Financial Services Council.
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Financial Markets Policy
Commerce, Consumers and Communications
Ministry of Business, Innovation & Employment
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Treatment of intermediaries under the new regime for the conduct of financial institutions

This submission on the Ministry of Business, Innovation and Employment (MBIE) Discussion Document: Treatment of intermediaries under the new regime for the conduct of financial institutions, April 2021 (the Discussion Document), is from the Financial Services Council of New Zealand (FSC).

As the voice of the sector, the FSC is a non-profit member organisation with a vision to grow the financial confidence and wellbeing of New Zealanders. FSC members commit to delivering strong consumer outcomes from a professional and sustainable financial services sector. Our 95 members manage funds of more than $95bn and pay out claims of $2.8bn per year (life and health insurance). Members include the major insurers in life, health, disability and income insurance, fund managers, KiwiSaver and workplace savings schemes (including restricted schemes), professional service providers, 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.

Key points of Submission

We welcome the opportunity to provide feedback on the treatment of intermediaries in the Financial Markets (Conduct of Institutions) Amendment Bill (the Bill). Addressing key points regarding the treatment of intermediaries under the Bill as it currently stands will vastly improve the regime.

Definitions

The FSC supports narrowing and focusing the definition of intermediaries. For agents, we support clarifying that persons who are only involved in a very generalised way in, or are providing advisory services relation to, the provision of relevant services and associated products are not captured within meaning of "agents".

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Treatment of intermediaries

FSC members agree that option 3 of the Discussion Document is not appropriate as financial institutions' obligations would remain uncertain, and it would not reduce the compliance burden on financial institutions. There are differing views within the FSC membership as to whether option 4 or option 5 is preferred. However, all members agree that "monitoring" provides a more appropriate threshold of oversight by financial institutions as it balances the legal and commercial limitations of overseeing independent third parties, with the need for financial institutions to oversee that their services and products are being distributed and provided in a way that focuses on fairness to customers.

Further consultation

We strongly urge MBIE to consult further on the exposure draft to ensure that the proposed drafting changes are appropriate and do not have unintended consequences that have not been contemplated or discussed in the Discussion Document.

I can be contacted on Privacy of natural persons to discuss any element of our submission.

Yours sincerely

Richard Klipin
Chief Executive Officer

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Your name and organisation

Name	Richard Klipin, Chief Executive Officer
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Organisation/Iwi	Financial Services Council of New Zealand

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Please check if your submission contains confidential information:

☐ I would like my submission (or identified parts of my submission) to be kept confidential, and **have stated below** my reasons and grounds under the Official Information Act that I believe apply, for consideration by MBIE.

~~I would like my submission (or identified parts of my submission) to be kept confidential because... [Insert text]~~

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Option 1: 'Amend definition of intermediary to focus on sales and distribution'

1. Do you have any comments on Option 1: 'Amend definition of intermediary to focus on sales and distribution'?

We support narrowing the proposed focus of the definition to financial advice, sales and distribution, and ongoing servicing by Financial Advice Providers (FAPs) and others involved in distribution channels. There are also differing views from our members as to whether this narrowed definition should also include referral arrangements.

A narrow interpretation of 'sales and distribution' may result in some ongoing servicing activities connected with previously sold or distributed products not being captured by the regime at all. The definition of intermediary should include all external persons involved in distribution channels who may remain involved in advising or assisting the customer throughout the product lifecycle and may continue to receive commissions over the life of the product. Any amendments to the definition need to ensure that intermediaries who may continue to advise or assist the customer after they have acquired the product are captured appropriately such as the issue of a new financial product or entering a new contract at law, which would often not be considered a 'sale' by financial institutions. Furthermore, usually the financial adviser will not be acting on behalf of the financial institution or have authority to bind the financial institution, and accordingly would not come within the definition of an agent. However, the financial adviser's involvement in these areas could have a significant impact on customer outcomes.

An important example of this is where an intermediary sells their book. If the definition of "intermediary" was narrowed to focus only on the sale, the intermediary that purchases that book would likely be out of scope as they were not involved in the initial sale. However, there should still be ongoing conduct expectations to anyone buying a book and receiving commission. We consider the scope should be extended beyond the initial sale and distribution to capture the activity of servicing.

Another example of this is legacy products where new sales have ceased, but intermediaries may continue to receive trail commissions and potentially advise existing customers on whether to retain, or exercise options relevant to the product. There should be clarity that intermediaries in this situation remain caught by the definition of intermediary.

