

7 November 2019

Financial Markets Policy
Building, Resources and Markets
Ministry of Business, Innovation & Employment
PO Box 1473
Wellington 6140
New Zealand

Dear Sir / Madam

Financial Markets Conduct (Regulated Financial Advice Disclosure) Amendment Regulations 2019

Thank you for the opportunity to comment on the draft regulations and provide feedback.

We welcome the draft regulations and believe they will be a useful step in establishing what is required from financial advisors under the new regulatory regime.

Overall the regulations have been well drafted and are for the most part clear and easy to follow. However, we believe that there are some areas in which clarity could be improved. We comment on each of these in more detail below.

Policy intention

The cabinet paper¹ sets out the objectives for the proposals (paragraph 14). They are to:

- Provide consumers with the key information they need
- Provide consumers with the right information at the right time

¹ Kris Faafoi, Minister of Commerce and Consumer Affairs, June 2019

- Provide information in a way that is accessible for consumers
- Provide consumers with effective disclosure, regardless of the channel used; and
- Not impose unnecessary compliance costs on the industry

Paragraph 15 notes that “Large volumes of information can be difficult for consumers to interpret...”. We agree.

In our view, as much information as possible should be placed on the financial advice provider’s website, with information provided to the client signalling what information is on the website, where to find it and how it may be relevant to them.

Some consumers may wish to read the advice and then go back to the financial advice provider with questions regarding the information given. We believe it is most important that the financial advice provider be available to answer any relevant or reasonable questions regarding the information.

The regulations as drafted also require some information to be provided to the financial advice client multiple times. Again, this seems contrary to the aims of the regulations. We suggest each type of information be provided only once in the process and a summary be provided at subsequent steps, along with information about where to find the full detail of the disclosure.

Clarity

In our view, the most important information to provide to a financial advice client is:

- How much the financial advisor is charging the client;
- How much commission the financial advice provider will receive for the sale; and
- Whether the financial advice provider would receive more commission for another broadly comparable product.

Other information should be provided in a summary for the client, with further information available on the financial advice provider’s website.

Summary of licensing status of the provider

This could be made clearer by allowing the FMA to suggest some standard wording.

Verbal disclosure

The regulations should clarify the requirements for a verbally provided disclosure. Are the parties entitled to rely on a verbal disclosure, or only a subsequent written disclosure? If the verbal disclosure is sufficient, how is a copy to be provided to the consumer? Should the financial advisor make a recording of the disclosure as it is given to the client? This should be specified.

Practicality

Timing

Some of the draft regulations will not be practical in all situations. For example, not all client interactions with a financial advisor go through a six step advice process. In some situations, the client may ask a financial advisor to advise on something not previously in scope; or may introduce a family member to the advisor for the express purpose of advising on one particular area or product, with other areas being out of scope. Sometimes only one meeting is necessary for both the advisor and client to agree on a product and make a sale.

We suggest that the regulations are modified to allow for this in some way. A practical mechanism may be needed to allow for the disclosures to be provided during the process.

Provision of hard copies

Most in the industry are moving away from providing hard copies of disclosures and this is acknowledged in the draft regulations. In our view hard copies should be offered by exception only. We suggest that financial advisors be required to include a downloadable and printable pdf on their website. This should minimise the number of requests for hard copies.

Summary of fees and expenses

We agree that information about fees and expenses should be provided to financial advice clients.

These will be of particular importance:

- How much the financial advisor is charging the client;
- How much commission they are receiving; and
- Whether they would receive more commission for another broadly comparable product.

Providing information on all fees could be complex. For example, some Financial Advice Providers may offer products from 20 different entities. Each entity may have 30 different products. Each product may offer a range of commission structures. That is a lot of information. The volume and complexity is likely to be confusing for consumers.

We recommend that the full information is included on the financial advisor's website but is not provided to the client unless requested. In our view, the financial advisor should provide only what they will be charging for the recommended products, what they will receive in commission from those products and how this compares to commission they would receive for a comparable product. These should be dollar amounts (rather than percentages). They should also be required to disclose whether they are receiving any other incentives to sell the product.

In terms of what constitutes a "comparable product" this is a phrase that could be open to interpretation. We believe Government should stipulate clearly what would constitute a comparable product. We acknowledge that this would need some work and we would be happy to discuss this further with you.

In addition, some general information could be included on the FMA website – such as the operation of the disclosure regime and the different types of commissions that may be payable – which the Financial Advice Provider could link to from their own site.

We recommend the fee information provided to the client be limited to a two page word document.

We would be happy to discuss our submission further with you. Please contact Jolayne Trim

Yours faithfully



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