under Australian law; and
 - issuer files notice and certain documents with NZ Registrar of Companies.
- Australian offering document used in NZ must contain certain warning statements.

Government Deposit Guarantee Scheme

- Introduced on 12 October as a response to the Australian equivalent.
- Covers retail deposits only – no wholesale guarantee.
- Applies to banks and certain NBDTs and collective investment schemes.
- Residency requirements.
- Sliding fee structure on credit rating/size of deposit book.