There is some ambiguity in section 446E(3)(a), which we consider should be clarified. With the intention to narrow the focus to sales and distribution activities, we are concerned that "negotiates … a contract for the service" could inadvertently capture the preparation of standard form contracts or other documentation that sets out the terms of an offer. To avoid this, the preparation of disclosure documents and other standard form documentation could be expressly carved out under section 446E(4).

We also note that the Discussion Document refers to excluding people who provide "services that are preparatory to a contract being entered into" from the definition of "intermediary". We agree that it should be removed from section 446E(3). However, we note that many referral arrangements, execution only or information only processes are arguably entirely preparatory to a contract or sale. As such, some of our members consider providing services

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that are preparatory to a sale should not be expressly excluded from the definition, namely it should not be something that is carved out under section 446E(4).

It may be useful for regulations to contain an exclusion from the definition of "intermediary" to address promotions that encourage and reward customers for referring friends and family. In these types of promotions, the customer may technically be involved in the provision of the service because they "solicit" a sale on behalf of the financial institution and may receive "consideration" from the financial institution in the form of a discount on their product, a token payment or gift, or entry into a prize draw. Depending on how the narrowed version of the definition is drafted, this may be sufficient to make anyone who refers customers and receives something in return an intermediary.

It is not entirely clear from the Discussion Document what drafting changes to the Bill are intended to achieve this proposed narrowed focus and, consequently, it is not clear whether the proposed changes will achieve the right scope. Given this and the above stated concerns, we encourage further consideration or consultation to further clarify the scope of this definition. In particular, care needs to be taken to ensure that the drafting achieves the intended objective of focusing certain aspects without unduly narrowing the definition. We encourage MBIE to consult on the exposure draft to ensure that a revised revision will address these and other concerns raised.

2. Do you think the scope of the proposed definition of an intermediary is comprehensive enough to capture the variety of sales and distribution methods and to avoid gaps and risks of arbitrage?

We consider that further clarity is required and a separate consultation on the proposed new definition so that different scenarios can be tested against the objectives of the new regime, including the treatment of online retail investment platforms.

A number of financial institutions distribute their managed fund products through online retail investment platforms which facilitate online investment either directly by consumers, or by financial advisers who are authorised to operate accounts on behalf of their clients. Whilst the platforms deliver (and record acknowledgement of) a Product Disclosure Statement when a new investment is made, fund managers typically only contract directly with the platform operator and have limited visibility of the identity or profile of underlying investors, and indeed the involvement of financial advisers who may be operating their accounts.

Assuming that retail investment platforms would be captured as intermediaries for the purposes of the Bill, we envisage issues where retail investment platforms may not provide financial institutions with sufficient visibility of, or access to consumers or financial advisers investing on their behalf, noting also that the latter may be regarded as intermediaries.

The conduct regime requirements may impact the willingness of retail investment platforms to distribute products manufactured by financial institutions (particularly in the case of multiple financial institutions who may have varying requirements), or conversely the willingness of financial institutions to distribute through these platforms may be impacted. This could potentially result in reduced access, convenience, and choice for consumers (and their financial advisers) who prefer to invest through online retail platforms.

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We encourage further consideration of these and other platform scenarios as platforms of all types grow in New Zealand and whether an intermediary involved in sales are considered to be in scope or not.

Option 2: Refine scope of who is covered as an agent

3. Do you have any comments on Option 2?

We support the further option at paragraph 40 of the Discussion Document, to further carve out from the meaning of "agents" and consequently the scope of financial institutions' responsibilities, persons who are only involved in a very generalised or incidental way in the provision of relevant services or associated products, rather than involved in the provision of any specific relevant services or products to individual consumers.

The legislation should clarify that for financial institutions the new regime applies in respect of an agent only to the extent that the agent is acting on behalf of the financial institution and in regard to the particular financial institution's relevant services and associated products. This will avoid unnecessary complexity and duplication where an agent is performing similar work on behalf of more than one financial institution.

4. Do you think Option 2 would adequately exclude advisory services (e.g. lawyers, accountants) and other service providers to the financial institution who are not involved, directly or indirectly, in providing any part of the financial institution's relevant service or associated products to consumers?

