MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

COVERSHEET

Minister	Hon Dr David Clark	**Portfolio**	Commerce and Consumer Affairs
Title of Cabinet paper	Regulations to support the new financial advice regime and other recent financial markets legislation changes	**Date to be published**	5 February 2021

List of documents that have been proactively released		
Date	**Title**	**Author**
December 2020	Cabinet paper: Regulations to support the new financial advice regime and other recent financial markets legislation changes	Office of the Minister of Commerce and Consumer Affairs
9 December 2020	DEV-20-MIN-0176: New Financial Advice Regime and Other Financial Markets Legislation Changes: Regulations	Cabinet Office
19 November 2020	Cost Recovery Impact Statement: Licensing fees for benchmark administrators	MBIE

Information redacted **YES**

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Some information has been withheld due to confidentiality of advice and some information has been withheld due to legal professional privilege.

In Confidence

Office of the Minister of Commerce and Consumer Affairs

Chair, Cabinet Business Committee

Regulations to support the new financial advice regime and other recent financial markets legislation changes

Proposal

1 This paper seeks authorisation to submit to Executive Council the following regulations necessary to support a new financial advice regulatory regime and other recent legislation changes affecting financial markets:

New financial advice regime and changes to financial service provider registration

1.1 Financial Markets Conduct Amendment Regulations 2020;

1.2 Financial Service Providers (Registration) Regulations 2020;

1.3 Financial Service Providers (Exemptions) Amendment Regulations 2020;

1.4 Financial Markets Authority (Levies) Amendment Regulations (No 2) 2020;

Licensing regime for administrators of financial benchmarks regulations

1.5 Financial Markets Conduct (Licensing of Administrators of Financial Benchmarks) Amendment Regulations 2020;

1.6 Financial Markets Conduct (Fees) Amendment Regulations 2020;

1.7 Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act Commencement Order 2020;

Consequential updates resulting from new financial advice regime

1.8 Anti-Money Laundering and Countering Financing of Terrorism (Definitions) Amendment Regulations 2020;

1.9 Electronic Identity Verification Amendment Regulations 2020;

1.10 Fair Trading (Uninvited Direct Sales - Financial Products) Amendment Regulations 2020;

1.11 Non-bank Deposit Takers (Declared-out Entities) Amendment Regulations 2020.

2 It also seeks agreement to a small number of policy matters that have been incorporated into the proposed regulations.

Relation to government priorities

3 Financial advice is important for helping New Zealanders navigate financial decisions, particularly at a time when many are facing changes to their financial circumstances. In regards to the licensing of benchmark administrators, it is also important that New Zealand financial institutions are able to continue to enter into financial instruments with overseas entities for risk management and capital-raising. Implementing reforms aimed at promoting access to quality financial advice and enabling financial instruments with overseas entities will ensure that the financial markets can continue to play its role in supporting New Zealand's recovery from the economic impacts of COVID-19.

Executive Summary

4 This paper seeks authorisation to submit to Executive Council various regulations necessary to support:

4.1 A new financial advice regulatory regime and other changes introduced by the Financial Services Legislation Amendment Act 2019 (**FSLAA**), which comes into force on 15 March 2021. The new regime aims to improve access to quality financial advice and address issues with the current regime, including suboptimal advice that is sometimes influenced by commissions or other conflicts of interest.

4.2 A licensing regime for administrators of financial benchmarks as introduced by the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 (**FMRAA**). This responds to European Union (**EU**) regulations aimed at ensuring the integrity of benchmarks and is necessary to ensure New Zealand institutions can continue to enter into financial contracts with EU counterparties.

5 There is broad stakeholder support for these new regimes.

6 The regulations give effect to earlier Cabinet policy decisions in relation to the content of the regulations [DEV-18-MIN-0157, DEV-19-MIN-0155, DEV-20-MIN-0144 refer].

