

**Public Consultation:
Exposure Draft
Financial Markets Conduct
Regulations 2014 Financial Advice
Disclosure Amendment Regulations**

Submission

by

Willis New Zealand Limited

to

**Ministry of Business Innovation &
Employment**

8th November 2019



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

Your name and organisation

Name	Peter Lowe, Chief Executive Officer
Organisation	Willis New Zealand Ltd, Willis Towers Watson

Introduction

Willis New Zealand Limited (Willis) is an Insurance Intermediary and Risk Management Consultancy. It forms part of the **Willis Towers Watson** group, a leading global advisory, insurance broking and solutions business that helps clients around the world.

Willis has been operating as an insurance broking business in New Zealand for over 50 years. We have six offices in Auckland, Wellington, Christchurch, Dunedin, Tauranga and Whangarei.

Willis supports the Government's objective of developing the financial advice regime with the aim of having more informed and confident participation of consumers. We recognise the challenges of developing a regime to cover all types of financial advice.

Insurance broking is a specialist form of advice distinct and separate from other forms. To the extent that the proposed changes to the current regime will impact insurance broking, Willis endorses the submission by Insurance Brokers Association of New Zealand Inc. (**IBANZ**).

Starting the 29th June 2020, 97.7% of all active New Zealand businesses will be 'retail' consumers.

This is based on Stats NZ figures and the increased 'wholesale client' threshold under the large definition to \$5 million assets or turnover for the previous two financial years.

Disclosures will therefore need to be appropriate and a benefit to both the average person and to financially literate businesses.

Key points

Record Keeping	
Disclosure record keeping should be limited to when regulated financial advice is given	Note duplication as FMA Licensing Conditions also have a record keeping obligation. Public Information Disclosure is before or at the start of any client interaction, and Initial Information disclosure is before any advice is given. Recording all enquiries for 7 years regardless of whether they led to any advice being given, is an unnecessary burden. See Question 1 for further information.
Public Information Disclosure: Website, Electronic and Hard Copy	
Website, and Hard Copy when relevant (i.e. no internet) or on request	If a client can receive electronic communication (i.e. email), they can review a website which can provide the same information in a much more user-friendly format. See Question 2 for further information.

Public Information Disclosure: All product providers in relation to financial advice products	
Listing financial advice products from particular product providers – is only relevant if this relates to a limitation or restriction on the advice given	<p>Disclosure should be simple, clear, concise, material and meaningful for clients.</p> <p>See Question 2 for further information.</p>
Public Information Disclosure: Remuneration – Fees/Expenses Payable & Commissions/Incentives	
Combine & Limit ‘How we get paid’: To ‘client’ costs payable and Commissions/Incentives received - ‘grouping together by similar type’	<p>Keep disclosure concise, user friendly, and consistent, by ensuring ‘brief’ is always stated before ‘explanation’ or ‘description’.</p> <p>Simplify Remuneration Disclosure to ‘ranges’ as exact dollar amounts may not be possible before advice given</p> <p>See Questions 2 & 9 for further information.</p>
Disclosure of Initial Information and Additional Information	
Avoid repetition: Permit combining Initial & Additional; and reference to FAP website public information.	<p>Enable these to be combined, and remove all repetitive declarations, including if already in the ‘public information’</p> <p>For all information that is the same for all clients, there should be the option to disclose on a FAP website.</p> <p>See Questions 3 & 4 for further information.</p>
Remove the 12 months limitation, as this requires ‘full’ Initial & Additional disclosure’s every 12 months	<p>See Question 8 for further information.</p>
Reinstate ‘Materiality’ limitation in Conflicts of Interest declarations	<p>See Question 9 for further information.</p>
Complaints Disclosure when a Complaint received	
Additional disclosure beyond the ‘public information’ on the website to be limited to ‘formal complaints’ concerning ‘regulated financial advice’	<p>Note duplication with FMA Licensing Conditions & External Dispute Resolution Provider Scheme Membership rules.</p> <p>Complaints resolved immediately, accepted as unjustified or the client declares they do not want to take it further – should not require additional ‘formal disclosure’</p> <p>See Question 5 for further information.</p>
Transition Period Required	
Time needed to implement systems, processes and documentation Time need to train/upskill advisers	<p>Final version of Regulations ‘early 2020’ & fixed requirement for everyone to 100% comply on 29th June 2020.</p> <p>Insurance policies often incept at the month end (i.e. 30th June) and the advice process for existing clients starts 90 days earlier and often only completes on the last day.</p> <p>Please refer to the response to Question 10 for further information.</p>

Responses to discussion document questions

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

New Regulation 192A Record keeping conditions

Keep a record of [each disclosure](#) made for at least 7 years and readily retrievable

Practical Issues:

1) FMA Licensing (Transitional & Full) - Record Keeping Condition's

The FMA Licensing Conditions will set, monitor and alter suitable record keeping at a flexible 'licence holder' level, therefore the duplication of a 'Regulation' requirement is not required.

