SIA | SECURITIES INDUSTRY ASSOCIATION

Friday 15 November 2019

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

Sent by E-mail: ***faareview@mbie.govt.nz***

Dear Madam or Sir,

Securities Industry Association submission: Exposure Draft: Financial Markets Conduct (Regulated Financial Advice Disclosure) Amendment Regulations 2019

The Securities Industry Association (**SIA**) wishes to thank the Ministry for Business, Innovation and Employment (**MBIE**) for the opportunity to provide feedback on the 'Financial Markets Conduct (Regulated Financial Advice Disclosure) Amendment Regulations 2019' consultation document (October 2019). Please find our submission attached.

SIA represents the shared interests of sharebroking, wealth management and investment banking firms that are accredited NZX Market Participants.

SIA members employ more than 500 accredited NZX Advisers, NZDX Advisers and NZX Derivatives Advisers, and more than 400 Authorised Financial Advisers nationwide. The combined businesses of our members work with over 300,000 New Zealand retail investors with total investment assets exceeding $80 billion, including $40 billion held in custodial accounts. Members also work with local and global institutions that invest in New Zealand.

No part of this submission is required to be kept confidential. Note, some SIA member firms may make an individual firm submission based on issues specific to the business of their firm. Those issues and views may not be reflected in this submission.

If you have any questions about this submission or require further information, in the first instance, please contact:

Bridget MacDonald, Executive Director, SIA.

Yours faithfully

Nick Hegan
Chairperson

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

Name	Bridget MacDonald, Executive Director
Organisation	Securities Industry Association (**SIA**)

Responses to discussion document questions

1 Will the proposed record-keeping requirement be workable in practice?

1. The Securities Industry Association (**SIA**) supports the need for best-practice record-keeping.

Consistent and aligned record-keeping requirements

2. SIA believes it is essential that the record-keeping requirements are consistent and aligned with those in the Financial Market Authority's (**FMA**) standard conditions for record-keeping, once finalised. It is not practicable to have inconsistencies across these requirements.

Transition period

3. The proposed requirements will require NZX firms to undertake system changes to disclosure processes and to keep records to the required standards. This will be a significant financial and time investment in resources, both in people, infrastructure and systems, particularly for larger firms or firms where no similar processes or systems exist. SIA supports the notion of a transition period to enable a smooth transition to the new regime. Please refer to our comments in response to Question 10.

Administration

4. Record-keeping requirements could present an issue from an evidencing perspective in scenarios where disclosure is made via hard copy or verbally rather than electronic format. It would be useful to have clear guidelines on what demonstrates that these requirements are being met.

5. We have concerns that increased disclosure requirements such as these, could create a substantial administrative burden on firms in order to demonstrate compliance with the requirements.

2 Do you have any comments on the drafting of the Regulations that will require information to be made publicly available?

6. We understand that the intention[i] of the new regime is to improve consumer understanding through disclosure and client-care and to introduce more meaningful disclosure requirements to improve consumer understanding and transparency.

7. SIA notes that the summary of information to be made publicly available could potentially be duplicative if the information is already on a firm's website.

8. It would be useful to have it clarified that disclosure is not limited to being delivered in hard, electronic or online formats, and that verbal disclosure is appropriate in some circumstances and will be acceptable in the context of firms making the other formats

freely available and accessible to customers.

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?

9. The sequencing of events is important for Regulation 229D(1)(b), where the requirement to disclose when the Financial Advice Provider (**FAP**) has reasonable grounds to conclude that advice will be given to the client. SIA interprets this as applying after the client has completed the account opening process. Although the FAP may prior to that time believe that it is possible that advice will be given, there is always a chance that the client will not complete the onboarding process, which can be time-consuming for some client types. From a risk perspective, it is not feasible to make disclosures (or give advice) until the client has committed to opening an account.

Disclosure in a 'class' advice situation

10. Regulation 229D relates to disclosure to be given when the general nature and scope of the advice that a client is seeking is known. However, in practice, some advisers would provide 'class' advice of some description (for example, examples of recommended portfolios) in the pitching or business development process. It is not typical for a scope of service to be agreed at this time.

