



**BELL GULLY**

# Financial Service Providers Law

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A GUIDE TO WIDE-RANGING LAW REFORM

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## INTRODUCTION

In September 2008, three Bills were enacted that have become the cornerstone of financial services law in New Zealand:

- the *FSP Act*;
- the *Financial Advisers Act*; and
- the *RBNZ Amendment Act*.

The *FSP Act* is the umbrella legislation that applies to all *financial service providers* that fall within its scope. The other two Acts impose new regimes on specific types of *financial service providers* – *financial advisers, brokers* and *NBDTs*.

The first substantive obligations under the *FSP Act* and the *Financial Advisers Act* came into force on 1 December 2010. Both Acts will be fully in force from 1 July 2011. Appendix 1 sets out the key dates for the implementation of these two Acts. The *RBNZ Amendment Act* came into full force on 1 December 2010.

Once all three Acts are in full force, the financial services industry in New Zealand will become significantly more regulated than it was 12 months ago. The table in Appendix 2 gives a snapshot of the principal regulatory regimes that apply to *financial service providers*. This guide is intended to assist *financial service providers* in identifying which regimes apply to them and what compliance obligations they face as a result.

The members of our Financial Services Team are available to advise on all aspects of this important law reform. The contact details of the partners in this Team are set out on the following page.

### Use of defined terms

Italicised terms used in this guide have the meanings set out in the Glossary.

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## 1 FINANCIAL SERVICE PROVIDERS (REGISTRATION AND DISPUTE RESOLUTION) ACT 2008

The *FSP Act* is the umbrella legislation for the Government's Review of Financial Products and Providers. Broadly, the *FSP Act* does two things. First, it sets up a registration system for *financial service providers*. Secondly, it establishes a dispute resolution system that is available to certain complainants.

### Overview of FSP Act

The *FSP Act* applies to all *financial service providers*. Importantly, however, the *FSP Act* only applies to those *financial service providers* who are in the business of providing a *financial service* (although this may not be the only, or even the principal, business of that person). Moreover, the *FSP Act* does not apply to specified persons (such as lawyers, accountants and real estate agents that provide a *financial service* in the ordinary course of their business). Also, the *FSP Act* does not apply to *financial services* provided to a related body corporate.

Where the *financial service provider* is an organisation, and the organisation is registered under the *FSP Act*, its employees are not subject to the *FSP Act* unless those employees are required to become *authorised financial advisers*.

Appendix 3 sets out a chart with a series of questions designed to determine whether the *FSP Act* applies to you.

### Registration

#### RESTRICTION ON PROVIDING FINANCIAL SERVICES

A person who is in the business of providing a *financial service* must be registered for each *financial service* it provides.<sup>1</sup> The main requirements for registration are that:

- the person (in the case of an individual), or the controlling owners, directors and senior managers (in the case of an entity), are not otherwise disqualified (e.g., by virtue of being a bankrupt or the subject of certain banning orders or criminal convictions);
- the person is a member of an *ADRS*, if *financial services* are provided to *retail clients*; and
- if the person provides a *licensed service*, that person is a *licensed provider*.

#### REGISTRATION PROCESS

The registration process is overseen by the *Registrar* – initially to be the Registrar of Companies. Applications for registration are made online at [www.fspr.govt.nz](http://www.fspr.govt.nz).<sup>2</sup> The register of *financial service providers* is kept in electronic form and is searchable by the public.

<sup>1</sup> As outlined in Appendix 1, those providing only *financial adviser services* do not need to be registered as a *financial service provider* under the *FSP Act* until 1 April 2011.

<sup>2</sup> The fees payable on registration are: an NZ\$357.78 registration fee; an NZ\$40.25 criminal history check fee (per individual named in the application); and an NZ\$30.67 consumer dispute resolution scheme fee (if the *financial service provider* is required to join an *ADRS*). Any fees payable to become a member of an *ADRS* (including complaint fees) are additional.

The register discloses, among other things:

- the name and business address of the *financial service provider*;
- the name and address of the *ADRS* of which the person is a member (if membership of an *ADRS* is required);
- the country or jurisdiction in which the *financial service provider* is incorporated (if it is an entity that is not incorporated in New Zealand); and
- the types of *financial services* the *financial service provider* is registered to provide.

For the vast majority of *financial service providers*, the initial registration requirement and the requirement to update their details at least annually are additional compliance costs they must face. Also, *financial service providers* should be aware that they are required to notify the *Registrar* if they know they are no longer qualified for registration (e.g., due to a banning order imposed on a director).

#### “RESPONSIBLE FINANCIAL SERVICE PROVIDER”

The *FSP Act* introduces the concept of a “responsible financial service provider”. If an entity is declared by Order in Council to be a responsible financial service provider, that entity becomes responsible for the *financial services* provided by its affiliates (who then do not need to register separately). The intention is to prevent unduly burdensome compliance costs in certain businesses where registration by each affiliated *financial service provider* would provide little benefit to consumers.

### Dispute resolution

Previously, voluntary industry-based dispute resolution schemes covered most banks and insurance companies, together with many managed funds. However, in many cases in the financial sector, consumers did not have access to appropriate dispute resolution and redress mechanisms due to a lack of knowledge about where to go, and complicated and expensive processes.

To address this, the *FSP Act* establishes a comprehensive, industry-based dispute resolution system, the key features of which are that:

- the relevant Minister may approve a dispute resolution scheme if it meets specified criteria; and
- membership of an *ADRS* is mandatory if a *financial service provider* provides *financial services* to retail clients.<sup>3</sup>

Currently there are three schemes that have been approved as *ADRSs*, and *financial service providers* can elect which scheme to join.<sup>4</sup> However, there is also a reserve scheme, for *financial service providers* who are not members of an approved scheme.<sup>5</sup>

<sup>3</sup> However, in a strange mismatch, the *FSP Act* provides that only individuals and small businesses with 19 or less full-time equivalent employees can make complaints through an *ADRS*.

<sup>4</sup> As at February 2011, Financial Services Complaints Ltd, the Insurance & Savings Ombudsman Scheme and the Banking Ombudsman Scheme have each become *ADRSs*.

<sup>5</sup> The reserve scheme is the Financial Dispute Resolution Scheme.

**Territorial scope**

The *FSP Act* applies to a person who is ordinarily resident in New Zealand or who has a place of business in New Zealand, regardless of where they may provide *financial services* from. The *FSP Act* also applies to a person who is, or is required to be, a *licensed provider*.

In practice, a *financial service provider* that provides *financial services* without having a place of business in New Zealand will not be required to register under the *FSP Act* or become a member of an *ADRS*. However, that *financial service provider* will be required to register under the *FSP Act* if it provides *financial services* in New Zealand and the provision of those services requires it to become a *licensed provider*.

## 2 FINANCIAL ADVISERS ACT 2008

### Overview of Financial Advisers Act

The *Financial Advisers Act* builds on the *FSP Act* regime and establishes a specific regulatory regime for *financial advisers* and brokers. It sets standards for, and requires oversight of, individuals and entities that provide *financial adviser services* or *broking services*.

In broad terms, the *Financial Advisers Act* regulates *financial advisers* and *brokers* by:

- requiring that certain persons who provide a *financial adviser service* be registered on the register of *financial service providers* (established under the *FSP Act*);
- requiring that certain individuals who provide *personalised services* to *retail clients* be authorised by the Commission;
- imposing *disclosure obligations* on *financial advisers* and *brokers* who deal with *retail clients*; and
- imposing *conduct obligations* and, in some cases, minimum professional standards on *financial advisers* and *brokers*.

Appendix 5 sets out a table with the obligations of *financial advisers*.

### Multi-tiered regulatory regime for financial advisers

The *Financial Advisers Act* adopts a multi-tiered approach that draws a distinction between different types of *financial adviser services* and different types of *financial advisers*.

