



Financial Advisers (Disclosure) Regulations 2010

Anand Satyanand, Governor-General

Order in Council

At Wellington this 26th day of October 2010

Present:

His Excellency the Governor-General in Council

Pursuant to sections 23 to 25 and 154 of the Financial Advisers Act 2008, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, and on the recommendation of the Minister of Commerce made after consulting the Securities Commission, makes the following regulations.

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Regulations

- 1 Title**
These regulations are the Financial Advisers (Disclosure) Regulations 2010.
- 2 Commencement**
These regulations come into force on 1 July 2011.
- 3 Interpretation**
 - (1) In these regulations, unless the context otherwise requires,—
 - Act** means the Financial Advisers Act 2008
 - approved dispute resolution scheme** has the meaning given by section 50 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008
 - remuneration**—
 - (a) means any commission, fee, or other benefit or advantage, whether pecuniary or non-pecuniary, and whether direct or indirect; but
 - (b) does not include salary or wages of a fixed amount
 - reserve scheme** has the meaning given by section 71 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008.
 - (2) Any term or expression that is defined in the Act and used, but not defined, in these regulations has the meaning given by the Act.

4 Disclosure by authorised financial advisers

- (1) This regulation prescribes disclosure for authorised financial advisers.
- (2) The following information is prescribed for the purposes of section 22 of the Act:
 - (a) the information required to complete the form set out in Schedule 1 (the **primary disclosure information**); and
 - (b) the information specified in Schedule 2 (the **secondary disclosure information**).
- (3) An authorised financial adviser must disclose the prescribed information in accordance with regulations 5 and 6.

5 Primary disclosure information (authorised financial advisers)

- (1) The primary disclosure information must—
 - (a) be in the form set out in Schedule 1 (the **primary disclosure statement**); and
 - (b) be completed in accordance with the instructions given in that form; and
 - (c) include all the information required to complete that form.
- (2) Despite subclause (1), if it is not practicable for the adviser to comply with subclause (1)(c), the adviser must not delay in providing the primary disclosure statement and must—
 - (a) complete the statement to the extent possible with the information that is available; and
 - (b) inform the client that the statement is incomplete, how and why it is incomplete, and that the missing information will be provided as soon as practicable; and
 - (c) provide the client with an updated statement (which includes all the information required under subclause (1)), as soon as practicable.

6 Secondary disclosure information (authorised financial advisers)

- (1) The secondary disclosure information may be disclosed in 1 or more disclosure statements (the **secondary disclosure statements**), but each secondary disclosure statement must, in add-

ition to containing some or all of the secondary disclosure information,—

- (a) contain the following information required by section 24(2)(b) and (c) of the Act:
 - (i) when the statement was prepared; and
 - (ii) the name, address, trading name (if any), telephone number, fax number, and email address of the financial adviser; and
 - (b) be prominently identified, with a clear heading that includes the term “disclosure statement”; and
 - (c) be printed in a font and font size that are easily readable by most people; and
 - (d) set out the prescribed information clearly, concisely, and in a manner likely to bring the information to the attention of the client.
- (2) To avoid doubt, an authorised financial adviser must, whether by a single secondary disclosure statement or by 2 or more such statements, disclose to the client all the secondary disclosure information that applies to that adviser.

7 Disclosure by other financial advisers

- (1) This regulation prescribes disclosure for financial advisers other than authorised financial advisers and QFE advisers.
- (2) The information required to complete the form set out in Schedule 3 (the **disclosure information**) is prescribed for the purposes of section 22 of the Act.
- (3) An adviser must disclose the prescribed information in accordance with subclause (4).
- (4) The disclosure information must—
 - (a) be in the form set out in Schedule 3 (the **disclosure statement**); and
 - (b) be completed in accordance with the instructions given in that form; and
 - (c) include all the information required to complete that form.