7 The regulations also incorporate a small number of further policy matters for which I am seeking policy approval, including in relation to:

7.1 licensing fees for benchmark administrators to enable the Financial Markets Authority (**FMA**) to recover the costs of processing the licence application from the applicant;

7.2 pecuniary penalties for contraventions of certain benchmark administrator licence conditions, so that licensees are appropriately incentivised to comply with those conditions; and

7.3 exemptions from certain Trusts Act 2019 provisions for portfolio investment entity trusts, to avoid inconsistencies and overlaps between

how those trusts are regulated under the Trusts Act and financial markets legislation.

Background

A new financial advice regime and other changes come into force on 15 March 2021

8 The FSLAA reforms the regulation of financial advice. It aims to improve access to quality financial advice in order to assist New Zealanders with making informed financial decisions. The changes come into force on 15 March 2021.

9 The changes respond to various problems with the current regulatory regime. For example, the current regime has different conduct and competence requirements for different types of advisers, which means that the quality of some advice may be suboptimal or materially influenced by commissions and other conflicts of interest.

10 The new regime requires anyone who gives financial advice to a retail client (for example, an individual consumer) to prioritise clients' interests, comply with a code of conduct and disclose certain information. They will also need to operate under a licence granted by the FMA.

11 In relation to financial services more generally, FSLAA also makes changes to the Financial Service Providers Register (**FSPR**), a public register of persons that provide financial services. The key change addresses a problem in relation to the use of the register by providers located overseas with little or no connection to New Zealand registering in order to take advantage of New Zealand's reputation as a well-regulated jurisdiction.

A licensing regime for benchmark administrators is needed following EU regulations

12 Financial benchmarks are figures or indexes, such as interest rates, that are referenced in financial products or contracts to set the price or determine the value of those financial products. Benchmarks are critical to New Zealand's and international financial markets, and, by implication, to broader economic activities.

13 The licensing regime for administrators of financial benchmarks in New Zealand has been created in response to EU regulations that set standards around the necessary processes by which benchmarks are set.

14 These EU regulations were considered necessary to respond to concerns about conflicts of interest and manipulation of benchmarks evident overseas. One example of this manipulation was the London Interbank Offered Rate (**LIBOR**) scandal in 2012. This involved banks colluding and falsely inflating or deflating the interest rates they each submitted for benchmark calculation purposes.

15 New Zealand regulators have not seen evidence in New Zealand of the types of behaviour apparent in other jurisdictions. The primary purpose of the

licensing regime is to ensure that our regulatory regime can meet the standards set in the EU regulations. Without this equivalence[1] with the EU, New Zealand benchmarks will not be able to be used in critical financial contracts with EU counterparties.

The proposed regulations give effect to existing Cabinet policy decisions

New financial advice regime and registration changes

16 In June 2019, Cabinet made policy decisions relating to the remaining regulations needed to support the new financial advice regime and FSPR changes, many of which are technical matters [DEV-19-MIN-0155 refers]. The main policy decisions are summarised below and reflected in the regulations I am seeking approval for:

16.1 Carry over certain aspects of the existing regime that were seen as generally effective, including continuing the effect of existing exemptions.

16.2 Enable the collection and display of more detailed information on the FSPR relating to providers' financial services.

16.3 Prescribe the minimum level of services that certain financial service providers must provide in order to register on the FSPR, to make it difficult for those seeking to misuse the FSPR to register.

16.4 Prescribe a warning statement that certain financial service providers must include if they advertise their FSPR registration, to protect against providers giving a misleading impression that they are actively regulated in New Zealand.

17 Cabinet also agreed to consequential updates to the Financial Markets Conduct Regulations 2014 and other regulations such as the Anti-Money Laundering and Countering Financing of Terrorism (Definitions) Regulations 2011 to reflect changes in terminology in the new financial advice regime.

18 Cabinet in July 2020 agreed to changes to FMA levies (payable by financial markets participants to help fund the FMA) to reflect changes in the new financial advice regime and increases to the FMA's operational funding in 2021/22 and 2022/23 as a result of its expanded remit [DEV-20-MIN-0144 refers].