Often people who are providing advisory services that contribute only in a generalised way to the management or administration of a relevant service will not be considered agents. For example, a professional adviser (such as a lawyer or accountant) who is providing advice on specific issues related to the administration of a relevant service would not be exercising authority granted by the financial institution. Rather, the financial institution would decide whether and how to implement the advice given.

Whilst we support clarification, care needs to be taken to ensure that any amendments to the Bill do not introduce new uncertainty as to the circumstances in which a third party may be an agent. It is currently unclear as to which roles MBIE considers the term "agent" would cover as the Bill is currently drafted, and which it considers should be carved out by potential amendments. In order to efficiently comply, financial institutions need certainty around whether and in what circumstances external parties are caught as agents.

We consider it is also important that the Bill provides greater certainty around what are considered "advisory services" and other "preparatory services", and we encourage the provision of further clarification. It is difficult to establish from the level of detail in the Discussion Document whether the proposal would appropriately exclude advisory services and other service providers who are only involved in a generalised way, but are not involved directly or indirectly, in providing any part of the financial institution's relevant service or associated products to particular consumers. For example, in the insurance context, medical staff may or may not be captured depending on their role and the wording of any exclusion. Whilst medical staff may sometimes be involved with claims handling, in other cases they

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may be involved in an advisory capacity helping to the insurer to understand diagnostic information, or only as a provider of medical services funded by the insurer.

5. Do you think any explicit exclusions are needed for particular occupations or activities? If so, which ones, and why?

Some of our members consider that explicit exclusions are required for certain occupations or activities to provide the industry with certainty and to avoid over regulation of already regulated professions involved in the provision of a specific relevant service or product to individual customers. However, it is also important to recognise the type of activity rather than simply particular professions.

We note that many professional service providers, such as lawyers, accountants and medical professionals will be subject to other conduct regulations as part of their professional standards. Where agents have professional obligations, care needs to be taken to ensure that obligations to oversee agents are drafted in a way that ensures those obligations do not conflict with the agent's professional duties or create excessive regulatory overlap.

As noted in response to Question 4, many professional or other advisers will not be deemed agents. We are concerned that carving out specific professions may create the inference that a broader definition is intended and that, but for the exclusion, those professions would have been caught as agents. Unless the list of exclusions is very comprehensive, this could consequently lead to uncertainty about other professions that are not specifically carved out and have a similar level and type of involvement in the administration of the relevant service. For example, if lawyers and accountants were carved out but actuaries or economists are not, this could create uncertainty about whether, an actuarial or economic consultant is an agent.

In addition, there may be differences depending on the nature and the scope of the role a professional or other person is providing, which may mean they should be carved out in some circumstances but not in others. For example, if a doctor is providing information or advice on medical practice or the significance of a diagnosis in the context of underwriting or claims management, this should not make them an agent. However, if that doctor has authority to approve claims (or influence over claims by sitting on claims committees) then they should be an agent. As such, it may not be the profession of the person that determines whether or not they should be carved out, but rather the role they are undertaking in the provision of the service.

Objectives

6. Do you have any comments on the objectives regarding the treatment of intermediaries?

We are pleased to see that MBIE agrees that good conduct towards consumers is a shared responsibility between financial institutions and intermediaries and our feedback below reflects this.

As our members have expressed differing views on what is the best approach to implementing the treatment of intermediaries, we consider it appropriate to point out areas

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in support, potential issues and general points on each option rather than provide a definitive position.

Option 3: Minimal changes to intermediaries obligations (remove 446M(1)(b) only)

7. Do you have any comments on Option 3: 'Minimal changes to intermediaries obligations'?

We consider that this Option 3 does not go far enough and there is residual uncertainty. It also does not achieve the objective of reducing the compliance burden or avoiding duplication of regulatory obligations.

As noted in previous comments in reference to paragraph 57 of the Discussion Document, for intermediaries that are separate and independent legal entities, financial institutions are constrained by their contractual relationships and are not in a relationship of influence or control over independent third party intermediaries. It is essential that obligations imposed are designed with this limitation in mind and are commercially reasonable for financial institutions to comply with.

We also consider that the compliance burden of such an onerous oversight requirement could have a negative impact for consumers as intermediaries would likely reduce the number of financial institutions they deal with or the number of products an intermediary will distribute. Higher compliance costs and more onerous oversight requirements will make distribution through intermediaries more difficult and may see financial institutions become more selective in the intermediaries they do business with or give preference to non-intermediated channels. This would ultimately result in narrowing delivery of financial services and the availability of advice that considers a range of competing products, as financial advisers are likely to deal with a smaller range of products.