- The intention of the first of these distinctions is that different obligations are imposed on *financial advisers* depending on the complexity and degree of risk of the *financial products* in relation to which they provide *financial adviser services* and the types of *clients* to whom *financial adviser services* are provided.
- The intention of the second of these distinctions is to provide for institutional accreditation for so-called “qualifying financial entities” (*QFEs*) in order to avoid excessive compliance costs and requirements for firms with a large numbers of employees.

### Who is a financial adviser?

The Glossary outlines who is a *financial adviser*, by reference to the three categories of *financial adviser service*. However, equally importantly, the *Financial Advisers Act* specifies that certain “cases” do not amount to providing a *financial adviser service*. Some of these cases duplicate an equivalent carve-out in the *FSP Act*. For example, a lawyer, accountant or real estate agent providing a *financial adviser service* in the ordinary course of business is not subject to the *Financial Advisers Act*. Other excluded cases include:

- a *financial adviser service* provided only as an incidental part of another business that is not a *financial service*;
- a *financial adviser service* provided in connection with providing credit under a credit contract where both the service and the credit are provided as an incidental part of another business that is not a *financial service*;
- an employer providing a *financial adviser service* to an employee in connection with a *financial product* made available through the employee’s workplace; and
- a non-profit organisation providing a *financial adviser service*, without charge, in the course of the organisation’s activities.

Appendix 4 sets out a chart with a series of questions designed to determine whether the *Financial Advisers Act* applies to you.

## Types of financial adviser services

An important distinction is made in the *Financial Advisers Act* between *financial adviser services* that are *personalised services* and *class services*.

A *financial adviser service* is a *personalised service* if it is tailored to a particular *client*. A full definition of *personalised service* is outlined in the Glossary.

A *financial adviser service* is a *class service* if it is not a *personalised service* (i.e., if it is generic advice or advice that is not tailored to a particular *client*).

## Restrictions on providing financial adviser services

The *Financial Advisers Act* provides for six different types of *financial advisers*, each of which is subject to a different level of restriction in relation to the provision of *financial adviser services*. The restrictions on *financial advisers* under the *Financial Advisers Act*, which can be seen in diagrammatic form in Appendix 4, are as follows:

### AUTHORISED FINANCIAL ADVISERS

An *authorised financial adviser* can provide any *financial adviser services* (i.e., *personalised services* or *class services*) to any *clients* (i.e., *retail clients* or *wholesale clients*) in relation to any *financial products* (i.e., *category 1 products* or *category 2 products*).

### QFE ADVISER

A *QFE adviser* can provide:

- a *personalised service* that is *financial advice* or a *discretionary investment management service* to *retail clients* in relation to *category 1 products* where the *QFE* (or another member of the *QFE group*) is the *product provider* or the *promoter*;
- a *personalised service* that is *financial advice* or a *discretionary investment management service* to *retail clients* in relation to *category 2 products*;
- *class services* to *retail clients* in relation to any *financial products*; and
- any *financial adviser services* to *wholesale clients*.

### REGISTERED INDIVIDUALS

A *registered individual* can provide:

- a *personalised service* that is *financial advice* or a *discretionary investment management service* to *retail clients* in relation to *category 2 products*;
- *class services* to *retail clients* in relation to any *financial products*; and
- any *financial adviser services* to *wholesale clients*.

### QFES

A *QFE* can provide:

- *class services* to *retail clients* in relation to any *financial products*; and
- any *financial adviser services* to *wholesale clients*.

## REGISTERED ENTITIES (OTHER THAN QFES)

A *registered entity* can provide:

- *class services to retail clients* in relation to any *financial products*; and
- any *financial adviser services to wholesale clients*.

## EXEMPT PROVIDERS

An *exempt provider* can provide:

- *class services to retail clients* in relation to any *financial products* (unless that person is an *overseas financial adviser*); and
- any *financial adviser services to wholesale clients*.

## Authorised financial advisers

Any individual may apply to the *Commission* to be authorised. The application must be made online at [www.fspr.govt.nz](http://www.fspr.govt.nz).<sup>6</sup>

An individual is eligible to be authorised if the *Commission* is satisfied that the person:

- is registered under the *FSP Act* (i.e., in addition to any registration that their employer may have);<sup>7</sup>
- is not disqualified and is a member of an *ADRS* (if applicable) for the purposes of the *FSP Act*;
- is of good character;
- meets the levels of competency, knowledge and skills specified in the *Code*;
- is not debarred from applying for authorisation; and
- has not been convicted by a court in New Zealand or elsewhere of an offence punishable by imprisonment of six months or more (unless the *Commission* is satisfied the offence does not reflect adversely on the person's fitness to act).

An applicant must also prepare an *adviser business statement*.

If an applicant is eligible, the *Commission* must authorise that person for a specified period. This authorisation may be subject to terms and conditions.

## Disclosure obligations

The *Financial Advisers Act* provides that a *financial adviser* must make certain disclosures to a *retail client* before providing a *personalised service* to that *client* (or, if not practicable before, as soon as practicable after). A previous disclosure to that person suffices unless the previous disclosure is out of date when the *financial adviser service* is provided. The *Financial Advisers Act* also contains a prohibition against misleading, deceptive or confusing disclosures.

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<sup>6</sup> An application must be accompanied by the fee for authorisation of NZ\$1,144.89.

<sup>7</sup> Even though the *FSP Act* only applies to those in the business of providing a *financial service*, the *Financial Advisers Act* provides that a person required to register as a *financial service provider* by the *Financial Advisers Act* must be treated, under the *FSP Act*, as being in the business of providing a *financial service*.

The level of disclosure required differs depending on which type of *financial adviser* provides the *financial adviser service*. Not surprisingly, the highest level of disclosure is required of those advising on the most complex types of *financial products* (i.e., *authorised financial advisers*).

The specific *disclosure obligations* for *financial advisers* are prescribed in regulations made pursuant to the *Financial Advisers Act*. *Financial advisers* must comply with the *disclosure obligations* from 1 July 2011.<sup>8</sup>

#### DISCLOSURE OBLIGATIONS THAT APPLY TO AUTHORISED FINANCIAL ADVISERS

In the case of an *authorised financial adviser* providing *financial adviser services* to *retail clients*, disclosure can occur in two stages. First, an *authorised financial adviser* must provide, in the form prescribed in the regulations, a primary “disclosure statement” disclosing:

- the name (including any trading name) and contact details of the *financial adviser*;
- the date on which the disclosure statement was prepared;
- the *financial adviser services* that the *financial adviser* is authorised to provide;
- how the *financial adviser* is paid;
- any adverse findings against the *financial adviser* in the last five years, including any bankruptcies, admissions to the no asset procedure under Part 5 of the Insolvency Act 2006, disciplinary proceedings or criminal convictions;
- dispute resolution arrangements, including internal complaints procedures (if any); and
- how the *authorised financial adviser* is regulated.

If it is not practicable for the *authorised financial adviser* to provide all of the above information to the *client*, the *financial adviser* must complete the disclosure statement to the extent possible, inform the *client* that it is incomplete and then provide the *client* with an updated disclosure statement as soon as practicable.

Secondly, an *authorised financial adviser* must provide one or more secondary “disclosure statements”, disclosing all of the following information applicable to that *financial adviser*:

- the type or types of *financial adviser services* provided (including the *financial products* in relation to which the *financial adviser service* is provided);
- if the *authorised financial adviser* provides a *financial adviser service* only in respect of *financial products* of a particular *product provider* or *product providers*, a statement to this effect and the name of each of the *product providers* concerned;
- if the *authorised financial adviser* will charge the *client* a fee, the basis on which the fee will be charged, a reasonable estimate of the fee, and when the *client* must pay the fee;
- details of every financial and other interest, relationship, or association of the *authorised financial adviser* that a reasonable *client* would find reasonably likely to materially influence the *financial adviser* in providing the *financial adviser service*;
- details of all remuneration that the *authorised financial adviser*, their employer, or their principal (or any one or more of them) has received, or will or may receive, from a person other than the *client* if the *financial adviser* provides a *financial adviser service*; and
- every matter that the *authorised financial adviser* is required to disclose in accordance with the *financial adviser's* terms and conditions (if any) of authorisation.

