FINANCIAL SERVICES FEDERATION

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Financial Markets Policy
Commerce, Consumers and Communications
Ministry of Business, Innovation and Employment

By email: financialconduct@mbie.govt.nz

Discussion document: Regulations to support the new regime for the conduct of financial institutions

The Financial Services Federation (FSF) is grateful to the Ministry for the opportunity to provide feedback with respect to the proposals covered in the discussion document.
By way of background, the FSF is the industry body representing responsible non-bank lenders, fleet and asset leasing providers and credit-related insurance providers. We have over 60 members and affiliates providing these products to more than 1.5 million New Zealand consumers and business. Our affiliate members include internationally recognised legal and consulting partners. A list of our members is attached as Appendix A. Data relating to the extent to which FSF members (excluding Affiliate members) contribute to New Zealand consumers, society and business is attached as Appendix B.

As you will see from the FSF member list, the financial institutions to which the conduct regime will apply who are members of the FSF are the three Non-Bank Deposit Taker (NBDT) members, First Credit Union, Nelson Building Society, and the small credit-related insurance provider members. This submission will largely represent the views of these members rather than the remainder of the membership that are Non-Deposit-Taking Lending Institutions (NDLIs) or the Affiliate membership. Although, as responsible lenders who take their compliance obligations very seriously, the NDLI members are keeping a watching brief on the requirements of the conduct regime to ensure that they do not remain out of step with what is being required of other financial institutions.

Before answering the questions raised in the discussion document, however, the FSF has some overarching views with respect to the regime that will be imposed upon financial institutions by the passing of the Financial Markets (Conduct of Institutions) Amendment Bill (the Bill).

In June of last year, several finance sector industry bodies wrote to then Minister of Commerce and Consumer Affairs, the Hon Kris Faafoi, expressing the collective concern of these bodies with respect to the Bill. The industry bodies who were signatories to this letter were the FSF, the New Zealand Bankers Association, the Insurance Council of New Zealand, the Financial Services Council and Financial Advice New Zealand. The letter is attached as Appendix C.

As you will see, the serious concerns raised in the letter centred around the lack of clarity contained in the Bill as to what the regime requires of financial institutions with respect to their conduct; the speed with which the Bill was originally drafted and the lack of consultation with affected financial institutions or their representatives as a result (which officials tasked with drafting the Bill acknowledged in the Bill's Regulatory Impact Statement); whether there was a need for yet another licensing regime for financial institutions already subject to a number of other licensing or registration requirements under other legislation; and the fact that the regime implemented by the passing of the Bill covered some financial institutions but not all.

The Minister responded by saying that, given the Bill was in front of the Select Committee at the time, he would wait to see what changes, if any, the Committee recommended to the Bill before meeting with the concerned industry bodies to further discuss the concerns raised.

Unfortunately, whilst the Select Committee did make some changes to the Bill when they reported back to the House on it in August last year, these were not sufficiently substantial as to make any real difference to it to address the concerns raised in the letter to the Minister. Given that the General Election was held a couple of months after the report back with the resulting change in ministerial portfolios, the concerned industry bodies have never had the further opportunity of presenting their concerns with respect to the conduct regime to the Government.

The FSF will therefore address those significant concerns about the regime which this Bill is seeking to introduce before answering the questions raised in the Discussion Document.

These are articulated as follows.

The need for a new licensing regime:
The FSF does not believe that the case has been made sufficiently robustly to demonstrate that there is a need for an entirely new licensing regime for the conduct of financial institutions. The Discussion Document references the FMA and RBNZ's joint reviews on the conduct and culture of banks and life insurers in New Zealand that were carried out in 2018 and 2019. Whilst these reviews identified a number of issues with bank and life insurer conduct and gaps in how they are regulated, the proposed conduct regime will apply to all insurers (including fire and general, health and credit-related insurance providers) and to NBDTs where there is absolutely no evidence of the existence of any conduct-related issues.