8 Disclosure by QFEs

- (1) This regulation prescribes disclosure for QFEs or members of a QFE group (the **QFE**).
- (2) The following information is prescribed for the purposes of section 25 of the Act:
 - (a) the name (including any trading name) of the QFE;
 - (b) the address, telephone number, and email address of the principal place of business of the QFE;
 - (c) brief particulars of the QFE's internal complaints procedure, including how to initiate the procedure;
 - (d) the name, address, telephone number, and email address of the approved dispute resolution scheme of which the QFE is a member or, if the QFE is not a member of an approved dispute resolution scheme, the reserve scheme;
 - (e) if the QFE provides a licensed service other than as a QFE,—
 - (i) the nature of every such licensed service; and
 - (ii) the person by whom the QFE is licensed, registered, authorised, or otherwise approved to provide the licensed service;
 - (f) every matter that is required to be disclosed by the QFE's terms and conditions of grant of QFE status.
- (3) A QFE must disclose the prescribed information in accordance with subclause (4) or (5).
- (4) Unless a QFE's client makes a request to receive disclosure in writing, the QFE may disclose the prescribed information in any form that is consistent with section 3(2)(b)(i) of the Act, these regulations, and the QFE's terms and conditions.
- (5) If a QFE's client makes a request to receive disclosure in writing, the QFE must provide the client with a disclosure statement, which must—
 - (a) specify when the statement was prepared; and
 - (b) be prominently identified, with a clear heading that includes the term "disclosure statement"; and
 - (c) be printed in a font and font size that are easily readable by most people; and

- (d) set out the prescribed information clearly, concisely, and in a manner likely to bring the information to the attention of the client.

Schedule 1

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Prescribed form for primary disclosure statement (authorised financial advisers)

Form

Primary disclosure statement (Authorised Financial Adviser)

[Due to circumstances beyond my control, it is not practicable for me to provide all of the information that I am required to include in this statement. However, I must still provide this statement to you and tell you how and why it is incomplete. I must also provide you with an updated and complete version of this statement as soon as practicable.]

Name and registration number of Authorised Financial Adviser: [*Insert the registration number issued to you by the Registrar of Financial Service Providers.*]

Address:

Trading name: [*Insert trading name or, if you do not have a trading name, omit this heading.*]

Telephone number:

Fax number:

Email address:

This disclosure statement was prepared on: [*date*]

It is important that you read this document

This information will help you to choose a financial adviser that best suits your needs. It will also provide some useful information about the financial adviser that you choose.

In addition to the information that I must disclose to you in this statement, I must also disclose other information to you in a separate disclosure statement (or statements), including information about the types of services that I provide, the fees that I charge, and any actual or potential conflicts of interest. If I have not provided that infor-

Form—*continued*

mation to you at the same time as I give you this statement, I must provide it to you as soon as I can.

What sort of adviser am I?

I am an Authorised Financial Adviser. This means I have been authorised by the Securities Commission (the government agency that monitors financial advisers) to provide the financial adviser services described below.

How can I help you?

I have been authorised to provide you with financial adviser services of the following categories: *[List the financial adviser services that you are authorised to provide. The manner in which these services are disclosed must be in accordance with any terms and conditions imposed on you by the Securities Commission.]*

When I do this, I will be able to [give you advice/provide a service] about—

[Tick the category that applies, which must correspond with the number of organisations providing the financial products that you distribute, offer, or otherwise provide. If an organisation (O) is a conduit for products that you provide to your clients, then the number of organisations should include the total number of organisations that provide products, through O and you, to your clients. For example, if you provide advice to your clients on the use of a platform or a portfolio management service, you must include both the provider of the platform or portfolio management service and all issuers of securities that are provided through the platform or portfolio management service.]

- financial products provided by only 1 organisation:
- financial products provided by a small number of organisations (2 to 5 organisations):
- financial products provided by a broad range of organisations (more than 5 organisations).