<sup>8</sup> A Cabinet Paper of 18 October 2010 provides for regulations to be drafted exempting from the *disclosure obligations* persons providing verbal *financial advice* on category 2 *products*, provided certain verbal disclosures are made to *clients*.

Although no set form of disclosure is prescribed for secondary disclosure statements, each statement must meet the requirements of the *Financial Advisers Act* (for example, stating the date on which the disclosure statement was prepared and the name and contact details of the *authorised financial adviser*) and set out the above information clearly, concisely, and in a manner likely to bring the information to the attention of the *client*.

In practice, it is likely that the above information (i.e., both primary disclosure statements and secondary disclosure statements) will be provided to the *client* at the same time.

Any advertisements for *financial adviser services* made by an *authorised financial adviser* must state that a disclosure statement is available, on request and free of charge.

## DISCLOSURE OBLIGATIONS THAT APPLY TO QFES

In the case of *financial adviser services* provided to *retail clients* by a *QFE adviser* in the course of the *QFE's* business, the *QFE* (or members of the *QFE group*) must disclose:

- the name (including any trading names) and contact details of the *QFE*;
- the *QFE's* dispute resolution arrangements, including particulars of the *QFE's* internal complaints procedures;
- matters required to be disclosed by the *QFE's* terms and conditions of grant of *QFE* status; and
- whether the *QFE* provides any other *licensed service* (for example, if it is also a registered bank).

However, a *QFE* is not required to disclose the above matters in a written disclosure statement to the *client* unless the *client* makes a request to receive that disclosure in writing. Practically, a *QFE* can comply with its *disclosure obligations* by making disclosures to *clients* verbally.

## DISCLOSURE OBLIGATIONS THAT APPLY TO REGISTERED INDIVIDUALS

In the case of a *registered individual* providing *financial adviser services* to *retail clients*, that *financial adviser* must disclose the following to a *client* in the prescribed form of written “disclosure statement”:

- the name (including any trading name) and contact details of the *financial adviser*;
- the date on which the disclosure statement was prepared;
- that the *financial adviser* is registered but not authorised;
- the classes of *financial products* in relation to which a *financial adviser service* is provided;
- dispute resolution arrangements, including any internal complaints procedures; and
- how the *financial adviser* is regulated.

## Conduct obligations

The *Financial Advisers Act* provides that all *financial advisers* must comply with certain *conduct obligations*. As is the case with *disclosure obligations*, *conduct obligations* differ depending on which type of *financial adviser* is providing the *financial adviser service*. Most of the *conduct obligations* came into force on 1 December 2010.

## CONDUCT OBLIGATIONS THAT APPLY TO ALL FINANCIAL ADVISERS

All *financial advisers* must comply with the following *conduct obligations*:

- to exercise the care, diligence and skill that a reasonable *financial adviser* would exercise in the circumstances, taking into account, but without limitation, the nature and requirements of the *financial adviser's client* and the nature of the service provided to the *client*;

- not to engage in misleading or deceptive conduct, or conduct that is likely to mislead or deceive; and
- not to advertise a *financial adviser service* in a way that is misleading, deceptive or confusing.

Regulations may be promulgated to impose specific *conduct obligations* on *financial advisers* that provide a *class service* to a *retail client* (for example, prescribing that a warning be given to the *client* that the *class service* is not a *personalised service*).

## CONDUCT OBLIGATIONS THAT APPLY TO AUTHORISED FINANCIAL ADVISERS ONLY

All *authorised financial advisers* must comply with the following additional *conduct obligations*:

- to comply with the *Code*;
- not to recommend the acquisition of securities if the *financial adviser* knows, or ought to know, that the offer for subscription of those securities was or is illegal;
- to comply with the terms and conditions of their authorisation; and
- to report any breaches of the *Financial Advisers Act*, the *Code* or any obligations imposed under the *Financial Advisers Act* to the *Commission*.

## CONDUCT OBLIGATIONS THAT APPLY TO QFES

All *QFES*, and members of a *QFE group*, must comply with the following additional *conduct obligations*:

- to comply with the terms and conditions of the *QFE's* grant of *QFE* status;
- not to engage in misleading or deceptive conduct; and
- not to advertise a *financial adviser service* in a way that is misleading, deceptive or confusing.

## The Code

### COMMISSIONER AND CODE COMMITTEE

The *Financial Advisers Act* states that the *Commissioner* must be appointed as a member of the *Commission*. The *Commissioner* has established a “code committee”, which has produced the *Code*.

### WHAT IS THE CODE?

The *Code* applies to *authorised financial advisers* only. The *Code* provides for minimum standards of professional conduct that must be demonstrated by *authorised financial advisers*, including 18 minimum standards of:

- competence;
- knowledge and skills;
- ethical behaviour; and
- client care.

The *Code* also provides for continuing professional training of *authorised financial advisers*.

The *Code* was approved by the *Commissioner* on 1 September 2010 and came into effect on 1 December 2010.<sup>9</sup>

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<sup>9</sup> The *Code* is available from [www.financialadvisercode.govt.nz](http://www.financialadvisercode.govt.nz).

## Qualifying financial entities

The advantage of an entity or group of entities having *QFE* status is that its employees and *nominated representatives* (together, *QFE advisers*) may provide certain *financial adviser services* without being individually registered under the *FSP Act* or authorised by the *Commission*. Any obligations or liabilities under the *Financial Advisers Act* fall on the *QFE*, not the individual *QFE adviser*.

A *QFE* can also apply to the *Commission* to form a *QFE group* by applying for *associated entities* to join it and its *partner entities*. The *QFE* must submit a name for the *QFE group* when it applies to the *Commission*. Additional *associated entities* can be added to the *QFE group* upon application to the *Commission*.

A *QFE* has ongoing compliance obligations, such as ensuring compliance by the *QFE*, *QFE advisers* and every member of the *QFE group* with the terms and conditions of the grant of *QFE* status and ensuring *QFE advisers* comply with *financial adviser obligations*.

Applicants for *QFE* status must submit an *adviser business statement* to the *Commission* for review and approval before formally applying for *QFE* status online at [www.fspr.govt.nz](http://www.fspr.govt.nz).<sup>10</sup>

## Brokers

The *Financial Advisers Act* includes a separate regime for *brokers* that provide a *broking service*.

*Brokers* are subject to *disclosure obligations* and *conduct obligations* under the *Financial Advisers Act*, with the nature of the *broker obligations* dependent on whether *broking services* are provided to *retail clients* or *wholesale clients*.

Importantly, the regime specifies that, if a *broking service* is provided by an employee on behalf of their employer, it is the employer (and not the employee) that has *broker obligations* under the *Financial Advisers Act*.

Appendix 6 sets out a chart with a series of questions designed to determine if the *broker obligations* in the *Financial Advisers Act* apply to you.

## Registration under the FSP Act

A *broking service* is a *financial service* for the purposes of the *FSP Act*. Therefore, *financial service providers* that are required to register under the *FSP Act* must select that they are providing a *broking service* (if relevant). Also, if *broking services* are provided to *retail clients*, the *broker* must be a member of an *ADRS*.

