Financial Services Council.
Growing and protecting the wealth of New Zealanders

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Submission: Disclosure requirements in the new financial advice regime

This submission on the exposure draft for the Financial Markets Conduct (Regulated Financial Advice Disclosure) Amendment Regulations 2019 is from the Financial Services Council of New Zealand Incorporated (FSC).

The FSC is a non-profit member organisation and the voice of the financial services sector in New Zealand. Our 50 members comprise 95% of the life insurance market in New Zealand, and manage funds of more than $47.5bn. Members include the major insurers in life, disability and income insurance, fund managers, KiwiSaver, professional services and technology providers to the financial services sector.

Our submission has been developed through consultation with FSC members, and represents the views of our members and our industry. We acknowledge the time and input of our members in contributing to this submission.

The FSC's guiding vision is to be the voice of New Zealand's financial services industry and we strongly support initiatives that are designed to deliver:
- strong and sustainable customer outcomes
- sustainability of the financial services sector
- increasing professionalism and trust of the industry.

We welcome the opportunity to provide feedback on the draft regulations, on whether they achieve the policy intent, and on how workable they are in practice for our members.

We support the high-level intent to make advice disclosure more effective and flexible. In many respects the draft regulations achieve this. However, in our members' view, more could be done to focus on the core, customer-centric purpose: how to achieve meaningful customer understanding of key aspects of the advice and of the person giving the advice. In particular:

- More explicit consideration is required in respect of how the prescribed disclosures work for "one-step" interactions (eg a mortgage application) because these are a fundamental part of ensuring the availability of quality advice for all New Zealanders. While there may already be sufficient flexibility in the technical detail of the drafting, direct confirmation would assist greatly (even if by example or by a statement of purpose) to ensure that:
    - advice conversations are not artificially interrupted at multiple points so that different layers of prescribed disclosure may be given
    - identical information is not repeated in a single conversation, simply to prove that each stage of disclosure has been complied with

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  - out of caution, FAPs do not feel compelled to produce full, personalised disclosure documents for every nominated representative, even when – aside from name and contact details – the content is generic for all members of the advice team.

- We note that the regime aims to remove arbitrary differences between the regulation of financial advisers and nominated representatives (and other advice giving mechanisms). However, in the case of nominated representatives, there are often situations where the client thinks they are dealing primarily with the FAP and not the individual representing the FAP. We acknowledge that this is already recognised in subtle ways in the draft regulations, for example in excluding NRs from the bankruptcy disclosure (clause 3(1)(d)) – which we fully support. However, it would assist if there were also a broader purposive provision in relation to disclosure of an NR's personal information that allowed for summary or abbreviated disclosures where a reasonable client would expect to be dealing with the FAP rather than the individual NR.
- A more dynamic use of publicly available information is possible. We understand the difference between information that customers need to go and find ("pull") from the website, and information that is actively provided to them ("push"). We agree there is a role for both. However, overwhelming clients with pushed information – especially in "one-step" advice situations or those not carried out face-to-face by a human adviser – is contrary to the overall objectives of the advice regime. There should be scope for certain aspects of "pushed" disclosure (eg info about duties, licence, complaints process) to be provided in summary (using text, video, or audio etc) – "soft push" – with the client then being referred to the website for more detail if they require it.
- Adviser remuneration flexibility is fundamental to ensuring that clients in a wide range of circumstances can afford to get financial advice – which is a key objective of the regime. We recommend that the regulations use language recognising that commissions are a type of remuneration, rather than classifying them only as a conflict of interest.
- There are significant system changes to be made to give effect to these regulations, especially the personalisation to an individual client's advice situation. We would be happy to provide further input on transition time requirements once we understand your response to the matters suggested above. In that regard, we note that while there may be scope to phase transition – with some disclosure requirements taking effect sooner than others – multiple effective dates could make implementation costly, time-consuming and confusing for customers.

Our responses to the consultation questions are attached.