Some of our members consider that with Option 3 there may be challenges with complying with the training requirement in 446M(1)(bb). If financial institutions are not expected to set procedures and processes for intermediaries and intermediaries are not required to comply with the financial institution's Fair Conduct Programme, the obligation in 446M(1)(bb)(ii) to train on procedures and processes may not be appropriate. Financial institutions can require intermediaries to be trained on their products and key aspects of their Fair Conduct Programme, such as product suitability criteria. However, the current obligation would need to be pared back.

In addition, the obligation in 446M(1)(bc) to check that each intermediary has a reasonable understanding of the matters that have been covered by training is overly onerous, impractical and imposes too high a burden on financial institutions, particularly in respect of intermediaries who may be several degrees of separation away from the financial institution.

8. If Option 3 were pursued, do you think any other obligations in section 446M(1)(bb), (bc), (bd) or (bf) would need clarifying or amending? Why/why not?

As noted in our response to Question 7, we consider there are issues with 446M(1)(bb), (bc) and (bd) that would need to be addressed through amendments.

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Option 4: More significant changes to intermediaries' obligations

9. Do you have any comments on Option 4: 'More significant changes to intermediaries' obligations?

MIBE states the intention of the conduct regime is to see a positive culture shift within financial institutions that improves conduct for the benefit of consumers. We consider that Option 4 both supports this intention and recognises the commercial constraints that financial institutions must operate within. We further suggest that in order to optimise the intent of conduct regime, monitoring obligations should be risk based taking into account into account the nature of the distribution, the types of customers involved, the complexity of the products and services and conduct risks.

Option 4 would also remove several of the provisions in the current Bill that potentially duplicate the requirements in FSLAA.

10. What do you think the level of responsibility should be for financial institutions' oversight of intermediaries? For example, "*managing or supervising* the intermediary to ensure they support the financial institutions compliance with the fair conduct principle", or "*monitoring* whether the intermediary is supporting the financial institution's compliance with the fair conduct principle", or something else?

We consider that "monitoring whether the intermediary is supporting the financial institution's compliance with the fair conduct principle" when acting in respect of a financial institution's relevant products and associated products, represents an appropriate standard and reflects that financial institutions are not in a relationship of legal influence or control over independent third party intermediaries.

However, we note that this standard is still open to interpretation as to what level of monitoring would be considered adequate and what this means in practice. We do not believe that attempting to define "monitoring" would be desirable, as this is likely to remove flexibility and could have unintended consequences. Monitoring of an intermediary needs to be commensurate with the scale, extent and complexity of the sales and distribution activities performed by the intermediary, and possibly an assessment of the conduct risks posed by that intermediary (for example related to capability and business model). Monitoring levels could also perhaps be adjusted based on poor customer outcomes, including complaints for example. We consider that regulatory guidance in the form of some non-exhaustive examples of what appropriate monitoring might look like would help support institutions with developing frameworks for the monitoring of intermediaries. It would reduce the need for financial institutions and intermediaries to undergo multiple iterations of change if the guidance is provided relatively early in the transition period. We strongly encourage consultation with industry on the content of the guidance.

We do not consider that managing and supervising reflects the correct level or responsibility a financial institution should have towards its intermediaries as it does not represent the nature of the relationship between financial institutions and their distributors (in addition to requiring intermediaries to voluntarily give up management control of their business). It would be impractical for intermediaries to be managed and supervised by multiple financial

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institutions and comply with multiple and inevitably differing Fair Conduct Programmes. This would likely reduce the number of intermediaries financial institutions deal with or the number of financial institutions and products an intermediary will distribute. This could ultimately have a fundamental impact on the financial institutions and consequently consumers.

11. What standard do you think financial institutions should have to oversee their intermediaries to?

Whilst the precise approach may vary between firms, we think the standard needs to reflect an appropriate balance between the costs of private businesses providing oversight and the legal and commercial limitations of overseeing an independent third party, and the need for financial institutions to monitor that their services and products are being distributed and provided in a way that ensures fairness to customers.