## Disclosure obligations

The *Financial Advisers Act* provides that a *broker* must make certain disclosures to a *retail client* before receiving client money or client property from or on behalf of the *client* (or, if not practicable before, as soon as practicable after). A previous disclosure to that person suffices unless the previous disclosure is out of date when the client money or client property is received by the *broker*. The *Financial Advisers Act* also contains a prohibition against misleading, deceptive or confusing disclosures.

The *disclosure obligations* on *brokers* that provide *broking services* to *retail clients* are to be prescribed by regulations that have yet to be promulgated. *Brokers* must comply with the *disclosure obligations* from 1 July

<sup>10</sup> The application fee to apply for *QFE* status is NZ\$4,886.22.

2011. The *Financial Advisers Act* provides that regulations may prescribe disclosure in relation to any of the following matters:

- contact details;
- fees, remuneration and material interests, relationships or associations;
- dispute resolution arrangements;
- criminal convictions, disciplinary proceedings and adverse findings by a court or the *Commission*;
- bankruptcy or other insolvency proceedings;
- procedures for handling client money or client property; and
- indemnity insurance.

## Conduct obligations

The *Financial Advisers Act* provides that a *broker* providing a *broking service* must comply with certain *conduct obligations*. A distinction is made between *conduct obligations* owed to *retail clients* and *conduct obligations* owed to *wholesale clients*. Most of the *conduct obligations* came into force on 1 December 2010.

### CONDUCT OBLIGATIONS THAT APPLY TO ALL BROKING SERVICES

All *brokers* must comply with the following *conduct obligations*:

- to exercise the care, diligence and skill that a reasonable *broker* would exercise in the same circumstances;
- not to engage in conduct in relation to the provision of *broking services* that is misleading or deceptive or likely to mislead or deceive;
- not to advertise a *broking service* in a way that is misleading, deceptive or confusing;
- not to use the term “sharebroker” in any advertising or promotional material unless the broker, or their employer, is a member of a registered exchange; and
- not to receive client money or client property for the acquisition of securities if the *broker* knows, or ought to know, that the offer of securities was or is illegal.

### CONDUCT OBLIGATIONS THAT APPLY TO BROKING SERVICES PROVIDED TO RETAIL CLIENTS

Greater *conduct obligations* are imposed under the *Financial Advisers Act* on *brokers* that provide a *broking service* to *retail clients*. In addition to the *conduct obligations* specified above, these *brokers* must:

- hold client money or client property, or ensure that client money or client property is held, on trust for the *client*;
- account properly, or ensure that account is properly made, to the *client* for client money or client property held on trust;
- keep, or ensure that there are kept, trust account records for client money and client property held on trust;
- not use or apply client money or client property received or held on trust except as expressly directed by the *client*; and
- ensure that client money or client property that is received or held by a *broker* on trust is not available for the payment of the debts of any other creditor of the *broker*, and 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*.

**Territorial scope**

The *Financial Advisers 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. Put another way, *financial adviser services* or *broking services* received by New Zealand *clients* from offshore (e.g., by an overseas entity acting through its Sydney branch) will fall within the scope of the *Financial Advisers Act*.

The *Financial Advisers Act* also extends certain *general conduct obligations* to *financial adviser services* and *broking services* received by a *client* outside New Zealand if the service is provided by a person who is ordinarily resident, is incorporated or has a place of business in New Zealand.

### 3 RESERVE BANK OF NEW ZEALAND AMENDMENT ACT 2008

The *RBNZ Amendment Act* establishes the framework for the regulation of *NBDTs* by the *RBNZ*. Regulations have been promulgated to flesh out much of that framework. Under the new arrangements, the *RBNZ* is responsible for administering and enforcing minimum prudential and governance requirements, applying credit rating requirements, and requiring information from trustees of *NBDTs*.

*NBDTs* remain subject to securities law requirements. Under the Securities Act 1978, all *NBDTs* are required, as issuers of debt securities, to have a trust deed (and, therefore, to be supervised by a trustee corporation). Accordingly, trustee corporations continue to be the front-line supervisors of *NBDTs*. The *RBNZ Amendment Act* imposes new requirements on each trustee corporation to ensure each *NBDT* complies with the new regulatory framework in Part 5D of the *RBNZ Act* and to report non-compliance or likely inability to comply to the *RBNZ*.

#### Who is an NBDT?

The definition of an *NBDT* is set out in the Glossary. The definition of an *NBDT* does *not* include organisations that fund themselves exclusively either intra-group or at wholesale level. In addition, regulations may in due course be promulgated that will declare persons and classes of persons to be (or not to be) *NBDTs*.

The *RBNZ* is also empowered to exempt persons or classes of persons from the regime, or from specific requirements of the regime. Certain exemptions have already been granted to date.

#### Requirements

From 1 December 2010, the new regime in Part 5D of the *RBNZ Act* requires all *NBDTs* to:

- comply with specified corporate governance requirements (e.g., if the *NBDT* is a company or a building society, the governing body of the *NBDT* must have at least two independent directors);
- obtain a credit rating from an approved rating agency (this requirement came into force on 1 March 2010);
- comply with a risk management programme that is approved by its trustee (this requirement came into force on 1 September 2009);
- maintain minimum levels of capital;
- maintain a minimum capital ratio, calculated according to the framework prescribed by the *RBNZ*;
- limit their aggregate credit exposure, including that of the borrowing group, to related parties; and
- comply with minimum liquidity requirements.

Most of these regulatory requirements are replicated in the trust deed the *NBDT* uses to issue debt securities. This reinforces the role of trustees as the front-line supervisor of *NBDTs*. Trustees, in turn, are overseen by the *Commission*.

In addition, the *RBNZ* is currently developing policy recommendations that, if enacted, will require *NBDTs* to:

- be licensed by the *RBNZ*;
- ensure directors and senior office holders of *NBDTs* meet certain “fit and proper person” requirements;
- be subject to a crisis management framework; and
- be subject to controls on changes of ownership.

It is intended that legislation to give effect to these changes will come into force in 2011. From these requirements, it is apparent that, in many respects, *NBDTs* will be regulated in a manner similar to registered banks.

## APPENDIX 1: KEY DATES

### ON AND FROM 1 DECEMBER 2010

- *financial service providers* must be registered under the *FSP Act* (other than those providing only *financial adviser services*, who have until 31 March 2011 to register);
- *financial advisers* must not hold out that they are *authorised financial advisers*, nor can *QFEs* claim they have been granted *QFE* status, unless they have been authorised or granted *QFE* status (both of which can be granted from this time);
- *QFEs* wishing to have *QFE* status granted before 1 April 2011 should submit their *adviser business statement* to the *Commission* for review by this date;
- the *Code* comes into effect; and
- most of the *conduct obligations* in the *Financial Advisers Act* for *financial advisers*, *brokers*, *QFEs* and *QFE advisers*, and the related enforcement provisions, come into force.

### ON AND FROM 1 APRIL 2011

- *financial advisers* must be registered under the *FSP Act*. At this time, the *FSP Act* is fully in force;
- any person seeking to rely on the grant of *QFE* status to avoid the need to register its *QFE advisers* must have *QFE* status granted by this date; and
- the *FMA* is expected to be operational.

### ON 1 JULY 2011

- the restrictions on who is permitted to provide *financial adviser services* are in force. Individuals required to become *authorised financial advisers* must be authorised by the *Commission* by this date and entities wishing to become *QFEs* must have *QFE* status granted by this date;
- the *disclosure obligations* for *financial advisers* and *brokers* replace those set out in the *Securities Markets Act 1988*; and
- all remaining provisions of the *Financial Advisers Act* are in force.