[1] EU regulations provide for an EU 'equivalence decision' that would allow continued access for third country benchmarks to EU financial markets. Seeking equivalence essentially involves consideration by the European Commission of the legal framework and supervisory practice of a third country regarding benchmark administrators and how that regulatory regime ensures benchmark administrators comply with binding requirements equivalent to EU regulations and that benchmark administrators will be subject to an effective supervision and enforcement regime by an appropriate regulatory body.

Licensing of benchmark administrators

19 In August 2018, Cabinet agreed to introduce a licensing regime for administrators of financial benchmarks under the Financial Markets Conduct Act 2013 (**FMC Act**) [DEV-18-MIN-0157 refers]. Key elements of the new regime include:

19.1 It is opt-in, so that it only captures the financial benchmarks that are intended to be regulated.

19.2 Licensing, monitoring and enforcement of the regime will be carried out by the FMA.

19.3 Subsequent regulations prescribe the detail of the licensing eligibility criteria, and conditions, consistent with and as required by EU regulations.

20 The FMRAA introduced a licensing regime for administrators of financial benchmarks.

21 I am now seeking approval to submit to Executive Council the Financial Markets Conduct (Licensing of Administrators of Financial Benchmarks) Amendment Regulations 2020 which set the detailed requirements for the licensing regime brought in by the FMRAA. Once those regulations are made, New Zealand will apply for 'equivalence' to the EU. The European Commission will then make a formal assessment of our regulatory framework to ensure it is equivalent to the EU regulations.

Some additional policy matters have been incorporated into the regulations

22 This paper also seeks policy approval for a small number of matters that have been incorporated into the proposed regulations.

Licensing fee for benchmark administrators

23 I am seeking Cabinet's approval to create a new fee in order to allow the FMA to recover the costs of licensing benchmark administrators. It is appropriate that licensed benchmark administrators are charged costs in relation to the time the FMA spends assessing a licence application, as the administrator will receive the benefit of holding a licence in a well-regulated environment, monitored by the FMA. Other licensed financial service providers also pay a licensing fee set on a cost recovery basis in regards to their licence applications.

24 I propose that the fee be set on an hourly basis, being the current FMA hourly rate of $178.25 (plus a $115 application fee, both GST inclusive). Recovering costs on an hourly basis is appropriate in these circumstances because the nature of the assessment process is not standardised, and therefore difficult to predict. Benchmark administration in New Zealand is carried out by the New Zealand Financial Markets Association (**NZFMA**). The NZFMA is

expected to be the only benchmark administrator in New Zealand to apply for a benchmark administrator licence.

25 A similar hourly-based application fee is charged for other types of licences issued by the FMA where the licence types are similarly rare, and potentially complex. This method of cost-recovery does give less certainty to the applicant, however the FMA has committed to providing applicants with regular updates about time spent processing applications throughout the course of the assessment process.

Pecuniary penalties for breach of benchmark administrator licence conditions

26 In order to provide the FMA with appropriate tools to ensure compliance with the benchmark administrator licence requirements, I propose pecuniary penalties will attach to breaches of some licensing conditions. I consider it is appropriate for the FMA to have access to such tools in relation to benchmark administrators in order to give the FMA appropriate tools to enforce compliance with the licence conditions. This is consistent with other types of licences issued under the FMC Act where some licence conditions attract pecuniary penalties if breached.

27 The types of licence conditions in relation to which penalties are proposed for breaches include:

27.1 Notification to the FMA of the licensee's intention to cease generating or operating the financial benchmark.

27.2 Notification to the FMA of material changes to a financial benchmark's methodology.

27.3 Provision of records or other information to the FMA.

28 A full list of proposed licence conditions to which pecuniary penalties would attach for breaches is set out in Annex 1.

29 The FMC Act provides that where a pecuniary penalty attaches to a breach of a licence condition, the maximum penalty is $600,000 for a non-individual.

30 I consider that these liability provisions are necessary, and will be adequate to incentivise compliance with licence conditions (a $600,000 penalty will likely represent a significant sum for the NZFMA as an independent incorporated society). It will enable the FMA to respond to breaches proportionately – the FMA would have regard to the nature of any breach in considering whether to seek a pecuniary penalty, or exercise one of its other enforcement tools (such as censure or a direction order).

