

20th August 2015

New Zealand Shareholders Association Submission on the Review of the Financial Advisers Act Exemption Application – Comingling Client and Broker Funds

Relationship of Submitter

The New Zealand Shareholders Association (NZSA) is the only independent national group that represents the interests of retail investors in the equity markets.

One of our major concerns is the need to engender confidence in the regulation and operation of the New Zealand capital markets. We therefore, take a close interest in the “public good” aspect of legislative changes or amendments of existing legislation as part of our core function.

This submission is written taking into consideration the impact to the prudent but non expert retail investor. We acknowledge that the exemption is peripheral to their main concerns. Our comments are set out in the same sequence as the submission document.

Exception in relation to funds and property being moved into and out of transacting accounts

- 1.** We see no practical solution that would avoid the necessity to utilise a transacting account in circumstances where a time differential or a gate way situation arises.
- 2.** We believe that the conditions proposed are reasonable to address the practical realities of the situation.
- 3.** In regard to the level of risk we have looked at the situation from a “worst outcome” situation. With the proposal that the shortest possible time would elapse and that money and property should remain separately identifiable, we believe that it is unlikely that there would be systemic risk. In our view any failure would likely be limited to one off or a short sequence of transactions which would not materially jeopardise the integrity of the system.
- 4.** We agree that a fundamental redesign is not practicable.

Exemption in relation to maintaining buffers in client accounts.

5. The proposed exemptions appear reasonable.
6. The proposed conditions are appropriate. We would like the FMA to add the condition that random checks may be carried out on market participants who choose to utilise this market exemption.
7. We agree that the risks to customers would remain low.
8. We agree that maintaining buffers reduces the commercial risk to clients, including our members.

Questions relevant to both exemption issues.

9. We support limiting the exemption to NZX Participants. As in our view there is sufficient regulatory oversight to ensure compliance. We would not support any extension to firms which are not subject to a similar level of oversight by New Zealand authorities.
10. To give further comfort to retail clients, we suggest that consideration be given to requiring that participants utilising this exemption hold appropriate insurance cover, to mitigate any possible loss.
11. In the event that an unregulated share market exemption is granted (such as Unlisted) we would assume that the same conditions would apply to market participants in the event that this exemption is granted. We would suggest that for the avoidance of doubt this should be clarified in any exemption notice.
12. We would expect that FMA would consult with a range of institutional investors.

Thank you the opportunity to provide input on this exemption proposal.

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