## APPENDIX 2: OVERVIEW OF FINANCIAL SERVICE PROVIDER REGIMES

Type of financial service provider	Definition	Principal governing legislation	Principal regulator	Type of regulatory regime (licensing, registration or disclosure)
<b>1. Registered bank</b>	A person whose name is entered into the register maintained under section 69 of the <i>RBNZ Act</i>	<i>RBNZ Act</i>	<i>RBNZ</i>	Licensing
<b>2. NBDT</b>	A person who: (a) offers debt securities to the public in New Zealand; and (b) carries on the business of borrowing and lending money, or providing financial services, or both,  including building societies and credit unions	<i>RBNZ Act</i>	<i>RBNZ</i>	Licensing
<b>3. Insurance company</b>	A person who: (a) is a New Zealand body corporate or association of persons, an overseas company carrying on business in New Zealand, an association of persons formed outside New Zealand that is carrying on business in New Zealand, or ordinarily resident in New Zealand; (b) acts, or has at any material time acted, as an insurer in New Zealand or	<i>IPS Act</i> <sup>11</sup>	<i>RBNZ</i>	Licensing

<sup>11</sup> The *IPS Act* received Royal Assent on 7 September 2010. Licensing requirements in the *IPS Act* come into effect from 7 March 2012.

Type of financial service provider	Definition	Principal governing legislation	Principal regulator	Type of regulatory regime (licensing, registration or disclosure)
	elsewhere; and (c) is liable as an insurer under a contract of insurance to a policyholder in New Zealand			
<b>4. Futures dealer</b>	A person who carries on the business of dealing in futures contracts <sup>12</sup>	Securities Markets Act 1988 <sup>13</sup>	the <i>Commission</i>	Licensing
<b>5. Financial adviser</b>	A person who provides a <i>financial adviser service</i>	<i>Financial Advisers Act</i>	the <i>Commission</i>	Licensing and/or disclosure
<b>6. Broker</b>	A person who provides a <i>broking service</i>	<i>Financial Advisers Act</i>	the <i>Commission</i>	Registration and/or disclosure
<b>7. Trustee company</b>	A person who acts as a trustee or statutory supervisor in respect of an offer of securities to the public in New Zealand	Securities Act 1978 and Trustee Companies Act 1967 <sup>14</sup>	the <i>Commission</i>	Licensing
<b>8. Public issuer</b>	A person who issues securities to the public in New Zealand	Securities Act 1978 and Securities Regulations 2009	the <i>Commission</i>	Disclosure
<b>9. Retail lender<sup>15</sup></b>	A person who provides credit to a natural person entering into the credit contract primarily for personal, domestic, or household (but not investment) purposes	Credit Contracts and Consumer Finance Act 2003 <sup>16</sup>	the Commerce Commission	Disclosure

<sup>12</sup> Both “dealing” and “futures contracts” are broadly defined in the Securities Markets Act. In particular, “dealing” includes advising or assisting a person, and “futures contracts” include OTC as well as exchange-traded products.

<sup>13</sup> On 21 June 2010, the Ministry of Economic Development released a discussion document entitled *Review of Securities Law*. That document proposes a new Act to replace the Securities Markets Act 1988 and the Securities Act 1978.

<sup>14</sup> This regime will be substantially overhauled once the Securities Trustees and Statutory Supervisors Bill is enacted and comes into force, expected to be in mid-2011.

<sup>15</sup> By contrast, wholesale lenders may be required to register under the *FSP Act*, but are not subject to any other substantive regulatory regime.

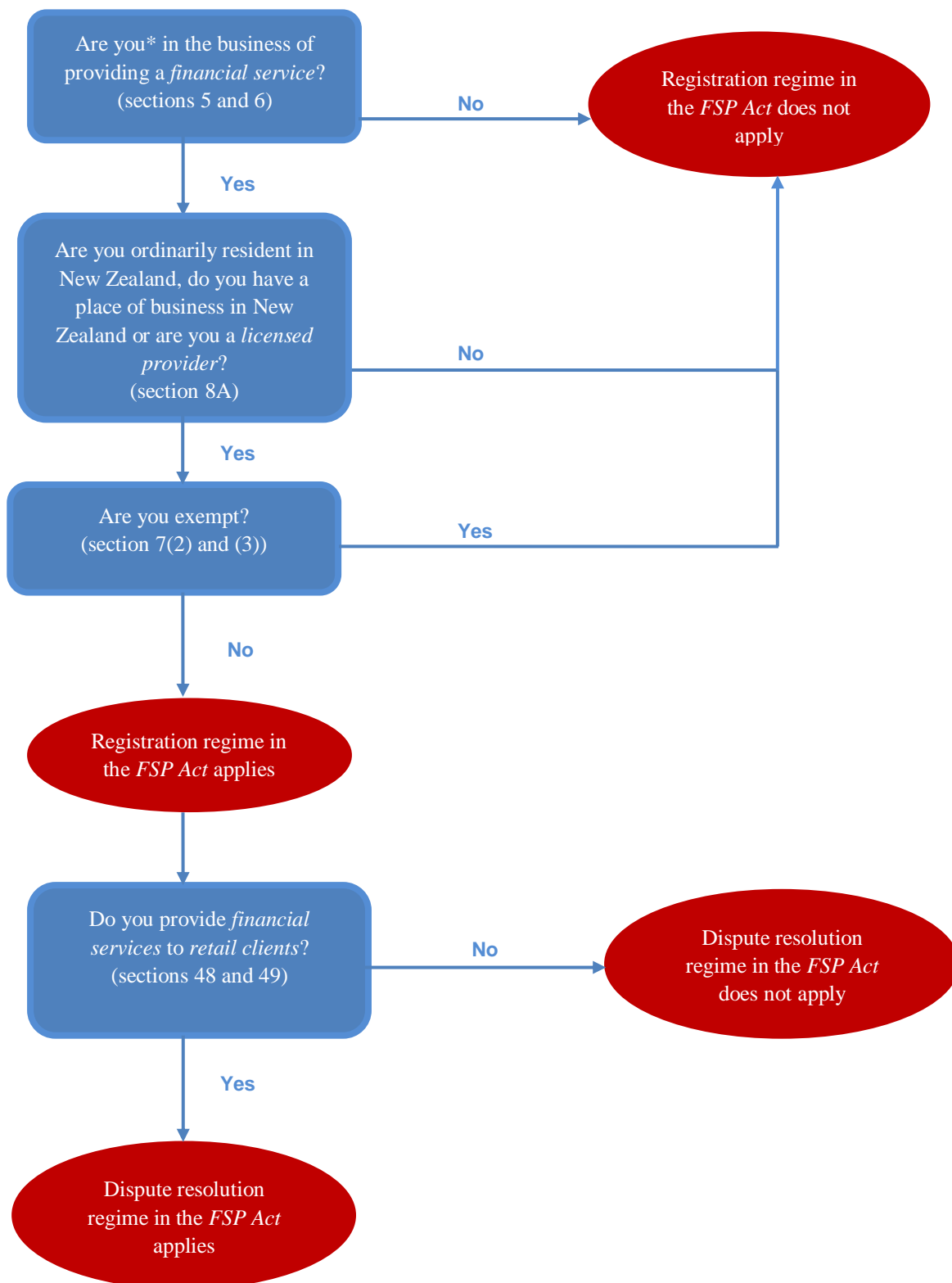
<sup>16</sup> The Ministry of Consumer Affairs is currently undertaking a review of the Credit Contracts and Consumer Finance Act.

Type of financial service provider	Definition	Principal governing legislation	Principal regulator	Type of regulatory regime (licensing, registration or disclosure)
<b>10. Registered superannuation scheme</b>	A superannuation scheme registered under the Superannuation Schemes Act 1989	Superannuation Schemes Act 1989	Government Actuary <sup>17</sup>	Licensing
<b>11. KiwiSaver scheme</b>	A scheme that is registered in the KiwiSaver schemes register	KiwiSaver Act 2006	Government Actuary <sup>18</sup>	Licensing

<sup>17</sup> The Financial Markets (Regulators and KiwiSaver) Bill provides that the *FMA* will become the principal regulator of registered superannuation schemes.