Exemptions from certain Trusts Act 2019 provisions for portfolio investment entities

31 I am also seeking approval to make regulations under the FMC Act to disapply certain discrete provisions of the Trusts Act 2019 for portfolio investment entity (**PIE**) trusts regulated under the FMC Act. The purpose of

these regulations is to avoid inconsistencies and overlaps with how these trusts are treated under the FMC Act and how they will be treated under the incoming Trusts Act (commencing 30 January 2021). Certain other FMC-regulated trusts have already had similar "carve outs" from the Trusts Act applied and PIE trusts are in many ways similar to these other FMC trusts.

32 These regulations are in line with previous policy decisions regarding PIE trusts, which were previously covered by the Trusts Bill as introduced. A regulation-making power was included instead of dealing with these trusts in the Act so that carve-outs could be applied in a more targeted way, with the expectation that regulations would be made in relation to these trusts.

Other policy matters

33 I also seek approval for some other matters that have been incorporated into the proposed regulations as set out in Annex 2. These changes are consistent with earlier policy approvals or are desirable to provide for an orderly transition to the new financial advice regime.

Financial Implications

34 There are no financial implications from the recommendations in this paper. The financial implications for the FMA levy changes were considered by Cabinet as part of the Budget Significant Initiatives Paper on 6 April 2020. Costs for initial set-up and ongoing monitoring of licensed benchmark administrators will be recoverable through new (proposed) licensing fees paid to the FMA and annual industry levies recovered for the Crown. Officials expect that any increased cost to the FMA of monitoring and supervision of benchmark administrators will be absorbed into their baseline. Officials will keep this under review.

Impact Analysis

35 Regulatory Impact Assessments relating to regulations to address misuse of the FSPR and the introduction of a licensing regime for administrators of financial benchmarks were prepared in accordance with the necessary requirements and submitted at the time that Cabinet policy approval was sought [DEV-18-MIN-0157 and DEV-19-MIN-0155 refer].

36 The Ministry of Business, Innovation and Employment's (**MBIE**) Regulatory Impact Analysis Review Panel has reviewed the attached Cost Recovery Impact Statement prepared by MBIE in relation to licensing fees for benchmark administrators. The Panel considers that the information and analysis summarised in the Statement meets the criteria necessary for Ministers to make informed decisions on the proposals in this paper.

37 The Regulatory Quality Team at the Treasury has determined that the other regulatory proposals in this paper are exempt from the requirement to provide a Regulatory Impact Statement on the basis that they have no or minor impacts on businesses, individuals or not-for-profit entities.

Consultation

38 The FMA, the Treasury, the Reserve Bank of New Zealand, the Ministry of Justice, the Department of Internal Affairs, Commerce Commission, and the Department of the Prime Minister and Cabinet (Policy Advisory Group) have been consulted on this Cabinet paper.

39 MBIE tested with a small group of stakeholders a draft of parts of the regulations relating to addressing misuse of the FSPR and other regulations relating to the new financial advice regime where consultation was considered particularly beneficial for ensuring the regulations were workable in practice. The feedback received was taken into account when finalising the regulations.

40 MBIE has undertaken targeted consultation on the draft benchmark administrator regulations (including on licensing fees) with the NZFMA. Feedback from consultation has been incorporated into the attached regulations.

41 MBIE also shared draft benchmark regulations with the EU. Confidential advice to Government

42 The Ministry of Justice has been consulted on the draft regulations to extend certain penalties in the FMC Act to administrators of financial benchmarks and considers the proposed penalties to be justified.

43 All regulations have been developed in consultation with the FMA, and with other interested agencies as relevant. Feedback received during the policy development process has also helped to inform the regulations.

Timing and 28-day rule

44 Regulations 29(2) and 30 of the Financial Markets Conduct Amendment Regulations 2020 will come into force on 18 January 2021.