I can be contacted on [redacted] to discuss any element of our submission.

Yours sincerely

Richard Klipin
Chief Executive Officer

Submission on discussion document: *Exposure draft: Financial Markets Conduct (Regulated Financial Advice Disclosure) Amendment Regulations 2019*

Your name and organisation

Name	Richard Klipin
Organisation	Financial Services Council

Responses to discussion document questions

1	Will the proposed record-keeping requirement be workable in practice?
	To ensure the availability of advice is not impeded, especially in high-volume situations, the regulation should clarify that a record of prescribed information being given to a client: • may rely generically on centralised master records of disclosures and on settings for apps and online tools • need not be a facsimile of the precise document that was given to the client, or a detailed transcript, provided the key content is clear • may be a hard copy or an electronic (eg text or audio/visual recording) copy, where the actual disclosure was not made in writing (for example disclosures made by video, app, or orally). The disclosure regulations and the FMA's standard conditions should be consistent, for example on which entity has the recording keeping obligation when an authorised body is involved. It may help if the purpose of the record-keeping condition is specified in the regulation.
2	Do you have any comments on the drafting of the Regulations that will require information to be made publicly available?
	Noting that "nature and scope" is used at different disclosure stages, we recommend that specific terminology be used to distinguish between the aspects of nature and scope considered at those stages, for example using "scope of financial advice services" for the publicly available information and the "scope of advice being given" for the initial information for the actual client.
3	Do you have any comments on the draft Regulations that will require the disclosure of information when the nature and scope of the advice is known?
	In clause 5(2)(f): • It is not clear whether comparative disclosure is required in respect of all the product options being considered or only the product that is likely to be recommended. The former approach may incentivise advisers not to consider a wide range of products so that disclosures are not so lenthy and complicated. It would assist to have a provision similar to the approach taken in clause 4(2), allowing a general statement to be made

about the range of possible commissions.

- In 5(2)(f)(iv) insert after "have" the word "been" to align with 4(1)(j)(ii) and 6(1)(f).

4	Do you have any comments on the draft Regulations that will require the disclosure of information when the financial advice is given?

In clause 6(1)(f):

- the first line should read "if any commission" not "commissions"
- sub (iii) should end "; and"
- sub (iv) is a repetition of sub (i) and should be deleted.

In place of the requirements in clauses 6(1)(g) to (i), we suggest that the client be provided (at most) with a brief explanation that there are complaints and independent dispute resolution processes, and that full details can be found in the publicly available information. This is likely to be more meaningful and less confusing to clients at that stage of the process. We note that the Cabinet Paper policy decision envisages this info being provided on the website and when receiving the complaint, not when the advice is given.

As noted in our covering letter:

- More explicit consideration is required in respect of how the prescribed disclosures work for "one-step" advice interactions because these are a fundamental part of ensuring the availability of quality advice for all New Zealanders. While there may already be sufficient flexibility in the technical detail of the drafting, direct confirmation would assist greatly (even if by example or by a statement of purpose) to ensure that:
    - advice conversations are not artificially interrupted at multiple points so that different layers of prescribed disclosure may be given
    - identical information is not repeated in a single conversation, simply to prove that each stage of disclosure has been complied with
    - out of caution, FAPs do not feel compelled to produce full, personalised disclosure documents for every nominated representative, even when – aside from name and contact details – the content is generic for all members of the advice team.
- We note that the regime aims to remove arbitrary differences between the regulation of financial advisers and nominated representatives (and other advice giving mechanisms). However, in the case of nominated representatives, there are often situations where the client thinks they are dealing primarily with the FAP and not the individual representing the FAP. We acknowledge that this is already recognised in subtle ways in the draft regulations, for example in excluding NRs from the bankruptcy disclosure (clause 3(1)(d)) – which we fully support. However, it would assist if there were also a broader purposive provision in relation to disclosure of an NR's personal information that allowed for summary or abbreviated disclosures where a reasonable client would expect to be dealing with the FAP rather than the individual NR.
- A more dynamic use of publicly available information is possible. We understand the difference between information that customers need to go and find ("pull") from the website, and information that is actively provided to them ("push"). We agree there is a role for both. However, overwhelming clients with pushed information –