11. Firms also offer public and client presentations, which can be considered as giving 'class' advice. It is in the public interest to increase financial and market literacy amongst the public. However, a requirement to provide and record disclosures in a public presentation situation would be challenging, particularly if the disclosure given at the time advice is given must be given in hard copy or electronically. SIA believes that the regulations need to be flexible and make it more apparent that verbal disclosure in these circumstances is sufficient.

12. Similarly, this should apply for when Research Analysts (both in-house and external) are presenting to clients in a similar environment.

13. There is also a risk of over-disclosure to clients, who may seek advice in different formats and forums. For example, a client may have agreed to a personalised scope of service for an investment plan, however, it would be cumbersome for the FAP to give an additional disclosure for every 'class' advice presentation by a Research Analyst that a client attends at the invitation of their Adviser. We suggest that an initial disclosure should be able to accommodate one or more advisers to remove the burden of receiving multiple disclosures.

INITIAL INFORMATION TO BE GIVEN WHEN NATURE AND SCOPE OF ADVICE IS KNOWN

Nature and scope of advice - types of advice

14. We understand that the intention of the reference to "types of advice" in Schedule 21A, clause 5(1)(c) is that the client will receive a high-level description of the financial advice services that will be provided. However, there is a concern that firms might provide overly detailed and extensive information on the types of advice they can provide than is otherwise necessary. We suggest that the wording of this clause is amended to avoid that.

Identifying information

15. As currently drafted, Schedule 21A, clause 5(2)(c) contemplates that one disclosure relates to a single financial adviser. This one of the pitfalls of the current regime,

whereby clients receive multiple identical disclosures if they receive advice from a team of advisers. To streamline the disclosure process and to remove the burden of receiving multiple disclosures for clients, this clause could be amended to allow a disclosure to cover one or more advisers.

Fees, expenses or other amounts payable

16. With respect to fees as noted in Schedule 21A, clause (5)(2d), it will not be practicable to give an estimate for a Funds Under Management (**FUM**)-based fee that is not particular to one instance of advice. For most broking firms, it is common to charge a FUM-based fee under which the client may receive advice on numerous occasions during the relevant period. It would be confusing to give a fee estimate based on an approximate FUM size in the future (when the fee becomes payable). Please also refer to our comments regarding fees in paragraphs 26-30.

'Class' advice from another person

17. SIA is concerned with how Schedule 21A, clause (5)(3) will apply where Research Analysts give 'class' advice if a client elects to attend a seminar or other presentation. It is not practical to provide a long list of Research Analysts each year to account for the remote possibility that one may present to that client, nor is it practical to give an updated written disclosure for each presentation by a Research Analyst. Ideally, it would be our preference to be able to reference the division or team of Research Analysts in the initial disclosure, allowing for any changes to the teams or circumstances throughout the year, such as conflicts of interest, to be made available online and hard or electronic copy on request.

ADDITIONAL INFORMATION TO BE GIVEN AT TIME ADVICE IS GIVEN

A team or multiple advisers

18. In some circumstances, advice may be given by someone other than the Financial Adviser named on an initial disclosure. It would be difficult to list every person a client might encounter or update clients every time there was a change in personnel. To streamline the process, SIA suggests that the initial disclosure refers to the lead Adviser and broader teams of advisers. It could also acknowledge that from time to time the Financial Advice Provider may provide access to external Research Analysts or guest speakers in a 'class' advice environment.

'Class' advice

19. With respect to Schedule 21A, clause (6), if a Financial Adviser or Research Analyst is presenting to a room of clients where 'class' advice is given and not taking into account an individual's personal circumstances, SIA suggests that for practical reasons a simple disclosure via a slide, handout or verbal delivery should be acceptable in these circumstances. The opportunity for clients to attend these types of events and the information relevant to these circumstances could also be referenced in a client's initial disclosure document.