Form—*continued***How do I get paid for the services that I provide to you?***[Tick the statement or statements that apply.]*

Payment type	Description
<input type="checkbox"/> Fees only	My services are only paid for by the fees that you pay. I do not receive payments from other people or organisations that might influence my advice.
<input type="checkbox"/> Fees	My services are paid for by the fees that you pay as well as in other ways.
<input type="checkbox"/> Commissions <i>[You do not need to tick this box if the only commission that you receive is passed on, in full, to your client.]</i>	There are situations in which [I/my employer/my employer and I/my principal/my principal and I] will be paid by other organisations. How much that payment will be depends on the decisions that you make.
<input type="checkbox"/> Extra payments from my [employer/principal]	I may receive extra payments from my [employer/principal] depending upon the decisions that you make.
<input type="checkbox"/> Non-financial benefits from other organisations	Other organisations may give [me/my employer/my employer and me/my principal/my principal and me] non-financial benefits depending on the decisions that you make.

I am required to tell you the specific fees, commissions, extra payments, and other benefits that I have received or will, or may, receive in relation to the services that I provide to you. I must tell you these things before I [give you advice/provide a service] or, if that is not practicable, as soon as practicable after I [give you that advice/provide that service].

Form—*continued***What are my obligations?**

As an Authorised Financial Adviser, I must comply with the Code of Professional Conduct for Authorised Financial Advisers. I also have other obligations under the Financial Advisers Act 2008 (including regulations made under that Act) and under the general law.

What else should you know about me?

[Include the statements that apply to you. If none apply, omit all the statements and this heading.]

I have, within the previous 5 years, been adjudicated bankrupt: *[Specify, in not more than 200 words, the date of every such adjudication, the court or other tribunal that made the adjudication, and the date on which you were discharged from the bankruptcy.]*

I have, within the previous 5 years, been admitted to the no asset procedure under Part 5 of the Insolvency Act 2006: *[Specify, in not more than 200 words, the date of every such admission to the no asset procedure, the name and contact details of the relevant Assignee, and the date on which you were discharged.]*

I have, within the previous 5 years, been the subject of disciplinary proceedings before the disciplinary committee (which deals with complaints regarding Authorised Financial Advisers), which has made a recommendation or order in relation to me, or has censured me: *[Specify, in not more than 200 words, the date and details of, and reasons for, every such recommendation, order, or censure.]*

I have, within the previous 5 years, been the subject of disciplinary proceedings before another professional body that have resulted in my being expelled from, or prohibited from being a member of, that professional body: *[Specify, in not more than 200 words, the date and details of, and reasons for, every such expulsion or prohibition, and the name of the professional body. The definition of professional body in the Code of Professional Conduct for Authorised Financial Advisers applies for the purposes of this disclosure statement.]*

I have criminal convictions or have had adverse findings made against me by a court or disciplinary tribunal, which I am required, by the terms and conditions of my authorisation as an Authorised Financial Adviser, to disclose to you: *[Specify the matters that you*

Form—*continued*

are required to disclose, and disclose those matters in accordance with your terms and conditions of authorisation.]

What should you do if something goes wrong?

If you have a problem, concern, or complaint about any part of my service, please tell [me/my employer/my internal complaints scheme] so that [I/my employer/my internal complaints scheme] can try to fix the problem.

You may contact the internal complaints scheme by [*briefly explain how to contact the scheme and how to make a complaint under the scheme or, if not applicable, omit this statement*].

If we cannot agree on how to fix the issue, or if you decide not to use the internal complaints scheme, you can contact [*name of the approved dispute resolution scheme of which you, your employer, or your principal is a member or, if not a member of the approved dispute resolution scheme, name of the reserve scheme*]. This service will cost you nothing, and will help us resolve any disagreements. You can contact [*name of scheme*] at—

Address:

Telephone number:

Email address:

If you need to know more, where can you get more information?

If you have a question about anything in this disclosure statement or you would like to know anything more about me, please ask me.

If you have a question about financial advisers generally, you can contact the Securities Commission.