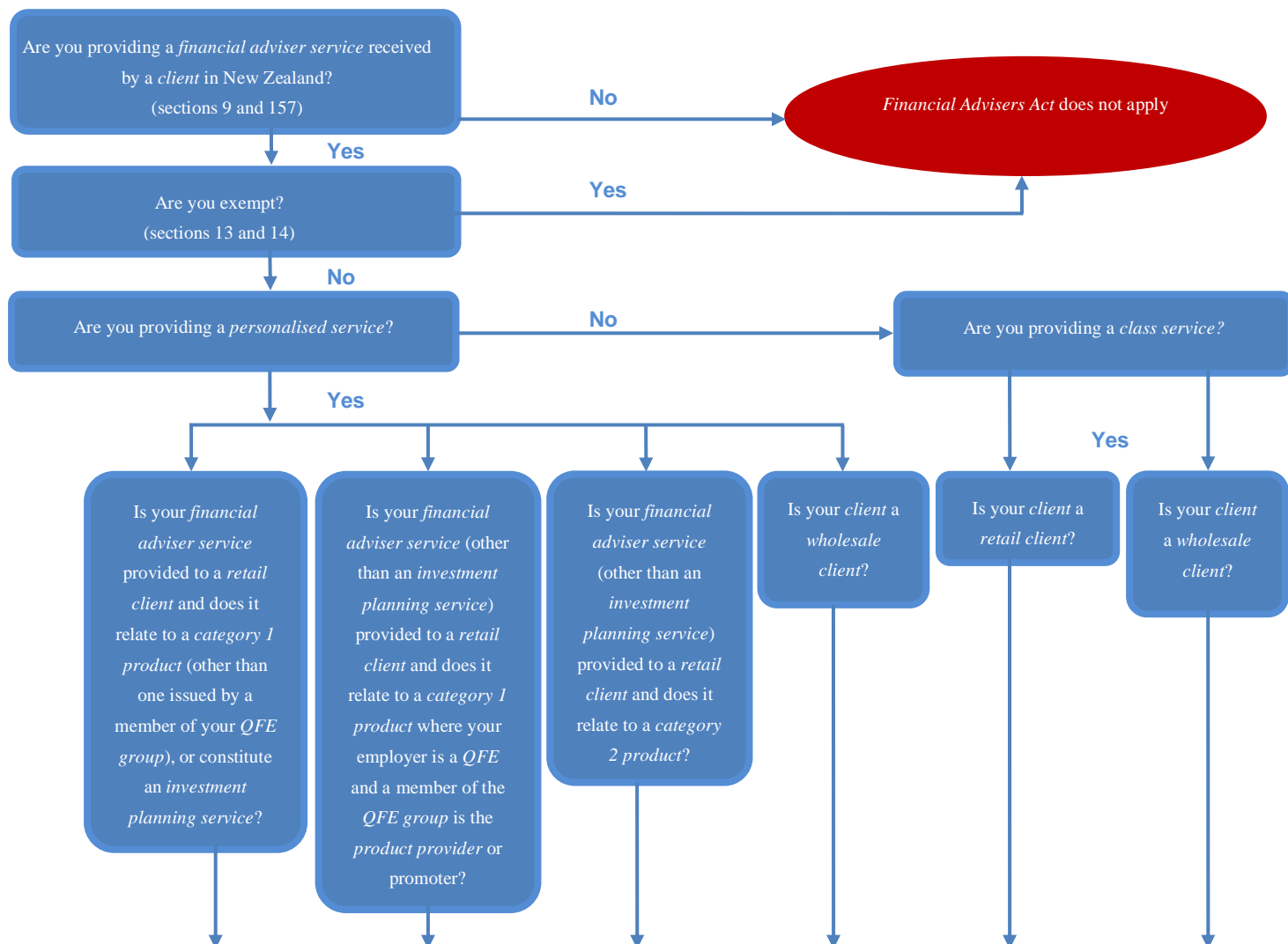
<sup>18</sup> The Financial Markets (Regulators and KiwiSaver) Bill provides that the *FMA* will become the principal regulator of KiwiSaver schemes.

**APPENDIX 3: APPLICATION OF FSP ACT**



\*The FSP Act can apply to both entities and individuals.

## APPENDIX 4: APPLICATION OF FINANCIAL ADVISERS ACT TO THOSE PROVIDING FINANCIAL ADVISER SERVICES



*Financial advisers permitted to provide the relevant service*

	Is your financial adviser service provided to a retail client and does it relate to a category 1 product (other than one issued by a member of your QFE group), or constitute an investment planning service?	Is your financial adviser service (other than an investment planning service) provided to a retail client and does it relate to a category 1 product where your employer is a QFE and a member of the QFE group is the product provider or promoter?	Is your financial adviser service (other than an investment planning service) provided to a retail client and does it relate to a category 2 product?	Is your client a wholesale client?	Is your client a retail client?	Is your client a wholesale client?
<b>Authorised financial adviser</b>	✓	✓	✓	✓	✓	✓
<b>QFE adviser</b>	✗	✓	✓	✓	✓	✓
<b>Registered individual</b>	✗	✗	✓	✓	✓	✓
<b>QFE</b>	✗	✗	✗	✓	✓	✓
<b>Registered entity</b>	✗	✗	✗	✓	✓	✓
<b>Exempt provider (other than an overseas financial adviser)</b>	✗	✗	✗	✓	✓	✓
<b>Overseas financial adviser</b>	✗	✗	✗	✓	✗	✓