20. In these circumstances, it would be useful if the regulations could allow for disclosure to be incorporated by reference. For example, in a 'class' advice presentation situation, the presenter could provide a brief verbal or written statement and then refer the attendees to the website for full disclosure information, and that hard copies are available in the room, or to speak with their Financial Adviser for information specific to their circumstances.

21. It is unclear what is required if other members of the firm present or a person who is not

member of the firm (such as an overseas Research Analyst) contributes to the discussion or answers questions. SIA seeks clarity on what would be required in these circumstances as there is potential for anyone joining the conversation to have to disclose or re-disclose at that time. This further supports the need for flexibility to reference multiple advisers on an initial disclosure.

22. An unintended consequence of the proposed regulations is that Financial Advisers or Research Analyst will no longer be able to appear on a television or radio programme and give 'class' advice due to the extensive disclosure required and the unrealistic ability for those channels to accommodate this. One option is that a clear yet concise verbal disclosure would be appropriate in such circumstances. For example, a brief verbal statement advising that the information is general and not specific to anyone's personal circumstances, and that people should seek financial advice from a Financial Adviser, or refer to a firm's website for further information.

Ongoing advice relationships

23. The nature of advice relationships with securities firms can mean that advice can be given many times over a year and sometimes even multiple times a day. In these situations, disclosure at the time the advice is given is not practical.

24. Our understanding of the regulations is that it is acceptable that a client would receive an initial disclosure then an annual disclosure with any updates, notwithstanding if there were material changes. However, what is not clear is whether firms can provide other disclosure updates at their discretion and not just only at the 'prescribed' times, nor whether a full statement needs to be sent or only the relevant information. SIA suggests that this needs to be clarified in the regulations.

25. If the intention is for firms to avoid providing the secondary disclosure before giving the advice, then we presume it is expected that material changes will be disclosed when material changes occur and before advice is given.

Fees, expenses or other amounts payable

26. There is a difference to the disclosure of fees and incentives outlined in Schedule 21A, clauses 5(2)d) and 6(1)(d). In clause 5, there is no particular limit on what content is included when scope of advice is known. The language in clause 6, the giving of advice or acting on advice is more nuanced, but it is unclear why this distinction has been drawn. Clients will typically want to know what their fees will be at the outset, i.e. when the nature and scope of the advice is known and not find out when the advice is being given.

27. There are differences between the giving of advice and acting on advice. Firms may charge a fee for portfolio management or charge a percentage-based fee for brokerage activity, i.e. when they are executing a transaction/acting on the advice, however, they may not charge a fee for giving advice. NZX Firms typically provide an annual report to client, which outlines the brokerage rate at that time, not when the advice is given. The client is already well-apprised of the costs that may be incurred from the initial disclosure.

28. In the new regime, at the initial (annual) disclosure it would be difficult to provide an 'estimate' of the fees as the Adviser would not know the amount to be transacted in detail. They could, however, disclose the amount payable in product fees such as portfolio management fees, and outline the fees associated with advice and the details for how they are determined, e.g. a percentage-based brokerage fee charged upon execution of a transaction.

29. Regarding providing additional information "at the time advice is given", it may not be practicable to estimate what the fee will be or to provide an estimate at every interaction. It is possible to outline the types of fees, but unless the specific detail of business is known (i.e. the client knows the exactly how much they want to invest, or when and how, potentially without receiving any advice) at that time it would be impossible to quote an exact figure.

30. We think that the information relating to fees at the stage of initial information when nature and scope is known should include more broader information and then be more specific for when giving advice. Clause 6(1)(d) could be reworded to reflect if the information "has not already been provided".

Complaints procedures

31. SIA suggests a streamlined and consistent approach to the definition of complaints is required. The definition of a complaint in FMA's recent proposed standard conditions for transitional licences consultation differed to the definition used by financial services dispute resolution schemes to which firms belong. The proposed standard condition defined a complaint as: "A complaint means a statement of dissatisfaction communicated to you by a client about your financial advice service, other than a statement of dissatisfaction that is trivial or vexatious or that the client indicates is not intended to be a complaint."

