



FINANCIAL SERVICES FEDERATION

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Uninvited direct sales – potential exemptions for certain sales of financial products

Introduction

Thank you for the opportunity for the Financial Services Federation (“FSF”) to respond to the document recently released on uninvited direct sales – potential exemptions for certain sales of financial products.

By way of background, the FSF is the industry body for the responsible and ethical finance and leasing providers of New Zealand. We have over forty members and associates providing financing, investment, banking and insurance services to over 1 million New Zealanders. Our affiliate members include internationally recognised legal and consulting partners. A list of our members is attached as Appendix A.

Questions for consultation

1. Our preliminary view is that it may be reasonably necessary to provide exemptions from the FTA UDS provisions for sales of financial products in the following circumstances which are already subject to an exemption under section 34(2) of the FMC Act:

- where the offer is to “wholesale investors” who are experienced, closely connected to the issuer, or were considered in the FMC Act context to not need protections from pressure selling (section 34(2)(a), but only in relation to offers that do not require disclosure because of an exclusion under clauses 3 to 5 of schedule 1 of the FMC Act)
- where the financial product offer is made through an authorised financial adviser or “QFE adviser” (section 34(2)(b))
- where the offer is of financial products quoted on the NZX or another market and the offer is made through a person who is permitted under the Financial Advisers Act to give advice on that offer (section 34(2)(c))

Do you agree that applying the UDS provisions to the sale of financial products in the above circumstances raises a problem? Explain the problem including (if applicable):

- a) any examples applicable to your business;
- b) an estimate of the volume of sales of financial products made under the above circumstances through uninvited direct selling;
- c) how selling practices are likely to change if an exemption is not provided, and the costs and detriment to businesses and consumers of such changes in practice.

The FSF members to whom these issues are principally relevant are those members that are non-bank deposit takers (“NBDTs”) who offer debt securities to the public. While the FSF is not aware of any of its NBDT members selling their financial products in ways that might attract the application of the uninvited direct sales provisions of the Fair Trading Act (the “UDS provisions”), the FSF does agree that applying the UDS provisions to the sale of financial products in the above circumstances would be inappropriate, and that an exemption would accordingly be a sensible response.

The reality is that the UDS provisions were drafted and enacted with a view to addressing the pressure selling of products such as vacuum cleaners sold door to door, and not with a view to addressing the marketing of financial products. The marketing of financial products has instead only just been addressed by a thorough review resulting in legislation targeted at financial products (i.e. – the FMC Act) and if as a matter of policy it has been decided that exemption from parts of the targeted regime resulting from the FMC Act

are warranted in the circumstances specified in section 34(2) of the FMC Act, then the same policy should also result in them being exempt from the UDS provisions which were not targeted at financial products in the first place.

2. Is an exemption under section 36S required to address the problem or is there another way to address the problem?

The FSF considers an exemption would be the best response to any perceived problem in this context. It cannot think of any other way of achieving the desired outcome as effectively as an exemption would.

3. Are there any other circumstances where you consider the sale of financial products should be exempt from the UDS provisions? (Bear in mind that the regulation-making power under section 36S is limited to offers of financial products that are exempt under the section 34(2) of the FMC Act.) If so, please explain the problem that would arise if an exemption is not made, including the details set out in question 1.a. – 1.c.

The FSF is not aware of any other circumstances where it might be considered that the sale of financial products should be exempt from the UDS provisions. It is relevant to note that most FSF NBDT members who offer debt securities to the public are also QFEs under the Financial Advisers Act, so that their relevant sales staff are QFE advisers within section 34(2)(b) of the FMC Act, so that this question would not arise for them if the exemption from the UDS provisions had the same scope as section 34(2) of the FMC Act.

4. Will consumers be adequately protected against the risks of pressure selling if exemptions from the UDS provisions are provided?

The FSF considers that the question is not so much whether consumers will be adequately protected against pressure selling if exemptions are given from the UDS provisions, but rather whether there might otherwise be any such risks that consumers need to be protected against. The FSF has already noted above that it is not aware of any of its members selling their financial products in ways that might be called “pressure selling”, and thinks that it is unlikely that NBDT debt securities might in future be sold that way by FSF members.

Even if the FSF were wrong about that, the Financial Advisers Act already provides a regime for what is effectively “consumer protection” in the context of financial products, and since it came into force the FSF is aware of nothing to suggest that Act might not already adequately protect consumer investors in this context.

5. We consider that it may be appropriate for any exemption to be subject to the condition that the supplier gives the consumer oral notice, before the sale agreement is entered into that the UDS provisions do not apply (in the same way that credit contracts are treated under the UDS provisions). Do you agree? What other terms and conditions should any exemptions be subject to in order to ensure that consumers are protected against the risks of pressure selling.

The FSF would have no objection to any exemption being subject to a condition that the supplier gives the consumer oral notice that the UDS provisions do not apply, but does have some doubt as to the need for, or utility of, such oral notices (in that many consumers will not be familiar with the UDS provisions to begin with, so oral notice may mean little to them).

If you have any questions, or if I can be of any further assistance, please do not hesitate to contact me.



Lyn McMorran
EXECUTIVE DIRECTOR

A National Federation of Financial Institutions

Membership List as at 1 May 2014

Debt Issuers - (NBDT) Non-Bank Deposit Takers	Vehicle Lenders	Finance Company Diversified Lenders	Credit Reporting	Insurance	Affiliate Members
<p><u>Rated</u></p> <ul style="list-style-type: none"> • Asset Finance (B) • Avanti Finance (BB) • Fisher & Paykel Finance (BB+) • Medical Securities (A-) <p><u>Non-Rated</u></p> <ul style="list-style-type: none"> • Mutual Credit Finance • Prometheus Finance 	<ul style="list-style-type: none"> • BMW Financial Services • Branded Financial Services • Community Financial Services Limited • European Financial Services • Fleet Partners NZ Ltd • Mercedes-Benz Financial Services • Motor Trade Finances • Nissan Financial Services NZ Pty Ltd • ORIX NZ • SG Fleet • Toyota Finance NZ • Yamaha Motor Finance 	<ul style="list-style-type: none"> • Centracorp Finance 2000 • Dorchester Finance • Finance Now • Future Finance • GE Capital • Instant Finance • John Deere Financial • Oxford Finance Ltd • Rent Plus • DTR Thorn Rentals 	<ul style="list-style-type: none"> • VEDA Advantage <p><u>Debt Collection Agencies</u></p> <ul style="list-style-type: none"> • Baycorp (NZ) 	<ul style="list-style-type: none"> • Autosure • Protecta Insurance • Provident Insurance Corporation Ltd <p><u>Associate Members</u></p> <ul style="list-style-type: none"> • Southsure Assurance 	<ul style="list-style-type: none"> • American Express International (NZ) Ltd • Buddle Findlay • Chapman Tripp • Deloitte • Ernst & Young • PriceWaterhouseCoopers • Russell McVeagh • SimpsonWestern • Visa Worldwide(NZ) Ltd