	especially in "one-step" advice situations or those not carried out face-to-face by a human adviser – is contrary to the overall objectives of the advice regime. There should be scope for certain aspects of "pushed" disclosure (eg info about duties, licence, complaints process) to be provided in summary (using text, video, or audio etc) – "soft push" – with the client then being referred to the website for more detail if they require it.
5	Do you have any comments on the draft Regulations that will require the disclosure of a provider's complaints handling and dispute resolution processes when a complaint is received?
	Reg 229F(3)(b) should be worded less broadly, for example by referring to "a failure to provide a financial advice service". (Please use the phrase "financial advice" was used so that it is abundantly clear that other types of advice are not caught.) We recommend that a complaint resolved at first point of contact should not trigger the disclosure obligation because to do so risks confusing a client who thinks the problem is solved. The FAP might well still record it as a complaint, but the disclosure should not be necessary.
6	Do you have any comments on the draft Regulations that set the manner in which information must be disclosed?
	We are concerned that the prescribed "4 times" for giving information could interrupt and confuse the flow of single-interaction advice situations. Our members want to ensure that complying with the prescribed disclosures does not detract from delivering good customer outcomes, including giving easy-to-understand and meaningful advice. For the avoidance of doubt, the regulations should clarify – in addition to regs229D(7) and 229E(5) – that: • information does not need to be provided multiple times in the same advice interaction (eg phone call) if it has already been provided – particularly in respect of initial information being repeated to satisfy a requirement for additional information • disclosures may be combined (eg initial/additional information or disclosures in respect of advice on alternative financial products) and do not need to be described as "Disclosure Statement" or "Initial Disclosure Statement" etc • reliance may be placed on publicly available information, provided the FAP can show that the client's attention has been drawn to specific publicly available information, for example the client has been informed that there is important information (about duties / complaints processs etc) which is available, free of charge, as a hard copy or an electronic copy, on request [reg229C(5)(a)]. Further, please consider providing a process for single-interaction advice situations that enables all the initial and additional information to be given by the end of the interaction, provided that the transaction that is the subject of the advice is not authorised by the client until after all the information is provided. A working example would be helpful here.
7	Are there instances in your business when regulation 229D might apply to someone who is not the one to give advice to the client? Please give examples and provide any comments on how the draft Regulations apply in such scenarios.

8	Do you have any further comments on new regulation 229A to 229H of the draft Regulations?
9	Do you have any further comments on new Schedule 21A in the draft Regulations?
	As noted in our covering letter, adviser remuneration flexibility is fundamental to ensuring that clients in a wide range of circumstances can afford to get financial advice – which is a key objective of the regime. We recommend that the regulations use language recognising that commissions are a type of remuneration, rather than classifying them only as a conflict of interest.
10	What (if any) transitional provisions should be included in the regulations?
	There are significant system changes to be made to give effect to these regulations, especially the personalisation to an individual client's advice situation. We would be happy to provide further input on transition time requirements once we understand your response to the matters suggested in this submission. In that regard, we note that while there may be scope to phase transition – with some disclosure requirements taking effect sooner than others – multiple effective dates could make implementation costly, time-consuming and confusing for customers. Because of the short lead-time between the finalisation of these regulations (when systems development requirements can be confirmed) and the regime start date, transitional provisions are needed for disclosure (and associated record-keeping), particularly in respect of: • clauses 5 and 6 generally • personalised NR disclosures in high-volume, "one-step" advice scenarios. Transitional relief could be granted on condition that disclosures equivalent to the outgoing FAA legislation (relevant to the particular advice type) were made in their place. In addition, FMA should have the power to provide exemptions from any disclosure requirements on a case-by-case basis.