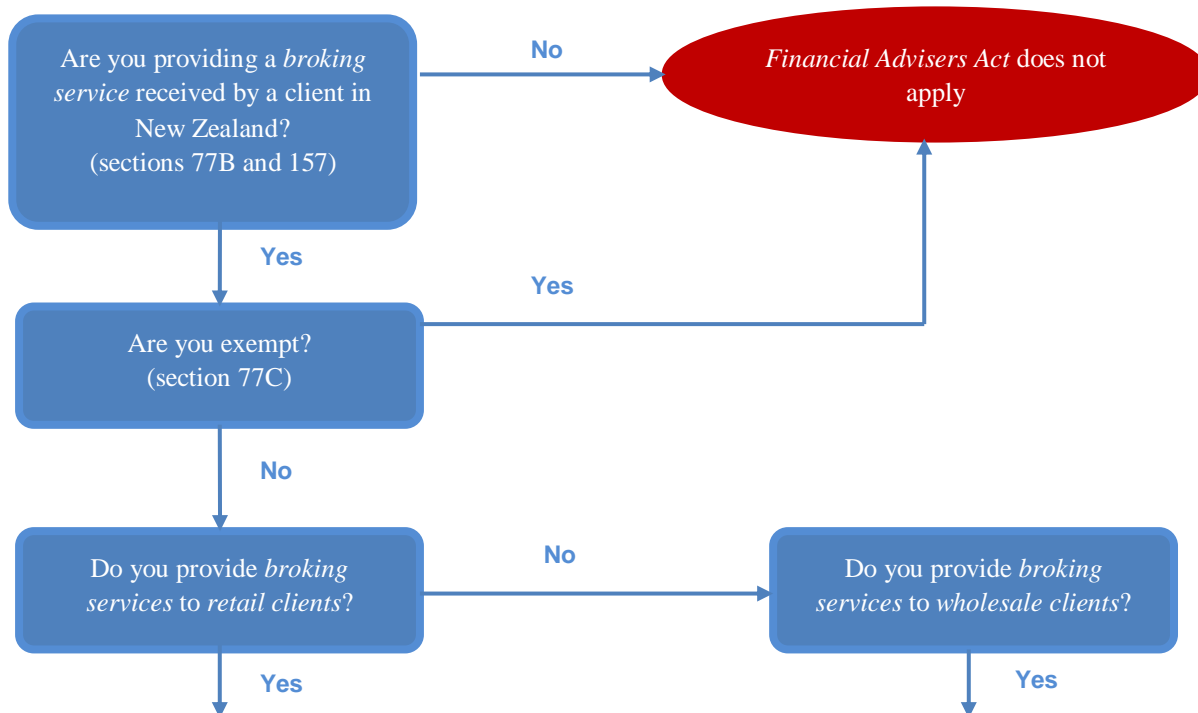
**APPENDIX 5: OBLIGATIONS OF FINANCIAL ADVISERS**

<i>Status under the Financial Advisers Act</i>	<i>Authorised financial adviser</i>	<i>QFE adviser</i>	<i>Registered individual*</i>	<i>Exempt provider</i>	<i>QFE</i>	<i>Registered entity</i>
<b>You must be registered under the FSP Act</b>	✓	✗	✓	✗	✓	✓
<b>You must be authorised by the Commission</b>	✓	✗	✗	✗	✗	✗
<b>Your employer must be registered under the FSP Act</b>	✓	✓	N/A	✗	N/A	N/A
<b>Person responsible for making prescribed disclosures</b>	You	The <i>QFE</i>	You	N/A	N/A	N/A
<b>Person required to be a member of an ADRS under the FSP Act (if financial adviser services are provided to retail clients)</b>	You**	The <i>QFE</i>	You	N/A	The <i>QFE</i>	The <i>registered entity</i>
<b>You must comply with the Code</b>	✓	✗	✗	✗	✗	✗
<b>You must comply with the applicable conduct obligations</b>	✓	✓	✓	✓	✓	✓
<b>Person liable for contravention of your financial adviser obligations</b>	You and your employer	The <i>QFE</i>	You	The <i>exempt provider</i>	The <i>QFE</i>	The <i>registered entity</i>

\*This column assumes the *registered individual* is not an employee of a *financial service provider*.

\*\*If your employer is a member of an ADRS, and your obligation to be a member of an ADRS arises through your employment, you are exempt from the requirement to become a member of an ADRS.

**APPENDIX 6: APPLICATION OF FINANCIAL ADVISERS ACT TO THOSE PROVIDING BROKING SERVICES**



	<i>Position under the Financial Advisers Act</i>	
✓	<b>Your employer must be registered under the FSP Act (if a broking service is provided within the territorial scope of the FSP Act)</b>	✓
✓	<b>Your employer must be a member of an ADRS under the FSP Act</b>	✗
✓	<b>You must make prescribed disclosures</b>	✗
✓	<b>You must comply with the applicable conduct obligations</b>	✓
Your employer	<b>Person liable for the contravention of your broker obligations</b>	Your employer

## GLOSSARY

<b>ADRS</b>	approved dispute resolution scheme under the <i>FSP Act</i>
<b>adviser business statement</b>	a statement that describes: <ul style="list-style-type: none"> <li>the applicant’s business and the compliance arrangements the applicant has in place (if the applicant is applying to become an <i>authorised financial adviser</i>); or</li> <li>the <i>QFE</i>’s business and the governance and compliance arrangements that ensure that the business and its employees operate professionally (if the applicant is applying to become a <i>QFE</i>)</li> </ul>
<b>authorised financial adviser</b>	an individual who is both registered as a <i>financial service provider</i> under the <i>FSP Act</i> and authorised by the <i>Commission</i> under the <i>Financial Advisers Act</i>
<b>associated entity</b>	an entity that has received approval from the <i>Commission</i> to be an associated entity of a <i>QFE</i>
<b>broker</b>	an individual or entity who carries on a business of providing or offering to provide a <i>broking service</i>
<b>broker obligation</b>	an obligation of a <i>broker</i> under the <i>Financial Advisers Act</i> or any regulations made under it
<b>broking service</b>	the receipt, holding, payment or transfer of client money or client property by a person acting as an <i>intermediary</i> for a <i>client</i>
<b>category 1 product</b>	complex products such as futures contracts, land investment products, <sup>19</sup> investment-linked contracts of insurance and securities (other than call debt securities or bank term deposits)
<b>category 2 product</b>	more simple products such as call debt securities, bank term deposits, bonus bonds, call building society shares, call credit union shares, insurance products (other than life insurance policies issued after 31 December 2008), and consumer credit contracts
<b>class service</b>	a <i>financial adviser service</i> that is not a <i>personalised service</i>
<b>client</b>	a person who receives a service (whether or not on payment of a charge) and, in relation to a <i>broking service</i> , a person on whose behalf the <i>financial product</i> is acquired or disposed of or the client money or client property is held (excluding the <i>product provider</i> )
<b>Code</b>	the Code of Professional Conduct for the purposes of the <i>Financial Advisers Act</i>
<b>Commission</b>	Securities Commission <sup>20</sup>

<sup>19</sup> This term is to be defined in regulations yet to be promulgated under the *Financial Advisers Act*.

<sup>20</sup> The Financial Markets (Regulators and KiwiSaver) Bill provides for the creation of the *FMA* to replace the *Commission*.

<b>Commissioner</b>	Commissioner for Financial Advisers
<b>conduct obligation</b>	a conduct obligation of a <i>financial adviser</i> or a <i>QFE</i> under sections 33 to 48 of the <i>Financial Advisers Act</i> , or a conduct obligation of a <i>broker</i> under sections 77K to 77T of the <i>Financial Advisers Act</i>
<b>disclosure obligation</b>	a disclosure obligation of a <i>financial adviser</i> or a <i>QFE</i> under sections 22 to 31 of the <i>Financial Advisers Act</i> , or a disclosure obligation of a <i>broker</i> under sections 77E to 77I of the <i>Financial Advisers Act</i>
<b>discretionary investment management service</b>	where a person: <ul style="list-style-type: none"> <li>• decides which <i>financial products</i> to acquire or dispose of on behalf of a <i>client</i>; and</li> <li>• in doing so, is acting under an authority to manage some or all of the <i>client's</i> holdings of <i>financial products</i>,</li> </ul> regardless of whether the <i>client</i> has the right to be consulted on, or to countermand, the decision
<b>eligible investor</b>	a <i>client</i> that certifies themselves as an eligible investor in accordance with the requirements of the <i>FSP Act</i> and the <i>Financial Advisers Act</i>
<b>exempt provider</b>	<ul style="list-style-type: none"> <li>• a person who is an <i>overseas financial adviser</i>;</li> <li>• a person who is exempted under the <i>Financial Advisers Act</i> or regulations made under it from the obligation to register under the <i>FSP Act</i> by virtue of providing <i>financial adviser services</i>; or</li> <li>• a person who is excluded or exempted under the <i>FSP Act</i> from the obligation to register under the <i>FSP Act</i> (unless the exclusion or exemption is limited so that it does not apply in respect of <i>financial adviser services</i>)</li> </ul>
<b>financial advice</b>	a recommendation or an opinion in relation to acquiring or disposing of a <i>financial product</i> , excluding: <ul style="list-style-type: none"> <li>• providing information;</li> <li>• making a recommendation or giving an opinion relating to a class of <i>financial products</i>;</li> <li>• making a recommendation or giving an opinion about the procedure for acquiring or disposing of a <i>financial product</i>;</li> <li>• transmitting the financial advice of another person; or</li> <li>• recommending that a person consult a <i>financial adviser</i></li> </ul>
<b>financial adviser</b>	a person who provides a <i>financial adviser service</i>
<b>financial adviser obligation</b>	an obligation of a <i>financial adviser</i> under the <i>Financial Advisers Act</i> , any regulations made under it, or the <i>Code</i>
<b>financial adviser service</b>	any one of the following services provided in the ordinary course of business: <ul style="list-style-type: none"> <li>• giving <i>financial advice</i>;</li> <li>• providing an <i>investment planning service</i>; or</li> <li>• providing a <i>discretionary investment management service</i></li> </ul>
<b>Financial Advisers Act</b>	Financial Advisers Act 2008

