

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

Your name and organisation

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Responses to discussion document questions

1	<p>Will the proposed record-keeping requirement be workable in practice?</p> <p>Yes.</p>
2	<p>Do you have any comments on the drafting of the Regulations that will require information to be made publicly available?</p> <p>There are two potential issues that we can see.</p> <ul style="list-style-type: none">- Publicly available information may need to be held at adviser level rather than at FAP level.- As a result of this information on adviser business websites would need to be held under a tab about the advisers in the business rather than on the homepage. We are not sure if this would meet the requirements of 229C (5)(b). <p>Example</p> <p>A financial advice provider could have multiple financial advisers working under the FAP. Whilst the FAP business could show on its website as giving advice on say insurance and mortgages, individual advisers may specialise in one of these only. Or an individual adviser may not hold accreditation with one of the lenders on the FAP's panel of lenders. Therefore there will need to be disclosure at the individual adviser level as well as at the FAP level. We don't see any problem with this but it will be 2 clicks away from the homepage on an adviser business website (potentially under the About Us tab).</p>
3	<p>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?</p> <p>A brief explanation on limitations or restrictions on the nature and scope of advice is required. Presumably this is within the specialist area that the advice will be given (Schedule 21A 5(1)(f)). For example does a mortgage adviser need to state that they do not give insurance advice? Or is the requirement only to disclose lenders they are not able to deal with?</p> <p>Perhaps the disclosure should be around what the client may reasonably expect to receive from the adviser that is not available. For example an adviser business website might show that they offer mortgage and insurance advice, however advisers within the business might</p>

specialise in one or the other. The client might reasonably expect that an adviser would give advice on both mortgages and insurance, so each adviser within the business would need to disclose in what area they offered advice, and in what area they didn't.

4

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

Existing business models may be compromised if the adviser providing the advice is on a salary, and commission is payable to their employer FAP. The adviser may not know the commission their employer receives.

Business models may change in future where an insurer or lender may pay an adviser business a "business allowance" for servicing and adding to a book of business. Perhaps the regulations need to accommodate other forms of remuneration should the commission model undergo changes.

An adviser can receive a referral fee for referring a client for example to a KiwiSaver provider. Referral fees are not specifically mentioned in the draft regulations but presumably come under "other incentives" with the same disclosure requirements as commission.

Information given previously does not need to be disclosed again, unless something has changed. If for example the complaints process is continually available on an adviser's website, and updates made to this, does the fact that it is always available mean that changes don't have to be disclosed if the changes occur during the advice process?

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?

No.

6

Do you have any comments on the draft Regulations that set the manner in which information must be disclosed?

No

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.

This could occur when an adviser might refer the client to another adviser or provider. For example we have referral arrangements with Tower (for fire & general insurance).

It could also occur if one adviser commences the advice and provides initial information under 229D, then realises it is more complex and outside their level of competence so refers the client to a more competent adviser. Or perhaps an adviser becomes ill during the advice process meaning another adviser takes over. In these cases we would expect the adviser taking over to meet disclosure requirements under 229D.

8 Do you have any further comments on new regulation 229A to 229H of the draft Regulations?

Allowing disclosure at different stages of the advice process makes sense. However advisers may choose to make full disclosure at each stage of the process to avoid the risk of non disclosure of any changes that may have occurred. This would result in repetitive information being given to the client.

9 Do you have any further comments on new Schedule 21A in the draft Regulations?

No

10 What (if any) transitional provisions should be included in the regulations?

We envisage the publicly available information being available on adviser websites. Some advisers may not have existing websites, and some existing websites will require modification. Depending on when the draft regulations become law, some grace period may be required for advisers to update websites (as they will likely have to use an IT resource).