45 Regulation 17 of the Financial Markets Conduct Amendment Regulations 2020 will come into force on 30 January 2021.

46 The commencement order will bring the remaining provisions of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 into force on 14 March 2021.

47 In the Financial Markets Authority (Levies) Amendment Regulations (No 2) 2020, regulations 11-13 and Schedule 2 will come into force on 1 July 2021 and regulations 14-16 and Schedule 3 will come into force on 1 July 2022 to reflect phased increases to FMA levies.

48 The rest of the regulations will come into force on 15 March 2021 to coincide with the start of the new financial advice regime.

Compliance

49 The proposed regulations and order comply with:

49.1 the principles of the Treaty of Waitangi;

49.2 the principles and guidelines set out in the Privacy Act 1993;

49.3 relevant international standards and obligations;

49.4 the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.

50 The Financial Markets Authority (FMA) has been consulted on the proposed regulations. As noted in recommendations 8-10 below, I and other relevant Ministers have taken into account a range of other considerations and consulted with representatives of affected parties where relevant during the development of the regulations, as required by the relevant empowering legislation.

*Rights and freedoms contained in the New Zealand Bill of Rights Act 1990 (**BORA**) or the Human Rights Act 1993*

51 The Financial Markets Conduct (Licensing of Administrators of Financial Benchmarks) Amendment Regulations 2020 engage the right to freedom of expression (section 14 of the BORA) where these regulations require a licensee to publish information about its financial benchmarks methodology and provide certain information to the FMA. The requirements to provide information to the FMA may also constitute a search for the purposes of section 21 of the BORA, which affirms the right to be secure against unreasonable search and seizure.

52 I consider these provisions are justified under section 5 of the BORA because:

52.1 the purpose of these provisions are directly linked to the objectives of the new licensing regime for administrators of financial benchmarks, which is to ensure the accuracy, reliability, integrity and continued availability of financial benchmarks to avoid instability or disruption to financial markets;

52.2 the information that is required to be published will promote transparency and ensure users of financial benchmarks have sufficient information to understand how those benchmarks are generated and their intended use. External users, including parties that do not contribute to the generation of the benchmark, use financial benchmarks in a range of financial contracts. This information disclosure is also a requirement under EU benchmark regulations with which New Zealand is seeking equivalence; and

52.3 the information to be made available to the FMA is limited to information that is directly relevant for monitoring compliance with

obligations that ensure the accuracy, reliability, integrity and continued availability of the benchmarks.

Regulations Review Committee

53 There are no grounds for the Regulations Review Committee to draw the regulations and order to the attention of the House of Representatives under Standing Order 327.

Certification by Parliamentary Counsel

54 The regulations and order have been certified by Parliamentary Counsel Office as being in order for submission to Cabinet, subject to:

54.1 the regulations being made on the recommendation of the relevant Minister in accordance with the relevant statutory prerequisites;

54.2 Legal professional privilege .

55 Legal professional privilege

Publicity

56 MBIE intends to notify key affected stakeholders of the approval of these regulations.

Proactive release

57 I intend to release this paper proactively within 30 days. MBIE will publish a copy on its website.

Recommendations

I recommend that the Cabinet Business Committee:

1 note that:

1.1 in August 2018 Cabinet Economic Development Committee agreed to the establishment of a licensing regime for administrators of financial benchmarks under the Financial Markets Conduct Act 2013 (FMC Act) [DEV-18-MIN-0157 refers];

1.2 in June 2019, the Cabinet Economic Development Committee agreed to regulations to support a new financial advice regime and other

changes in the Financial Services Legislation Amendment Act 2019 which comes into force on 15 March 2021 [DEV-19-MIN-0155 refers];

1.3 in July 2020, the Cabinet Economic Development Committee agreed to changes to Financial Markets Authority (FMA) levies to reflect the new financial advice regime and increases to the FMA's funding in 2021/22 and 2022/23 [DEV-20-MIN-0144 refers];

Further policy decisions

2 agree to introduce a licensing fee, set on an hourly basis, being the current FMA hourly rate of $178.25 (plus a $115 application fee, both GST inclusive) for applications for a licence to act as an administrator of a financial benchmark;