32. Regulation 229F applies to a broader category of complaints. It is not practicable to have separate definitions, and it would be of no value to keep separate registers. The implication is that the process could be different for the different category of complaints, which we presume is not the intention. We suggest that the definition of a complaint as per the standard condition is appropriate because the definition under the proposed legislation creates ambiguity by not using the terminology defined by the regime. Further, it makes sense for the complaints regime to apply to the same scope to which the overarching legislation applies. As currently drafted, the regulation may apply to "services" that fall outside the Financial Services Legislation Amendment Act (**FSLAA**) regime altogether.

33. We appreciate there is a need to ensure that there is a consistent understanding, recognising the intention of the new regime to provide scope to make a complaint about an adviser or a product that has been either provided or not provided. However, it fails to recognise that in some circumstances the FAP may decline to provide advice for good reason, for example, if not within the scope of service, the suitability of the client's risk profile, or the competence of the adviser.

Conflicts of interest, including commissions or other incentives

34. Schedule 21A, clause (6)(1f) refers to information about conflicts of interest (other than commissions and incentives) concerning the advice and applies when the advice is given. In the context of Schedule 21A, clause (5)(2f), it is our interpretation that there is no limitation on what can be disclosed in the first disclosure so long as it is clear, concise and effective. In practical terms, conflicts are unlikely to change with each piece of advice. This would mean that almost all conflicts will be disclosed once per year. We think this is in the best interests of clients and ensures they are not saturated with disclosures, particularly in circumstances where they receive advice at numerous intervals during the year.

35. Schedule 21A, clause (5)(2f) relating to incentives applies when the nature and scope of

advice is known except it has the additional line "an explanation of when, or in what circumstances, they will or may be given". The purpose of this distinction is not clear; however, provided there is no restriction on giving this information in the earlier disclosure given at the time the nature and scope is known, it is workable. Our interpretation of the regulations is that there is no limitation on what can be disclosed in the first disclosure so long as it is clear, concise and effective. In practical terms, this will mean that almost all commissions and incentives will be disclosed once per year. Again, this is in the best interests of clients and ensures they are not saturated with disclosures, particularly in circumstances where they may receive advice at numerous times during the year.

36. There is an overlap in Schedule 21A, clauses 4, 5 and 6 with respect to Conflicts of Interest that we believe create unnecessary duplication and volume in disclosures. We believe that there is scope for Conflicts of Interest to come out of clauses 5 and 6 and just be included in clause 4, Information that must be publicly available. For example, we suggest that it is sufficient for the initial disclosure (hard copy, electronic, digital or online versions) to refer to an online register of Conflicts of Interests, and that this information would be readily available and provided in hard copy or electronic/digital formats if requested. This could also be referred to in any subsequent disclosures.

37. Otherwise, the Conflicts of Interest will need to be declared in full in the disclosure statement, on the website, in initial information and additional information. Furthermore, without materiality being addressed, there is risk of this not supporting a streamlined experience for customers, particularly if a firm takes a risk-averse approach and identifies an exhaustive list of existing and potential conflicts.

Volume of disclosure and meeting the intent of the new regime

38. As noted previously, we understand the intent of the new regime is to introduce more meaningful disclosure requirements to improve consumer understanding and transparency. However, we have concerns that the proposed regulations will increase the number of disclosures, i.e. website disclosure, complaints disclosure, initial information when nature and scope of advice are known and disclosure when advice is given, notwithstanding disclosure of any material changes in the course of a year.

39. It is important that customers are educated on the different types of disclosure and why they are needed. Customer 'bandwidth' for understanding and not being overwhelmed by the volume and frequency of documentation also needs to be taken into consideration when assessing the efficiencies and streamlining opportunities proposed in this submission, such as consolidation of Conflicts of Interest, allowing verbal disclosure, aligning complaints definitions and processes, and including teams or multiple advisers on disclosures.