Whether or not gaps exist in the way the conduct of financial institutions is regulated (and the FSF is not entirely convinced of the existence of these gaps), applying yet another licensing regime to those financial institutions that are in the scope of the regime, is in the FSF's view such a clear example of regulatory overlap taken to an extreme as to render it nonsensical.

The financial institutions that will be subject to the conduct regime – banks, insurers and NBDTs – are already subject to very robust licensing and supervisory regimes for all other aspects of their operations.

All banks, insurers and NBDTs must be licensed or registered as such in order to be able to carry on business in New Zealand. Their activities are supervised by the Reserve Bank and, for NBDTs, also by their Trustee (under existing legislation). If they provide financial advice as part of their activities, they must have a further license from the FMA. They are all registered on the Financial Services Providers Register and, if they provide consumer credit, they will be required to have their directors and senior managers certified by the Commerce Commission as being fit and proper persons under the requirements of the amended Credit Contracts and Consumer Finance Act 2003 (CCCFA) which are about to come into force from 1 October this year.

Surely within this very comprehensive licensing and registration regime, there is room for the conduct of these financial institutions to be supervised without the need for a further licensing regime? The FSF strongly believes that this should be the case and the consumer outcomes being sought by the regime this Bill seeks to bring into force can be achieved without a further layer of licensing albeit possibly with some tweaks to existing licensing arrangements.

There is a very real risk, in the FSF's view, that regulators will be so busy assessing and approving licensing applications under all these competing regimes, that they will be too busy to enforce the law.

In addition, there is a considerable amount of legislation governing New Zealand's financial institutions that is already in place, is about to come into force, or is currently under review. The FSF believes that the process of the legislation reviews currently in play should be allowed to be completed before introducing yet another regime.

The legislation to which the FSF refers includes:

- The recent implementation of a new financial advice regime through the Financial Services Legislation Amendment Act 2020 (FSLAA) which requires those financial institutions offering regulated financial advice in New Zealand to obtain a transitional Financial Advice Providers licence through the FMA before applying for a full license, and to prioritise their clients' interests. This regime is designed to improve consumer outcomes when seeking financial advice in New Zealand.
- Changes to the CCCFA enacted in 2019 and accompanying regulations finalised earlier this year and guidance in the updated Responsible Lending Code of February this year – the vast amount of which is coming into force on 1 October this year. These changes have taken the CCCFA regime from being a very principles-based approach to a significantly more prescriptive one for providers of consumer credit contracts and credit-related insurance products in New Zealand. All of these changes are designed to improve consumer outcomes when applying for credit.
- A new Deposit Takers Act is being proposed for all banks and NBDTs that raise deposits from the public. For NBDTs this will replace the Non-Bank Deposit Takers Act 2013 and will give the Reserve Bank greater supervisory powers over deposit taking institutions. It also introduces a Depositor Insurance Scheme for all deposit takers including banks and NBDTs with the aim of providing more consumer protection when they place investment money with licensed deposit takers.

- The Insurance (Prudential Supervision) Act 2010 review which is under way to ensure that the legislation remains current and relevant in requiring that insurance companies manage their risks well so that the public can have confidence in the insurance sector and that it remains sound and efficient.
- The Insurance Contract law reform which is expected to commence later this year to make improvements to the disclosure obligations for consumers when entering into an insurance policy so that it is clearer for consumers about what information they must tell the insurer; to ensure that insurers must respond proportionately when consumers don't disclose something they should have, or misrepresent themselves; to make changes to the way insurance policies are written and presented, so that it is easier for consumers to understand their insurance contracts; and to strengthen protections for consumers against unfair terms in insurance contracts – all of which is designed to ensure better consumer outcomes when dealing with insurers.