3 agree that civil liability, including a maximum pecuniary penalty of $200,000 in the case of individual or $600,000 in any other case, should attach for non-compliance with the licensing conditions for administrators of financial benchmarks described in Annex 1;

4 agree to disapply parts of the Trusts Act 2019 in relation to portfolio investment entity trusts regulated under the FMC Act;

5 agree to the policy matters set out in Annex 2, being matters that are consistent with earlier policy approvals or desirable to provide for an orderly transition into the new financial advice regime;

Regulations

6 note that the following regulations give effect to the decision in paragraphs 1 to 5 above:

6.1 Financial Markets Conduct Amendment Regulations 2020;

6.2 Financial Service Providers (Registration) Regulations 2020;

6.3 Financial Service Providers (Exemptions) Amendment Regulations 2020;

6.4 Financial Markets Authority (Levies) Amendment Regulations (No 2) 2020;

6.5 Financial Markets Conduct (Licensing of Administrators of Financial Benchmarks) Amendment Regulations 2020;

6.6 Financial Markets Conduct (Fees) Amendment Regulations 2020;

6.7 Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act Commencement Order 2020;

6.8 Anti-Money Laundering and Countering Financing of Terrorism (Definitions) Amendment Regulations 2020;

6.9 Electronic Identity Verification Amendment Regulations 2020;

6.10 Fair Trading (Uninvited Direct Sales - Financial Products) Amendment Regulations 2020;

6.11 Non-bank Deposit Takers (Declared-out Entities) Amendment Regulations 2020;

7 authorise the submission to Executive Council of the regulations referred to in paragraph 6;

Statutory prerequisites

8 note that the Minister of Commerce and Consumer Affairs is required to:

8.1 consult the FMA before recommending regulations under the FMC Act;

8.2 for regulations relating to exemptions and exclusions under the FMC Act, have regard to the purposes of that Act and the Trusts Act 2019 and to be satisfied that the exemptions or exclusions are not broader than is reasonably necessary;

8.3 be satisfied that transitional regulations are necessary or desirable for the orderly implementation of the amendment legislation and are consistent with the purposes of the FMC Act or Financial Service Providers (Registration and Dispute Resolution) Act 2008 (FSP Act);

8.4 be satisfied that regulations relating to recognition regimes under the FMC Act are in the public interest having regard to the securities laws of the designated country and the interests of New Zealand investors;

8.5 have regard to the principles in section 308 of the FMC Act for regulation changes relating to financial product markets;

8.6 for exemptions under the FSP Act, have regard to New Zealand's obligations under the international Financial Action Task Force Recommendations and to be satisfied that the costs of compliance with that Act would be unreasonable or not justified by the benefits;

8.7 be satisfied that exemptions under the Fair Trading Act 1986 are not broader than is reasonably necessary and persons or representatives that will be substantially affected have been consulted;

9 note that the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 requires the Minister of Justice to have regard to certain factors and to give representatives of affected parties an opportunity to comment;

10 note that the Non-bank Deposit Takers Act 2013 requires the Minister of Finance to have regard to certain matters after a recommendation is made by the Reserve Bank of New Zealand after certain requirements have been met;

11 note the advice of the Minister of Commerce and Consumer Affairs that the requirement in paragraphs 8.1-8.7 above has been met;

12 note that the Minister of Justice has had regard to the relevant factors and provided an opportunity to comment in accordance with the requirements referred to in paragraph 9;

13 note that the Minister of Finance has had regard to the required matters after a recommendation made by the Reserve Bank in accordance with the requirements referred to in paragraph 10;

Timing

14 note that:

14.1 Regulations 29(2) and 30 of the Financial Markets Conduct Amendment Regulations 2020 will come into force on 18 January 2021;

14.2 Regulation 17 of the Financial Markets Conduct Amendment Regulations 2020 will come into force on 30 January 2021;

14.3 the commencement order will bring the remaining provisions of the Financial Markets (Derivatives Margin and Benchmarking) Reform Amendment Act 2019 into force on 14 March 2021;

14.4 In the Financial Markets Authority (Levies) Amendment Regulations (No 2) 2020, regulations 11-13 and Schedule 2 will come into force on 1 July 2021 and regulations 14-16 and Schedule 3 will come into force on 1 July 2022 to reflect phased increases to FMA levies;

14.5 the rest of the regulations will come into force on 15 March 2021 to coincide with the start of the new financial advice regime.