As touched on in the response to Question 10, a flexible approach allows a financial institution to tailor its approach to monitoring, possibly subject to the inherent risks posed by the intermediaries it is required to monitor. For example, this could include a lower level of monitoring being required for FSLAA intermediaries than for non-FSLAA intermediaries, as FSLAA intermediaries have their own conduct obligations under the FMCA. Similarly, the volume of business the intermediary conducts with the financial institution, and whether the intermediary has a history of compliance or conduct issues would likely be factors in a financial institution's risk based monitoring decisions.

Option 5: Distinguish between FSLAA and non-FSLAA intermediaries

12. Do you have any comments on Option 5: 'Distinguish between FSLAA and non-FSLAA intermediaries'?

Differentiation between FSLAA and non-FSLAA intermediaries has the advantage of potentially promoting a level playing field, by requiring financial institutions to ensure their non-FSLAA intermediaries support the same good customer outcomes that FSLAA intermediaries are required to deliver. In addition, this distinction acknowledges that FSLAA intermediaries are already highly regulated and subject to scrutiny under the FSLAA regime and may reduce duplication and the conflicts between conduct regimes (however, we note that Option 4 is likely to achieve this also).

FSLAA intermediary have their own obligations for ensuring the products and services they recommend or sell to customers are suitable for that customer. They are required to have sufficient knowledge and skill (including training) to distribute the product. It would often be reasonable for financial institutions to place some reliance on the FSLAA intermediary's processes to obtain assurance that products are suitable, and the FSLAA intermediary could be asked to attest this to the financial institution. Therefore, an intermediary that is already regulated under FSLAA does not necessarily require the same level of oversight by a financial institution as an entity that is not subject to regulation under the FSLAA regime. For those intermediaries that fall outside of FSLAA, more responsibility would sit with the financial institution for setting the conduct expectations and monitoring that these expectations are met.

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However, subject to drafting, such a distinction could create a regulatory gap. We note that the Discussion Document states that this option would apply on an entity level and not distinguish between regulated financial advice and non-regulated financial advice (for example execution only sales) provided by an FSLAA intermediary. This does not appear to address the gap in regulatory frameworks where an FSLAA intermediary distributes a product on an information only basis and is not subject to the FLSAA requirements which are contingent on financial advice being provided. Therefore, information only transactions conducted by a financial adviser or nominated representative may not be subject to any oversight other than monitoring conducted by a financial institution.

A further concern with Option 5 is that it does not sufficiently address the differences in the proposed treatment between FSLAA and non FSLAA intermediaries and introduces greater complexity. By distinguishing between FSLAA and non-FSLAA intermediaries in a prescriptive way, the risk is the focus becomes a tick box compliance exercise as opposed to identifying and responding to risks to customers arising from the various and often complex arrangements with intermediaries. Option 5 is likely to have broader appeal if there are further areas where more reliance can be placed on FSLAA requirements, and consequently financial institutions can be less responsible for the conduct of FSLAA regulated intermediaries.

If a distinction is made, care would need to be taken about how the distinction between FSLAA and non-FSLAA intermediaries are designed. There are instances where financial advisers are engaged by a licenced FAP but employed by their own company (which may not be a licenced FAP or authorised body under a FAP licence). In these structures, licenced FAP and the financial adviser's company would be considered intermediaries (assuming they receive commission for those services), but the financial adviser would not be an intermediary due to being an employee of an intermediary. If the distinction between FSLAA and non-FSLAA is based on whether each intermediary is a licenced FAP, associated body under a FAP licence, financial adviser or nominated representative, this could result in some companies being treated as non-FSLAA intermediaries when in fact the engagement is regulated under FSLAA. Requiring financial institutions to develop and operate two different standards for FSLAA and non-FSLAA intermediaries would also result in added cost and complexity in addition to the uncertainty above around when either standard is to be applied.

13. How far do you think financial institutions' oversight of FSLAA intermediaries under Option 4 should extend? For example, should it cover the general conduct of the intermediaries, or more narrowly on product performance and related consumer outcomes (or something else)?

We are unclear what is intended by the reference to "product performance" in the question in paragraph 71 of the Discussion Document. Product performance is likely to be influenced by a number of factors but is unlikely to be determined by the conduct of intermediaries (under the proposed narrowed definition). Rather, the impact of intermediaries is likely to be focused on whether the customer is sold a suitable product.