Financial institutions are already under extreme pressure to develop processes, policies, systems, and procedures to meet their obligations under these pieces of legislation and will continue to be as each new law is finally enacted. The purpose of each of these laws is to provide a more robust financial sector in New Zealand to provide better outcomes for consumers. The Discussion Document itself acknowledges the overlap with this legislation and others such as the Fair-Trading Act 1986 and the Consumer Guarantees Act 1993 and yet extraordinarily adding a further compliance burden in terms of the fair conduct regime under this Bill is still being proceeded with.

Therefore, on the basis of the fact that the development of the Bill has been rushed which has not allowed for sufficient consultation on its content; on the basis that there are already in place licensing regimes which could easily be tweaked slightly to allow for a fair conduct programme to be implemented; and on the basis that there is large swathe of legislation either in place, about to come into force or in train that will also address issues of better consumer outcomes within our financial institutions, the FSF strongly urges Government to halt the progress of this Bill and the regime it seeks to bring in and to wait until the other legislative reviews are completed to determine whether there are any gaps remaining with respect to fair conduct.

Scope of the Bill

The Bill will require financial institutions to be licensed by the FMA in respect of their conduct and to establish, implement, maintain, and comply with effective fair conduct programmes that are designed to ensure the institutions meet an overarching principle to treat consumers fairly.

The Bill defines "financial institutions" in S446D as being a registered bank, a licensed insurer or an NBDT. This then means that those financial institutions that are not a bank, an insurer or an NBDT – for example NDLIs – will not be subject to this regime.

However, the FSF finds much of the wording in the Discussion Document to be very confusing with respect to which financial institutions will be covered by some requirements of the regime. Where "financial institutions" is used to clearly mean banks, insurers and NBDTs, it is clear other institutions such as NDLIs are not covered by it. However, in many

places in the Discussion Document there is reference to “all financial institutions” or “every financial institution” so it is not as clear that the regime applies solely to banks, insurers and NBDTs. The FSF believes that this murkiness in terms of the regime’s scope is not at all helpful and is a further reason why the Bill should be withdrawn in its entirety.

The decision to not capture NDLI members under the scope of the regime reflects the FSF’s beliefs that no financial institutions should be within its scope as it should be withdrawn in its entirety for the reasons stated above. However, whilst this Bill is proceeded to enactment, there remains a significant anomaly with some institutions being captured whilst others are not. The FSF queries whether such identified gaps will be resolved with the current scope of captured institutions, or whether this is regulation for regulation’s sake.

As responsible credit providers, FSF members who are not proposed to be in the regime’s scope, will not seek to take advantage of consumers by leveraging on this anomaly. However, there are other financial institutions who do not take their obligations to behave fairly in all instances so seriously, who may do so.

This submission will now go on to address the specific questions which have been asked in the Discussion Document, with respect to the comments made above and references to the noted overlapping legislations rendering some of these propositions unnecessary.

Question 1: Do you have any comments on the status quo i.e., no further regulations to support the minimum requirements for fair conduct programmes in the Bill?
The FSF supports the notion that no further regulation is required on this issue.

Question 2: Do you have any comments on MBIE’s proposal position that no regulations are needed at this time to support section 446M(1)(a)?
The FSF supports the premise that there is no need for further regulation on this aspect also.

Question 3: Do you have any comments on the proposals regarding distribution of relevant services and associated products?
The FSF has serious concerns as to how a consumer is defined within this regime. “Consumer” is currently not defined in the Bill, nor any of the existing overlapping legislation that the Discussion Document references. If entities will then be required to identify their own “potential consumers” more guidance is required to resolve the ambiguity that comes with such a non-defined regulatory term.

The FSF also has concerns regarding the ambiguity surrounding the application of the definition of a “potential consumer”. The FSF questions whether such an assessment can be effectively made as it encompasses too broad a definition and, as such, is a poorly considered suggestion.

The FSF also has qualms about the sheer number of “Cons” identified in this proposal whilst then suggesting its progression, nonetheless. The FSF questions the rationale of doing a cost benefit analysis and then proceeding to recommend the cost heavy option despite the

result of the analysis. The FSF urges such a proposal to be considered in light of MBIE's own analysis, and therefore, suggests the adoption of a less cost-heavy approach.