How am I regulated by the Government?

You can check that I am a registered financial services provider and an Authorised Financial Adviser at <http://www.fspr.govt.nz>

The Securities Commission authorises and regulates financial advisers. Contact the Securities Commission for more information, including financial tips and warnings.

Form—*continued*

You can report information or complain about my conduct to the Securities Commission, but in the event of a disagreement, you may choose to first use the dispute resolution procedures described above (under **What should you do if something goes wrong?**).

Declaration

I, [*full name*], declare that, to the best of my knowledge and belief, the information contained in this disclosure statement is true and complete and complies with the disclosure requirements in the Financial Advisers Act 2008 and the Financial Advisers (Disclosure) Regulations 2010.

Signed:

Notes for Authorised Financial Adviser on
completing this form

To complete this form, you must—

- omit all instructions and explanatory material (italicised text that is enclosed in square brackets) and, if required, replace that text with the information specified; and
- omit all other text enclosed in square brackets that does not apply, including all inapplicable alternative text (which is enclosed in square brackets and separated by “/”) and any other text that the instructions direct you to omit; and
- omit all square brackets enclosing the text referred to above; and
- omit these notes (including the heading to these notes); and
- sign the declaration.

You need not set out the disclosure statement in the same format as this prescribed form, but the format you use must—

- be typed (not handwritten) and printed in a font and font size that are easily readable by most people; and

Form—*continued*

- include the same headings and words that appear in this form (other than the text that must be inserted or omitted, as detailed above); and
- present the information in the same order as in this form; and
- not be misleading in any way; and
- not include any information (other than unobtrusive material such as a corporate logo) that is not required to be included in the disclosure statement; and
- include all tick boxes and the text relating to those tick boxes.

Schedule 2

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**Prescribed information to be included
in secondary disclosure statements
(authorised financial advisers)**

- 1 The type or types of financial adviser service provided (including financial products in relation to which the financial service is provided).
- 2 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.
- 3 If the authorised financial adviser will charge the client a fee for the financial adviser service,—
 - (a) the basis on which the fee will be charged; and
 - (b) a reasonable estimate of the fee (including informing the client and providing a further estimate if it becomes apparent that the fee estimate is likely to be exceeded); and
 - (c) when the client must pay the fee.
- 4 Details of every financial and other interest, relationship, or association (other than those disclosed in accordance with para-

graph 2) of the authorised financial adviser that a reasonable client would find reasonably likely to materially influence the adviser in providing the financial adviser service.

- 5 Details of all remuneration (other than remuneration that a reasonable client would consider to be of such an insignificant nature that it would be unlikely to influence the adviser) that the authorised financial adviser, the adviser's employer, or the adviser's principal (or any 1 or more of them) has received, or will or may receive, from a person other than the client if the adviser provides a financial adviser service, and, in this case, the adviser must disclose—
- (a) the amount or rate, to the extent practicable, of the remuneration; and
 - (b) the name of the person from whom the remuneration has been, or will or may be, received; and
 - (c) details of any arrangements the financial adviser has made to manage any conflict of interest arising from the receipt, or possible receipt, of the remuneration.
- 6 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.

Schedule 3

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Prescribed form for disclosure statement (financial adviser other than authorised financial adviser and QFE advisers)

Form

Disclosure statement (financial adviser)

Name of financial adviser:

Address:

Trading name: *[Insert trading name or, if you do not have a trading name, omit this heading.]*

Telephone number:

Fax number:

Form—*continued*

Email address:

This disclosure statement was prepared on: *[date]*

It is important that you read this document

This information will help you to choose a financial adviser that best suits your needs. It will also provide some useful information about the financial adviser that you choose.

What sort of adviser am I?

I am a registered, but not authorised, financial adviser.

I can give you advice about: *[Describe, using not more than 200 words, the classes of financial products on which the adviser can give advice.]*

What should you do if something goes wrong?