2) No relationship, Enquiry Only – Retain on same basis as full relationship

All 3 Information Disclosures (Public, Initial & Additional) will be given by the 'Quotation' Recommendation stage, however the client may not proceed beyond a preliminary conversation.

We agree and support the IBANZ proposal that if the record keeping condition is retained, to reword **192A (1)** as follows:

- (1) A market services licence for a provider of a financial advice service is subject to a condition that the financial advice provider (**P**) must, **in the event advice is given to the client**, keep a record of each disclosure under regulation 229D, 229E, or 229F that is given by P or by any person engaged by P to give advice to P's clients on P's behalf.

This ensures the full 7 year record keeping requirement applies when regulated financial advice is given. Prior to this point, no advice relationship has been formed.

3) Website 'Public Information' retained for 7 years

The need to maintain an archived record of each website change to evidence the 'public information' presented on any particular day from the 29th June 2020 may require process changes to financial advice providers (*FAPs*) current IT arrangements.

Please refer also to our submission in response to Question 10 below in relation to the need for a transitional period to allow for the *FAP* development of record keeping systems.

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

New Regulation 229C 'Public Information'

Practical Issues:

1) Duplication of 'Electronic' & 'Website' Information

The requirements of 229C (b) to prominently display information easily accessible at all reasonable times on the financial advice providers (*FAPs*) website(s) and also to provide the same information again by separate electronic means on request under 229C (a) is a duplication of requirements.

A client who can receive an electronic 'soft copy' can already easily access a website, review the information at a display size that suits them personally, save and print off a hard copy if required.

The 'hard copy' option should be for when the 'website' option is not reasonable or practical; to ensure those with no internet access also can receive and review the information.

2) 'Nature & Scope' Schedule 21A: S4(1)(e) (ii): Declare names of the product providers in relation to financial advice products

For *FAPs* who provide a broad and diverse range of products from a wide range of providers both in the New Zealand and overseas – the wording of this regulation could lead to a very long list of options

that will not assist the client in a “clear, concise, and effective manner (229G).

We recommend that S4(1)(e) & (f) be combined to provide clarity that the listing of providers concerns ‘limitations or restrictions’:

a brief explanation of any limitations or restrictions on the nature and scope of the advice that P gives, or that is given on P’s behalf, that a reasonable client would expect to, or to be likely to, influence a member of the public in deciding whether to seek advice from P. Including if P gives advice in relation to financial advice products from particular product providers,—

- (i) a statement to that effect; and
- (ii) the names of the product providers:

3) Remuneration Text: Combine Fees & Commissions Schedule 21A, S4(1)h & j & S4(2)

These regulations duplicate the Secret Commissions Act requirement of client consent concerning remuneration.

To maintain consistency with the other ‘public’ regulations, both S4(1) h & S4(1)j(i) the text ‘**explanation**’ needs to be amended to read ‘**brief explanation**’.

We also recommend that both the **Fees/Expenses Payable S4(1)h** & **Incentives S4(1)j** should be declared together rather than separately as they gives the complete picture of how a service being provided is paid for.

Consequently, we suggest the commentary on ‘Incentives’ disclosure under **S4(2)** be altered to explain that all forms of remuneration under **S4(1)h** & **S4(1)j** may be grouped together by similar type.

The concise example disclosure guidance given in **Schedule 21A, S4(2)** groups all forms of insurance together:

We receive commissions from the insurance companies about whose policies we give advice. If you decide to take out insurance, the insurer will pay a commission to your financial adviser. The amount of the commission is based on the value of the policy.

An example of changing this to cover all forms of remuneration yet also keeping the explanation “clear, concise, and effective”:

How do we get paid for the services provided to you?

We receive commissions from the insurance companies about whose policies we give advice, or a fee as agreed with you. If appropriate, and with your consent, we may receive a fee and commission.

If you decide to take out insurance, the insurer will pay a commission out of the premium payable to them to [Full Name of Financial Advice Provider].

The amount of the commission we receive is a percentage of the insurance premium paid by you based on the value of the policy.

We will disclose the compensation we will earn before insurance is purchased.

We have no agreement with any insurers to recommend their terms over and above any other insurers.

4) ‘Brief’ Outline of Conflicts of Interest

This is the general information stage and therefore the word ‘brief’ needs to be added to:

Schedule 21A: S4(1)(i)(i) a **brief description of the nature of each conflict of interest.**

and to: Schedule 21A: S4(1)(j)(i) **an brief explanation of when, or in what circumstances, they will or may be given**

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?

New Regulation 229D 'Initial information' - must be given before the advice is given

As noted in the IBANZ submission, Insurance Broking client conversations, face-to-face, by phone or email involve a back and forth dialogue establishing the 'nature and scope', giving a quote and the opportunity to bind cover.