As echoed throughout our introductory comments, and what will continue to be echoed throughout the remainder of this submission, there are existing regimes and legislation that cover and regulate institutions' fair conduct and how they should manage their provision of financial products and services to the benefit of consumers. This is particularly so with respect to the CCCFA with its significant emphasis on protecting vulnerable consumers.

As mentioned in the Discussion Document, and with further extrinsic information, the FMA's noted "gaps of compliance" have been more so the result of lack of enforcement of existing law as opposed to the lack of legislation. The necessary regulations and extensive number of regimes already exist as the FSF has previously emphasised in this submission. If gaps in compliance have been identified in FMA's desktop review, which has been completed in light of this Discussion Document, the FSF suggests that enforcement of those regimes should be undertaken, rather than imposing a further surplus of unenforced regulation.

Question 4: Do you have any comments on MBIE's position that no regulations are needed at this time to support section 446M (1) (ac)?
The FSF is in agreement with MBIE's position that no further regulation is needed for this aspect. The FSF directs MBIE to the Non-Bank Deposit Takers Act and other legislation, which already has extensive requirements for entities to have Risk Management plans in place.

Question 5: Do you have any comments on MBIE's position that no regulations are needed at this time to support section 446M (1) (bb) to (bd)?
The FSF agrees with this stance also, for similar reasons as those given in the answers above.

Question 6: Do you have any comments on the proposal to specify further minimum requirements regarding remediation of issues? Are there any further specific remediation principles that should be specified in regulations?
The FSF directs MBIE to the legal requirements for financial institutions to be a member of an approved Financial Dispute Resolution Scheme, as specified in the overlapping legislation MBIE has identified.

The FSF is uncertain therefore why regulated entities would need to have more remediation regulation imposed on them, when Dispute Resolution Schemes exist. The Dispute Resolution Schemes provide for a streamlined and consistent process in which those complaints which cannot be dealt with internally or which have reached a deadlock within the financial institution, are resolved. There is therefore no need in the FSF's view, for legislation to take away the role and purpose of the Dispute Resolution Schemes, which is what such a proposal would do.

The FSF also recalls a recent review into the rules for the approved Dispute Resolution Schemes, and questions why MBIE would invest in such a review of the schemes whilst also proposing to reduce their need in this Discussion Document.

Question 7: Do you have any comments on MBIE's position that no regulations are needed at this time to support section 446M (1) (be)?
The FSF support MBIE's stance that there is no regulation that is needed at this time for this section.

Question 8: Do you have any comments on MBIE's position that no regulations are needed at this time to support section 446M (1) (bf)?
The FSF support MBIE's stance that there is no need for regulations in support of this section.

Question 9: Do you have any comments on MBIE's position that no regulations are needed at this time to support section 446M (1) (d)?
The FSF support MBIE's stance that there is no need for regulations in support of this section also.

Question 10: Do you have any comments on the proposal to specify further minimum requirements regarding consumer complaints handling?
As FSF answered with respect to Question 6 of this Discussion Document, regulated entities are legally obligated to belong to an approved external Disputes Resolution Scheme whose role is to then deal with consumer complaints if an internal agreement is not reached between the entity and the consumer.

What the FSF records, and what MBIE has stated in their Discussion Document on the review of the approved Financial Dispute Resolution Scheme rules in paragraph 59, is actually the typical success that complaints have when dealt with internally. Therefore, it can non-contentiously be concluded that the need for further requirements would prove to be unnecessary.

Question 11: Do you have any comments on the proposals to specify further minimum requirements regarding claims handling?
The FSF's members that are insurers are providers of credit-related and other insurance products such as motor vehicle insurance that have very fast claim turnarounds and resolution timeframes and it is in their interests that they do resolve claims quickly. Therefore, the FSF believes that our insurance provider members currently surpass requirements in regard to claims handling, thus no further requirements would need to be specified.