Financial institutions should not be responsible for the general conduct of intermediaries. This would be unreasonable as it is unlikely that they have sufficient sight of their intermediaries' general conduct to be able to provide this level of oversight and would also

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likely result in financial institutions being required to have oversight for conduct relating to another financial institution's products and services. Such an obligation would result in a duplication of supervision efforts and additional complexity and cost for both financial institutions and intermediaries.

As FSLAA intermediaries are already regulated, they are generally lower risk than non-FSLAA intermediaries and accordingly, generally require a lower level of oversight. Following a risk based approach, our view is that more oversight is likely to be required for non-FSLAA intermediaries. As discussed with reasoning in our response to Question 10, we consider that monitoring is more appropriate than managing and supervising, which would have legal difficulties.

We consider financial institutions' oversight of FSLAA intermediaries should be expressly limited to conduct and customer engagements that involve that financial institution's services or products. With FSLAA intermediaries, it is common that a financial adviser will be able to advise on and sell competing products from multiple providers, as well as potentially products across multiple market segments that could be offered by different providers. In these circumstances, it would be problematic if financial institutions were expected to monitor the intermediary's entire business. Requiring financial institutions to monitor their intermediaries' advice, sales and distribution of other providers' products could give rise to conflicts of interest or issues with commercial confidentiality. It would be unduly onerous for financial institutions, without furthering the objective of the intermediaries' provisions. These provisions are to ensure financial institutions remain responsible for overseeing that intermediated customers are not being sold, or left in, products that do not meet their needs or they are not receiving fair value from. Lastly, it would increase the duplication of supervision efforts, which would add complexity and additional costs.

Obligations in relation to employees and agents

14. Do you have any comments on the proposals regarding obligations in relation to employees and agents?

Agents could capture a wide range of parties, from contractors to professional advisers (in some limited circumstances) to outsource providers, such as claims management companies. Whilst some agents may work exclusively for the financial institution, others may provide services on a non-exclusive basis or the functions they perform as an agent may be a relatively limited part of their business or a combination of both. As per the discussion on Option 2 above, there remain questions and concerns about the potential breath and need to exclude advisory services and other service providers who are involved in only a generalised way, and are not involved, directly or indirectly, in providing the financial institution's relevant service or associated products to particular consumers.

We consider the proposed obligations on agents should be restricted to when they are performing "relevant services" as an agent. We are concerned that without clearly aligning the agent's services to the activity of the financial institution that is impacting customers, the concept may be too broad and open for misinterpretation. A financial institution should not be responsible for the management or supervision of agents to ensure that they are supporting the financial institution's compliance with the Fair Conduct Principle (as per paragraph 74(c)). As with intermediaries, we recommend that the "manage or supervise"

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language is amended to "monitor" in line with the changes proposed under Option 4 and set out in paragraphs 62 and 63.

Again, with reference to feedback noted at paragraph 57, it is not always within the financial institution's ability to ensure that the agent has "completed that training and have a reasonable understanding of the matters contained within it" as contained in section 446M(1)(bc) of the Bill as noted in paragraph 74(b). We recommend that the assurance over completion and understanding of training material is pared back.

15. Do you think there should be a distinction drawn between employees and agents? Why/why not?

In circumstances where an agent is an independent business, it is important to recognise that financial institutions may not be able to exercise control over, or manage, agents in the same way it would for employees. Rather, it may be appropriate for the Bill to only require financial institutions to set standards and conduct expectations for agents, monitor whether the agent is supporting the financial institution's compliance with the fair conduct principle, and deal with issues and misconduct. In this regard, it may be more appropriate to treat agents more akin to intermediaries.

In addition, we consider the provisions relating to agents should be limited to where that party is acting as an agent. In this regard, any training obligation should be limited to what is relevant to the agent's role. Additionally, the obligation for financial institutions to monitor should be limited to functions performed as that financial institution's agent.

16. Do you think any amendments should be made to the obligations in 446M(1) that would apply to employees and agents?

We do not think the provisions would always be appropriate for agents. Accordingly, we consider section 446M(1) should be amended to treat agents more similar to intermediaries. Please refer to our response to Question 14 and 15 for further details.

17. Do you have any other comments or viable proposals?

We note in paragraph 85 and 86 of the Discussion Document, MBIE suggests the same reasons for rejecting the proposal for intermediaries to have their own Fair Conduct Programme applies to the proposal that intermediaries have a duty to cooperate and constructively engage with financial institutions. These are two different proposals with different considerations and should be considered separately.

Other comments