<b>financial product</b>	a <i>category 1 product</i> or <i>category 2 product</i>
<b>financial service</b>	<ul style="list-style-type: none"> <li>• a <i>financial adviser service</i>;</li> <li>• a <i>broking service</i>;</li> <li>• acting as an <i>NBDT</i>;</li> <li>• being a registered bank;</li> <li>• keeping, investing, administering or managing money, securities or investment portfolios on behalf of other persons;</li> <li>• providing credit under a credit contract;</li> <li>• operating a money or value transfer service;</li> <li>• issuing and managing means of payment (e.g., credit and debit cards);</li> <li>• giving financial guarantees;</li> <li>• participating in an offer of securities to the public as either an issuer of the securities or as a promoter;</li> <li>• acting as a trustee, unit trustee, superannuation trustee or manager in respect of securities offered to the public;</li> <li>• changing foreign currency;</li> <li>• entering into derivative transactions, or trading in money market instruments, foreign exchange, interest rate and index instruments, transferable securities (including shares), and futures contracts on behalf of another person;</li> <li>• providing forward foreign exchange contracts; and</li> <li>• acting as an insurer</li> </ul>
<b>financial service provider</b>	a person who provides, or offers to provide, a <i>financial service</i>
<b>FMA</b>	the Financial Markets Authority. The Financial Markets (Regulators and KiwiSaver) Bill provides that the Financial Markets Authority will consolidate the functions undertaken by the <i>Commission</i> , and some of the functions currently carried out by the NZX and the Ministry of Economic Development
<b>FSP Act</b>	Financial Service Providers (Registration and Dispute Resolution) Act 2008
<b>intermediary</b>	a person who does not receive, hold, pay or transfer client money or client property on the person's own account
<b>investment planning service</b>	<p>a service that designs, or offers to design, a plan for an individual that:</p> <ul style="list-style-type: none"> <li>• is based on, or purports to be based on, an analysis of the individual's current and future overall financial situation (which must include his or her investment needs) and identification of the individual's investment goals; and</li> <li>• includes one or more recommendations or opinions on how to realise those goals,</li> </ul> <p>even if the analysis and identification of the individual's financial situation or goals is attributable to the class of persons that the individual is identified as coming within</p>
<b>IPS Act</b>	Insurance (Prudential Supervision) Act 2010

<b>licensed provider</b>	an <i>authorised financial adviser</i> , <i>QFE</i> , or registered bank under the <i>RBNZ Act</i>
<b>licensed service</b>	a <i>financial service</i> in respect of which a <i>licensing enactment</i> requires a person to be licensed (or to be exempt from that requirement) to provide the service or hold out that the person provides the service
<b>licensing enactment</b>	<i>Financial Advisers Act</i> and <i>RBNZ Act</i>
<b>NBDT</b>	non-bank deposit taker, or person who: <ul style="list-style-type: none"> <li>• offers debt securities to the public in New Zealand; and</li> <li>• carries on the business of borrowing and lending money, or providing financial services, or both, including a building society or credit union</li> </ul>
<b>nominated representative</b>	an individual who has been nominated as such by a <i>QFE</i> or a <i>partner entity</i> in accordance with the <i>Financial Advisers Act</i>
<b>overseas financial adviser</b>	a person who: <ul style="list-style-type: none"> <li>• is not ordinarily resident in New Zealand (within the meaning of section 4 of the Crimes Act) and does not have a place of business in New Zealand; and</li> <li>• does not provide <i>financial adviser services</i> that are received by <i>retail clients</i> in New Zealand</li> </ul>
<b>partner entity</b>	an entity that is part of a <i>QFE</i>
<b>personalised service</b>	a <i>financial adviser service</i> given to, or in respect of, a named <i>client</i> or a <i>client</i> that is otherwise readily identifiable by the <i>financial adviser</i> and either: <ul style="list-style-type: none"> <li>• the <i>financial adviser</i> has taken into account the <i>client's</i> particular financial situation or goals (or any one or more of them) in providing the service; or</li> <li>• a <i>client</i> would, in the circumstances in which the service is provided, reasonably expect the <i>financial adviser</i> to take into account the <i>client's</i> particular financial situation or goals (or any one or more of them)</li> </ul>
<b>product provider</b>	<ul style="list-style-type: none"> <li>• the issuer, in the case of a security;</li> <li>• the creditor, in the case of a consumer credit contract;</li> <li>• the insurer, in the case of a contract of insurance; or</li> <li>• any person specified by regulations made under the <i>Financial Advisers Act</i> in any other case</li> </ul>
<b>QFE</b>	an entity that is registered as a <i>financial service provider</i> under the <i>FSP Act</i> and that has been granted QFE status, or a number of <i>partner entities</i> that are each registered as <i>financial service providers</i> under the <i>FSP Act</i> and have jointly been granted QFE status, by the <i>Commission</i> under the <i>Financial Advisers Act</i>
<b>QFE adviser</b>	an individual who is not an <i>authorised financial adviser</i> and who is: <ul style="list-style-type: none"> <li>• an employee of a <i>QFE</i> or any member of a <i>QFE group</i>; or</li> <li>• a <i>nominated representative</i> of a <i>QFE</i> or a <i>partner entity</i></li> </ul>
<b>QFE group</b>	a group of entities that consists of: <ul style="list-style-type: none"> <li>• the <i>partner entities</i> that are part of a <i>QFE</i> and the <i>associated entities</i> of that</li> </ul>

	<p>QFE; or</p> <ul style="list-style-type: none"> <li>the <i>QFE</i> and its <i>associated entities</i></li> </ul>
<b>RBNZ</b>	Reserve Bank of New Zealand
<b>RBNZ Act</b>	Reserve Bank of New Zealand Act 1989
<b>RBNZ Amendment Act</b>	Reserve Bank of New Zealand Amendment Act 2008
<b>registered entity</b>	an entity that is a <i>registered financial adviser</i> but that does not have <i>QFE</i> status
<b>registered financial adviser</b>	a <i>financial adviser</i> who is registered as a <i>financial service provider</i> under the <i>FSP Act</i>
<b>registered individual</b>	an individual that is a <i>registered financial adviser</i>
<b>Registrar</b>	Registrar of Financial Service Providers
<b>retail client</b>	a <i>client</i> who is not a <i>wholesale client</i>
<b>wholesale client<sup>21</sup></b>	<ul style="list-style-type: none"> <li>a person in the business of providing <i>financial services</i> who receives a <i>financial service</i> in the course of that business;</li> <li>a <i>financial adviser</i> or <i>broker</i> who receives a <i>financial adviser service</i> or <i>broking service</i> in the course of that business;</li> <li>a person whose principal business is the investment of money or who, in the course of and for the purposes of that person's business, habitually invests money;</li> <li>an entity with net assets in excess of NZ\$1 million, or turnover in excess of \$1 million, in each of the last two completed accounting periods (or a related body corporate of such an entity);</li> <li>a local authority, a Crown entity, a State enterprise, the <i>RBNZ</i> and the National Provident Fund;</li> <li>a person who falls within one or more of the categories listed in section 3(2), 5(2CB), or 5(2CBA) of the Securities Act 1978, if the <i>financial service</i>, <i>financial adviser service</i> or <i>broking service</i> relates to securities that may be offered to that person, or that have been subscribed for by that person, in a private offer of securities; and</li> <li>an <i>eligible investor</i></li> </ul>

<sup>21</sup> The definition of *wholesale client* in the *FSP Act* differs in some respects to the definition of *wholesale client* in the *Financial Advisers Act*.

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