As drafted the client conversation must be paused '*Initial Information*' given before advice **229D(6)**, then again paused to give '*Additional Information*' **229E** with the quote/recommendation.

The ability to give a streamlined disclosure combining both 'Initial' and 'Additional' information needs to be clarified in the interest of 'good client outcomes'.

Cross-referring to the FAP's website should be sufficient where the same information is already publicly available.

1) Identifying Information: Schedule 21A: S5(2)c

As drafted only an Adviser (A) who is a Financial Adviser (FA) has to identify their role and state they are a 'Financial adviser'.

We recommend this is expanded to clarify the status of the Adviser (A) by also requiring they state if they are a 'Nominated Representative'.

2) 'Brief' Outline of Conflicts of Interest

This is 'concise' information and the word 'brief' needs to be added to:

Schedule 21A: S5(2)(e)(i) a **brief description of the nature of each conflict of interest.**

4

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

New Regulation 229E: Additional information - must be given at time advice given

Practical Issue's

1) Repetitive Disclosure

We support the IBANZ submission that the lengthy repetitive disclosure within the public, initial and additional information needs to be redrafted, to achieve a clear and concise statement to the client of all relevant information at the appropriate time.

We agree this could be achieved by:

- Specifically allowing the detailed information to be disclosed on the FAP's website or in as part of initial information disclosure (as applicable), particularly where there has not been a material change to information previously provided to the client as part of these disclosures.
- Disclosure should be limited to a single sound-bite such as "the conditions to my licence are available on my website" or "no material changes have occurred since your last discussions"; and
- Amending clause **6(1), Schedule 21A** to read as follows:

- (1) **To the extent not already given to the client under clause 4(1)(k) and (l), clause 5(2)(a) to (c), clause 5(2)(d) or clause 5(2)(e) to (f), a A person** who gives advice (A) must give the following information to a client of a financial advice provider (P) in accordance with **regulation 229E** (which provides that additional information must be given to a client at the time the advice is given):

If this amendment is made, the words "*to the extent not already given under clause 5(2)(d),*" should be deleted from **clause 6(1)(d), Schedule 21A.**

2) Duties Information: Schedule 21A, S6(1)j & S6(2)

This summary information should be part of the license holder 'Public Information' on a FAP's website coupled with a requirement to also provide the 'Professional Code of Conduct'

3) Brief Outline of Conflicts of Interest

This is 'concise' information and the word 'brief' needs to be added to:

Schedule 21A: S6(1)(e)(i) a **brief description of the nature of each conflict of interest.**

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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?

New Regulation 229F Information that must be given if complaint received

The FMA standard licencing conditions also specify a complaints process and recording, therefore the duplication of a 'Regulation' is not required.

All FAP's are also required under the FSPR legislation to be members of an External Dispute Resolution Scheme and have a robust internal complaint process.

If this Regulation is retained it should recognise the difference between a 'complaint' and a 'formal complaint'.

Complaint Definitions:

1. International Australia and New Zealand Standard on Complaint Handling (AS/NZ ISO 10002):
"Any expression of dissatisfaction made directly or indirectly, explicitly or implicitly, to an organization or its staff about the organization, its products, services, staff or the complaint handling system itself".
2. Willis Towers Watson definition: "Any expression of dissatisfaction, whether written or oral, and whether justified or not, from or on behalf of a client about a provision of, or failure to provide services agreed expressly or customary in the market".

A client expressing any form of dissatisfaction is a complaint, however after further discussion they may agree it is unjustified and/or clearly state they do not want to take it further.

We support the IBANZ submission that a '**complaint**' requiring disclosure needs further definition:

- 1) **Formal Complaint:** The process only applies when a client wishes to make a 'formal complaint' and that the complaint process is detailed on the FAP website and available in hard copy if they wish.
- 2) **Regulated Financial Advice:** That the reference in the definition of a relevant complaint 229F(3)(a)&(b) to 'advice' be amended to read 'regulated financial advice'

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

As noted in the previous responses the proposed 'Disclosure Regulations' as drafted to require excessive repetition and need to be worded to allow streamlining the customer experience by combining/tailoring to fit, or allowing the option for the information to be declared on the FAP website.

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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.

New Regulation 229D 'Initial information' - must be given before the advice is given

As this is a factual 'informational disclosure' and not 'regulated financial advice' it may be given on behalf of the actual Adviser by a digital platform, website interaction, or broker support people.

As drafted it is the personal responsibility of the individual Adviser (A) not the FAP to ensure this 'information' is given to the client and that they understand its relevance.

New or additional Advisers can become involved when providing cover for another Adviser or providing specialist advice on specific areas.

Disclosure design should streamline the disclosures required when a new adviser is introduced into an ongoing relationship so there is no excessive repetition.

