

Financial Intermediaries

Financial Intermediary Reform

In a cabinet paper released on 20 December 2006, the Minister of Commerce sought agreement to the development of regulations under the Securities Markets Act 1988 and the Securities Act 1978. Amongst other things, these regulations will provide some further detail for the new compulsory upfront disclosure requirements that investment advisers are to become subject to later in the year.

At the time of going to print, details of the draft regulations had not become publicly available. From the cabinet paper, however, we can expect to see regulations:

- providing relief from upfront disclosure where investment advice is given over the phone, provided written disclosure is provided within five working days;
- requiring precise details of adviser remuneration to be provided after initial advice has been given and once actual proposed investments have been confirmed, but before the client is committed to invest;
- requiring information disclosed to be clear, concise and effective, with prescribed format, style and headings;
- confirming advice about fixed term deposits with a bank fall outside the disclosure requirements;
- exempting lawyers and chartered accountants from disclosure requirements where investment advice provided is incidental to and necessary for their usual professional advice; and
- recognising Chinese walls.

The compliance bar for investment adviser and investment broker disclosure obligations has been raised with the passage of the Securities Markets Act and the pending replacement of the Investment Advisers (Disclosure) Act. And it's not just the shift to single-tier, up-front disclosure that will present challenges.

Whilst advisers have always been subject to Fair Trading Act-type constraints on conduct, the new rules around advertising represent a significant shift in focus with specific, targeted offences created.

Penalties have also been "enhanced". An extra "0" has been added to the quantum of potential penalties for disclosure offences – moving from a maximum

\$10,000 penalty for individuals to \$100,000, and \$30,000 to \$300,000 for corporates.

The Securities Commission and the courts will also have a variety of non-pecuniary remedies at their disposal, with the power to impose disclosure orders, corrective orders, prohibition orders and banning orders. Get things badly wrong, and you could be effectively banned from the industry for up to 10 years.

Much is expected to become clear over the next quarter. If you would like assistance with transitioning to the new disclosure regime, please give David Ireland a call on (04) 498 0840 or email us at financiallawupdate@kensingtonswan.com.

Need Help?

If you have any questions, or would like our assistance with anything, please contact your usual Kensington Swan adviser or any of the following:

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