If you have a problem, concern, or complaint about any part of my service, please tell *[me/my employer/my internal complaints scheme]* so that *[I/my employer/my internal complaints scheme]* can try to fix the problem.

You may contact the internal complaints scheme by *[briefly explain how to contact the scheme and how to make a complaint under the scheme or, if not applicable, omit this statement]*.

If we cannot agree on how to fix the issue, or if you decide not to use the internal complaints scheme, you can contact *[name of the approved dispute resolution scheme of which you, your employer, or your principal are a member or, if not a member of the approved dispute resolution scheme, name of the reserve scheme]*. This service will cost you nothing, and will help us resolve any disagreements. You can contact *[name of scheme]* at—

Address:

Telephone number:

Email address:

Form—*continued***How am I regulated by the Government?**

You can check that I am a registered financial adviser at <http://www.fspr.govt.nz>

The Securities Commission regulates financial advisers. Contact the Securities Commission for more information, including financial tips and warnings.

You can report information or complain about my conduct to the Securities Commission, but in the event of a disagreement, you may choose to first use the dispute resolution procedures described above (under **What should you do if something goes wrong?**).

Declaration

I, [*full name*], declare that, to the best of my knowledge and belief, the information contained in this disclosure statement is true and complete and complies with the disclosure requirements in the Financial Advisers Act 2008 and the Financial Advisers (Disclosure) Regulations 2010.

Signed:

Notes for financial adviser on completing this
form

To complete this form, you must—

- omit all instructions and explanatory material (italicised text that is enclosed in square brackets) and, if required, replace that text with the information specified; and
- omit all alternative text (text that is enclosed in square brackets and separated by “/”) that does not apply; and
- omit all square brackets enclosing the text referred to above; and
- omit these notes (including the heading to these notes); and
- sign the declaration.

Form—*continued*

You need not set out the disclosure statement in the same format as in this prescribed form, but the format you use must—

- be typed (not handwritten) and printed in a font and font size that are easily readable by most people; and
- include the same headings and words that appear in this form (other than the text that must be inserted or omitted, as detailed above); and
- present the information in the same order as in this form; and
- not be misleading in any way; and
- not include any information (other than unobtrusive material such as a corporate logo) that is not required to be included in the disclosure statement.

Rebecca Kitteridge,
Clerk of the Executive Council.

Explanatory note

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations, which come into force on 1 July 2011, prescribe, for the purposes of the Financial Advisers Act 2008 (the **Act**), information that authorised financial advisers, QFEs, and other financial advisers who provide a personalised service to a retail client must disclose to those clients. The regulations also specify the form in which disclosure must be made.

For authorised financial advisers, disclosure occurs in 2 processes, as follows:

- the adviser must provide the client with the primary disclosure information (the information required to complete the form set out in Schedule 1), all of which must be disclosed at the same time in a single document (although there is a limited exception if, due to circumstances beyond the adviser's control, it is not practicable for the adviser to comply). The document con-

taining the primary disclosure information is known as the primary disclosure statement, which is the completed form set out in *Schedule 1*, and which includes a declaration signed by the adviser. The primary disclosure statement includes the fundamental information that a client might require in making a decision on whether or not to use the services of the adviser. The information that must be included in the primary disclosure statement is—

- the name and contact details of the adviser; and
 - the date on which the statement was prepared; and
 - the services that the adviser is authorised to provide; and
 - how the adviser gets paid for the services; and
 - any adverse finding against the adviser in the last 5 years, including any bankruptcies, admissions to the no asset procedure under Part 5 of the Insolvency Act 2006, disciplinary proceeding, and criminal convictions; and
 - what the client may do if the client has a problem, concern, or complaint about the adviser's service (including recourse to the adviser's internal complaints procedure (if any) and the relevant dispute resolution scheme of which the adviser, or the adviser's employer or principal, is a member); and
 - how the adviser is regulated by the Government:
- the remainder of the disclosure information (the secondary disclosure information) must be disclosed to the client in 1 or more secondary disclosure statements. The secondary disclosure information is prescribed in *Schedule 2*. In summary, the secondary disclosure information comprises information about the types of financial adviser services to be provided, any limitations on those services, the fees payable by the client, any material conflicts of interest, remuneration, and any matters that the adviser is required to disclose in accordance with the adviser's terms and conditions (if any) of authorisation. Although no form of disclosure is specified for secondary disclosure statements, each statement must, in addition to containing 1 or more of the matters listed in *Schedule 2*, meet the following requirements:

- it must contain the information required by section 24(2)(b) and (c) of the Act (when the statement was prepared and the adviser’s name and contact details); and
- it must have a clear heading, including the term “disclosure statement”; and
- it must be printed in a font and font size that are easily readable by most people; and
- it must set out the information clearly and concisely and in a manner likely to bring the information to the attention of the client.

Financial advisers (advisers who are not authorised financial advisers or QFEs) must provide the client with the disclosure information (the information required to complete the form set out in *Schedule 3*), all of which must be disclosed at the same time in a single document. The document containing the disclosure information is known as the disclosure statement, which is the completed form set out in *Schedule 3*, and which includes a declaration signed by the adviser. The information that must be included in the disclosure statement is—

- the name and contact details of the adviser; and
- the date on which the statement was prepared; and
- the advice that the adviser may provide; and
- what the client may do if the client has a problem, concern, or complaint about the adviser’s service (including recourse to the adviser’s internal complaints procedure (if any) and the relevant dispute resolution scheme of which the adviser, or the adviser’s employer or principal, is a member); and
- how the adviser is regulated by the Government.

For QFEs, the required disclosure comprises the QFEs contact details, information about its internal and external complaints schemes, any services provided other than as a QFE, and every matter that the QFE is required to disclose in accordance with its terms and conditions of grant of QFE status.

Unless a QFE’s client requests disclosure in writing, the QFE may provide disclosure by any means that is consistent with section 3(2)(b)(i) of the Act, these regulations, and the QFE’s terms and conditions. If a QFE’s client makes a request to receive disclosure in

writing, the QFE must provide the client with a disclosure statement that meets the following requirements:

- it must specify when the statement was prepared; and
- it must have a clear heading, including the term “disclosure statement”; and
- it must be printed in a font and font size that are easily readable by most people; and
- it must set out the disclosure information clearly and concisely and in a manner likely to bring the information to the attention of the client.

In all cases, further obligations are imposed on advisers and QFEs by the Act. In particular, disclosure must be made before the advice is provided or, if that is not practicable, as soon as practicable after the service is provided (section 22(1) imposes that obligation on financial advisers other than QFEs, and section 25(1) imposes a corresponding obligation on QFEs). This means, for example, that an adviser or QFE providing telephone advice to a client could comply with the disclosure requirements by providing written disclosure as soon as practicable after the service was provided or, in the case of a QFE (unless the client requests written disclosure), by providing the required disclosure verbally, over the telephone. In the case of the primary and secondary disclosure information that is required to be provided by authorised financial advisers, the adviser must comply with section 22(1): that is, the adviser must disclose the prescribed information (both primary and secondary) before providing the service unless it is impractical to do so, in which case the information must be provided as soon as practicable after providing the service. In the majority of cases, it is likely that all the prescribed information will be provided at the same time.

A financial adviser must, in accordance with section 24(2)(d), either provide disclosure statements to the client or deliver or send the statements to the client at the client’s last known address or an address (including an electronic address) specified by the client for that purpose. In addition, authorised financial advisers and QFEs must comply with any terms and conditions imposed on them by the Commission under the Act.

**Financial Advisers (Disclosure)
Regulations 2010**

2010/378

Issued under the authority of the Acts and Regulations Publication Act 1989.
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These regulations are administered by the Ministry of Economic Development.