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

1) Remove Preceding 12 Months Limitation

The 12 month period in **229D(7)** and **229E(5)** is not a practical solution to repetitive disclosures when the service provided remains the same, instead it imposes a fixed repetition.

Clients can have a very long relationship with a FAP and/or Adviser where the material changes are in the financial product advice and not in the other disclosures.

We support the IBANZ recommendation to remove 'in the preceding 12 months' from Regulation 229D(7) and 229E(5).

3) 229G Form and manner in which information must be given

229G(2) needs redrafting as previously noted in Q2 concerning the duplication of 'electronic' and 'website'; 'hard copy' option should be for when the 'website' option is not reasonable or practical; to ensure those with no internet access also can receive and review the information.

If unaltered the addition of a comma is recommended to avoid misinterpretation of hard copy compulsory and electronic only if requested.

Regulation as drafted:

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|---|
| 2. A person who is required to give information under regulations 229D to 229F must give it as a hard copy or an electronic copy if requested. |
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Recommended alteration:

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| 2. A person who is required to give information under regulations 229D to 229F must give it as a hard copy or FAP website or an electronic copy, if requested. |
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Do you have any further comments on new Schedule 21A in the draft Regulations?

Practical Issues

1) Materiality and Conflict of Interest definition Consistency

Beyond the addition of 'brief' as noted in Q2, Q3 & Q4 to the repetitive Conflicts of Interest disclosures; there are practical issues with the definitions used for conflict of interest.

We support the IBANZ submission that:

- 1) The phrase '*materially influence/impact the financial advice*' within the Disclosure Cabinet Paper needs to be reinstated into the draft regulations.

- 2) Disclosure should be limited to conflicts “*in relation to the giving of advice*”, rather than “*in relation to advice*”.
- 3) As noted in Q2 Commissions and other incentives should not be included in the conflicts of interest definition, and should instead be included together with disclosure in respect of “Fees, expenses, or other amounts payable” in **Fees/Expenses Payable S4(1)(h), S5(1)(d) and 6(1)(d), Schedule 21A.**

2) Clarify ‘Nature & Scope’ within ‘Public Information’ & ‘Initial Information’

- 1) What does “**types of advice**” in clause 5(1)(c), Schedule 21A mean?
Lack of definition may lead to different interpretation by FAP’s
- 2) Names of the **product providers**
At the initial advice stages this encompasses numerous possible ‘providers’ which is not a meaningful list to the client. The relevant providers can also change as the final client needs are understood.
- 3) **Relevant** fees, expenses, or other amounts payable

3) Fees, Costs, Remuneration’ disclosure’:

1) Clarify Scope

We support the IBANZ submission that the wording used in the Regulations relating to “*information about applicable fees and costs relating to financial advice*” is amended to read: “fees, expenses, or other amounts payable **by the client**”

“clients will or may have to pay fees, expenses, or other amounts in relation to the giving of advice **to A, P, or another person connected with the giving of the advice**, an explanation of when, or in what circumstances, those amounts will or may be payable”

2) Insurance Intermediaries Act 1994 (IIA) areas to be removed from ‘Fees disclosure’

a) *Premiums payable for a insurance policy.*

In accordance with the requirements of the *IIA*, premiums are commonly paid by a client to Insurance Broker’s insurance broking client account, and are then invested and paid to the relevant Insurer by the Broker.

b) *Investment income a “broker” is entitled to receive from the investment of “broking money” in its insurance broking client account.*

Section 15 of the *IIA* permits brokers to invest money in their insurance broking client account, and retain investment income earned from doing so. This investment income is not a “fee”, but rather a permitted entitlement of the broker.

4) Timing & Level of itemised disclosure

As client advice can cover multiple insurance policies across a range of insurer’s to disclose all possible fees and commissions will lead to lengthy and overly complex disclosure.

The clearest point regarding the actual amount of remuneration (fees/commissions) paid to an adviser is at the time of sending the invoice to the client (or at least at the time of making the recommendation). It is generally not possible to determine exact dollar amounts before advice is provided.

We support the IBANZ submission that:

- The ‘initial’ and ‘additional information’ disclosure requirements in respect of remuneration (fees/commissions) are simplified to enable *FAPs* to provide a range, rather than an explanation of how the amount will be determined (which may be very complicated).

- Delete “*the terms of payment (if known)*” as will be dealt with in the invoice provided to the client, and do not need to be included as part of disclosure.

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

Transition period required to allow for implementation of/significant upgrades to systems

With the date of the final version of the Disclosure Regulations being sometime in early 2020, we support the IBANZ submission that a transition period will be necessary for all FAP’s to update their systems and processes without having a negative impact on the services provided to clients.

As all aspects of the complaints disclosure except summarising the FAP’s complaints process are already required, no transitional provisions are necessary for this area.