



Simpson Grierson

Corporate Advisory

SIMPSON GRIERSON

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Raising the Bar - New Rules for Investment Advisers

A number of important changes are about to be made to New Zealand's securities law. On 29 February 2008 the Securities Markets Amendment Act 2006 (**Amendment Act**) will come into force, making far-reaching changes to insider trading laws and changes to the disclosure by substantial security holder disclosure requirements. In addition, the Amendment Act will introduce new market manipulation provisions, a general dealing misconduct provision and new disclosure requirements for investment advisers and investment brokers.

In this, the fourth of a series of publications on the changes to the Securities Markets Act 1988 (**Act**), we consider provisions relating to investment advisers and investment brokers. This publication follows last week's release on the changes to the disclosure of substantial security holdings. Separate publications have been released to address other changes to the Act.

Overview of New Regime

From 29 February 2008, investment advisers and investment brokers must make certain disclosures to their clients before they give investment advice or provide services as an investment broker. Previously disclosure was only required on request, unless prior bankruptcy or criminal offences were being disclosed. The new rules

are intended to increase client awareness about their investment advisers and brokers. Particular focus will be on the fees, commissions and other remuneration that the adviser or broker will receive. There are severe penalties for breach of the new rules.

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Businesses will need to consider the various roles within their respective organisations and assess which members of staff are investment advisers or investment brokers, and prepare disclosure statements accordingly. Disclosure statements, if required, must be kept up-to-date and must not be deceptive, misleading or confusing. Investment advisers should therefore adopt procedures to ensure their disclosure statements are regularly reviewed for accuracy and updated.

Who is Affected?

Any person who is an investment adviser and/or an investment broker, and any member of the public to whom they provide services, will be affected by the new regime. One person can be both an adviser and a broker.

Investment advice includes any recommendation, opinion, or guidance about investing in securities, given to a member of the public. The Securities Commission has stated that investment advice will include suggesting that a particular investment would be a good investment

to make, that a particular investment would not be a good idea, or how an investment might suit a particular investor or a particular type of investor.

Certain information will not constitute investment advice:

- opinions published in the media if the writer's main job is journalism;
- guidance on the procedure for acquiring or disposing of securities; and
- offer documents (a registered prospectus or investment statement) and authorised advertisements (being documents governed by the Securities Act 1978).

An investment adviser is a person who, in the course of the person's business or employment, gives investment advice about securities to a member of the public. If a person gives investment advice during the course of their employment, both the employer and employee will be investment advisers.

Persons who only transmit investment advice about particular securities given by an issuer or promoter of those securities are not investment advisers. Also exempt is an issuer (or promoter) of securities to which the investment advice relates. However an employee or agent of (or person otherwise associated with) that issuer will be an investment adviser if that person gives investment advice about the issuer's securities to a member of the public.

For example, if a ListCo Limited employee, in talking to a prospective investor in ListCo's securities, simply reads relevant information provided by ListCo, the employee will not be providing investment advice. If the ListCo employee goes beyond those prepared statements and recommends that the investor buy (or sell) ListCo shares, the employee will be giving investment advice and so be an investment adviser.

An investment broker is a person (including a company) who receives investment money or investment property from members of the public as part of their job or business. Investment money is any money received from a member of the public in relation to buying or selling securities. Investment property is any property received

for the same purpose.

Disclosure Requirements

Disclosure, if required, must be made in a disclosure statement. A client cannot waive their right to receive the disclosure statement.

Disclosures required in an investment adviser's disclosure statement include:

- information regarding the adviser's qualifications;
- a brief description of their experience as an investment adviser;
- details of criminal convictions of certain types, bankruptcy, management bans or expulsion from professional bodies;

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- the nature and level of fees the adviser will charge in relation to the securities in question (or a formula if a fixed amount is not known);
- types of securities on which the adviser provides advice;
- the nature and extent of any interest or relationship the adviser has which is reasonably likely to influence the advice given.

The "interests or relationship" disclosure requirement will include all remuneration which the adviser will or may receive, directly or indirectly, in connection with the giving of the investment advice or a transaction resulting from the giving of the advice. This will include fees or advantage, whether or not financial, but will not include fixed salary or wages.

An adviser who gives general advice about many types of securities does not have to provide a list of the fees and remuneration for each of the products that are discussed. However, when the advice becomes specific to a particular product or products, then fees and remuneration for those products must be disclosed at that point.

Investment brokers must disclose prior criminal convictions of certain types, bankruptcy and disciplinary

proceedings and the broker's procedures for dealing with investment money and investment property.

The disclosure statement must be provided before the giving of investment advice to a member of the public, or before a broker receives investment money or investment property. Disclosure statements can be sent by email to an address specified by the client. It will not be sufficient to place disclosure statements on a website or some other place where the member of the public may have access to it.

Further Developments

Building on the principles of the new regime, the government has now introduced to Parliament the Financial Advisers Bill and the Financial Service Providers

(Registration and Dispute Resolution) Bill. These Bills, which are expected to pass into law later this year, will carry forward and extend the above disclosure requirements and introduce a comprehensive co-regulatory regime for financial advisers. We will be releasing a further FYI on these Bills shortly.

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