4	Do you have any comments on the draft Regulations that will require the disclosure of information when the financial advice is given?
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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?
	40. SIA has no material concerns with complaints handling requirements, including disclosure of a Provider's complaints handling and dispute resolution processes when a

	complaint is received.
6	Do you have any comments on the draft Regulations that set the manner in which information must be disclosed?
	41. SIA understand the intent of the new regime is to simplify and to make disclosure short and more easily digestible for clients, similar to current primary and secondary disclosures, except aiming to be more detailed and more effective. 42. The regulations are quite prescriptive at the stage at which disclosure should be made. SIA interprets the regulations as it is adequate to send an annual disclosure to clients. For example, as part of the process of an annual update or report, and then provide additional information only if required for a specific piece of advice, a material change, or at a later date if something was not picked up previously. Providing 'per advice' disclosures would be very difficult for our industry where clients have regular interaction with their adviser. 43. It is also unclear whether it is permissible to make earlier disclosures more the lengthy disclosure, so that key information is upfront. We also seek clarity whether Advisers can choose to send any additional disclosures at their discretion. 44. We would like the regulations to provide clarity that verbal disclosure would be an acceptable form of disclosure, particularly when disclosure information will be available in hard copy, electronic and online/digital form. This is of particular importance to members who have frequent interactions with clients, whereby it is not practical, nor in the best interest of the client to provide an unnecessary volume of additional 'paperwork'.
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.
	45. Please refer to our response to Question 3, paragraphs 15 – 22.
8	Do you have any further comments on new regulation 229A to 229H of the draft Regulations?
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9	Do you have any further comments on new Schedule 21A in the draft Regulations?
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10	What (if any) transitional provisions should be included in the regulations?
	46. SIA strongly supports the notion of a transition period to enable a smooth transition to the new regime with the best customer outcomes. SIA appreciates the need to implement the new regime fully, and in good faith, proposes that a reasonable transition timeframe is required to ensure its success. 47. As noted in our response to Question 1, the proposed requirements will require NZX Participant Firms to undertake system changes to disclosure processes and record-keeping. This will require a significant financial and time investment in resources, including the development of infrastructure and systems, staff training, and client communications.

48. The Code of Professional Conduct for Financial Advice Services requires FAPs to ensure the client understands the scope of advice. The process for achieving this is significantly compressed if the final regulations are not completed until early 2020, as disclosure of the scope of service could not be sent to clients until after that time.

49. SIA's members are conscious of doing the right things by their clients and wanting the best possible outcome during the transition to the new regime. Firms will want to implement customer care programmes and contact their clients through direct mail and offer face-to-face meetings to advise of the go-live date, what the changes are, how they will be impacted, and provide contact centre or support services. There would not be sufficient time to do that with the currently proposed timeframe.

50. It is also vital that firms undertake the appropriate training and education with their staff, and we are aware that this will take time for firms with large teams.

51. Without knowing the final disclosure regulations and timeframes, it is difficult for firms to quantify and timetable the downstream implications or determine the exact costs. Until the final details of the regulations are known, firms are unable to fully scope or schedule the work by in-house digital teams or contract additional IT services.

52. Firms would require at least 9-12 months from the date of finalising the regulations to produce a disclosure document whereby they are comfortable that the client will understand it. For example, some firms could interpret it as requiring acknowledgement of the scope and/or needing to have a personal conversation with the client before being able to meet the Code.

53. One option would be to continue to default to the previous regime and Code throughout the transition period. However, a preferred option could be to provide a timeframe for firms to opt-in to the new regime as they become ready. Firms have indicated that if disclosure regulations were to be finalised by 30 March 2020 with an effective date of 30 June 2020, then a 12-month period (from when regulations are finalised) i.e. by 31 March 2021 would be sufficient to allow time for systems to be designed, developed, tested and implemented, and staff training and customer care programmes to be put into place and delivered. Firms could transition into the new regime once they complete the process.

54. SIA wishes to thank MBIE for the opportunity to make a submission on the Disclosure requirements in the new financial advice regime. We also thank MBIE for meeting with members to talk through issues at a high-level. We welcome the opportunity to discuss this submission further or to provide any additional information.

[i] https://www.mbie.govt.nz/dmsdocument/947-consultation-document-new-financial-advice-regime-pdf