Authorised for lodgement

Hon Dr David Clark

Minister of Commerce and Consumer Affairs

Appendix 1 – Table of licensing conditions for administrators of financial benchmarks which attach civil liability for breaches (refer paragraph 27)

Clause of regulations	Licence condition
15(2)(a)	Licensee or authorised body must ensure all outsourcing arrangements are in a written contract.
22	Licensee must notify the FMA of a material change to a financial benchmark methodology.
23	Licensee must notify the FMA of a material change to the contributor conduct rules.
24	Licensee must report significant contraventions of Part 2 of the FMC Act (which relates to fair dealing).
25	Licensee must notify the FMA of its intention to cease generation or operation of a financial benchmark.
26(1)	Compliance Records – licensee must create and maintain records, and keep other information or data from contributors.
26(2)	Compliance Records – licensee must keep records, information and data for 7 years.
27	Licensee must give certain compliance records and information or data to FMA on written notice.
31(1) to 31(5)(a)	Assurance Engagement - licensee must obtain an assurance engagement, with a qualified auditor, at 2-yearly intervals, or another interval specified by the FMA, and provide a copy of each assurance report to FMA. The assurance engagement must be done in accordance with applicable auditing and assurance standards.

Appendix 2 – Other matters incorporated into regulations (refer paragraph 33)

Description	Reason for regulation
New financial advice regime	
Retaining records required by current regime Authorised financial advisers and qualifying financial entities required to keep records for seven years under current regime. The regulations provide that those that continue operating in the new regime must retain and see out their obligation to keep records for seven years despite the repeal of the current regime.	Providers may otherwise be able to destroy records upon commencement of new regime. Records necessary to support monitoring and enforcement activities.
Addressing misconduct in current regime after new regime commences The regulations provide that the financial advisers disciplinary committee may consider a complaint made about an authorised financial adviser after the commencement of new financial advice regime where the complaint relates to pre-commencement conduct (or a failure to continue keeping records about pre-commencement conduct). The committee may only impose sanctions available under the current regime.	Necessary to provide a mechanism for addressing breaches of the current regime that only come to light after the start of the new regime.
Details of list of nominated representatives Legislation requires financial advice providers to keep a list "in the prescribed manner" of individual "nominated representatives" that give advice on the provider's behalf. The regulations prescribe that the list must include the names of the representatives, effective dates of nomination and any interposed person.	Necessary for regulations to set out the requirements for the list in order to give effect to the intent of the legislation that a list be kept.
Applying consistent limits to Discretionary Investment Management Services Legislation places limits on the rights of providers of Discretionary Investment Management Services (DIMS) to be indemnified by the client. The regulations provide that the same limits apply when a financial advice provider provides DIMS services on a "contingency" basis, e.g. when a client is incapacitated.	All regulation of DIMS is being moved to the Financial Markets Conduct Act 2013. It is appropriate that equivalent requirements apply.
Minor changes to better reflect policy intent - Change to a cross-reference in disclosure requirements so that financial advice providers are able to refer to their website when disclosing information about their legal duties. - Technical change to licence fee category description so that an entity that engages only 1 financial adviser where the financial adviser is not a director of the entity or the entity has more than 2 directors does not pay the highest licensing fee.	
Other	
Consequential change to disclosure Following the passage of the Taxation (KiwiSaver, Student Loans, and Remedial Matters) Act 2020, disclosure statements for Portfolio Investment Entities (PIEs) need to be updated to reflect changes to tax refundability. The regulations prescribe the correct wording for disclosure.	Necessary to ensure appropriate disclosure is made by PIEs following law changes.