The only factors currently delaying the settlement of claims by the FSF's insurance provider members are external and are caused by such issues as the delay in getting supply of replacement motor vehicle parts and their delivery or awaiting Police or coroner's reports. This is particularly so in the current climate of delays with parts manufacture and shipping of which MBIE is aware. This may have an effect on the resolution of some claims, as some entities are not able to provide parts as swiftly as they once were and therefore claims are taking longer to settle. However, this is not an issue caused by any fault of the institutions, but the current global climate. The FSF urges MBIE to consider any current situations in

terms of supply of resources before going on to further regulate claims handling processes particularly with respect to the FSF's insurance provider members.

The FSF also notes that considering the variability of insurance products provided by those financial institutions captured under this regime, a prescribed process in which claims are dealt with is impractical and unreasonable as it is clearly not a "one size fits all" situation. Various insurance products will have various procedures for claims handling and resolution of claims can be influenced to a greater or lesser degree by external factors outside of the control of the insurer rendering a prescribed process for all claims completely unworkable.

The FSF sees no issue with the current claim handling process and therefore submits that a proposal for specifying requirements is unnecessary and will not accommodate the diversity of products provided by various financial institutions.

Question 12: Do you think there is need to define what "handling a claim under an insurance contract" means? If so, why?
The FSF sees no need to further define what "handling a claim under an insurance contract" means.

Question 13: Do you have any comments on the discussion regarding customer vulnerability?
There has been much recognition of the efforts by registered banks in their response to customer vulnerability and hardship during the Covid19 first lockdown period, where they provided variations on contracts and other amendments to help with the potential customer hardship that was forecast.

It should be remembered that the non-bank lending sector also provided similar relief to their customers however this is often unrecognised. What is an especially important distinction between the banking and non-banking sector, is that non-banks did this without the protection of the urgent legislation made by the Government to enable such variation powers, which banks had the privilege of receiving. The FSF would like this to foreshadow the understanding of the way in which the non-bank sector also seeks to treat their customers and operations with a view to delivering the best possible customer outcomes.

As mentioned earlier in this submission, many of the amendments that have been made to the CCCFA were also made with the intention of adding protection to vulnerable borrowers. These amendments are comprehensive and extensive, and with these in mind, the FSF does not believe that there needs to be any further guidance on this aspect.
The FSF also notes that the Insurance Contract Law Review, as mentioned in our introductory comments, will also commence later this year with the intention of strengthening the consumer's understanding of contracts and mitigating consumer vulnerability. As a result, the FSF sees no 'gaps' to fill in the space of consumer vulnerability and no further proposals on this topic are relevant or appropriate.

The FSF notes the discussion on the aspect of sales and incentives in this document. If MBIE was to adopt their preferred option of reform for incentives, being prescriptive blanket prohibition on volume and value targets, then the FSF fails to see how any further customer

vulnerability regulation would be considered necessary. Therefore, any further recommendations for customer vulnerability are not necessary and made redundant, not only by the argument of existing regimes, but especially so if incentives reform is adopted.

Question 14: Do you have any comments regarding the option of including vulnerable consumers in section 446M (1A)?
The FSF refers to the answer given to Question 13 in which the FSF specified that much of what is proposed here in terms of protecting the vulnerable consumer will already be covered in the suite of amendments made to the CCCFA (coming into force earlier than when we would expect COFI to) and the upcoming Insurance Contract Law review, rendering this option unnecessary.

Question 15: Do you think any further factors should be added by regulations to the list under section 446M (1A)?
The FSF does not believe that any further factors should be added by regulations to this section.

Question 16: Do you think any other regulations that could be made under new section 546(1) (oa) are necessary or desirable? Please provide reasons for your comments.
The FSF does not believe that any further regulations are appropriate for this section. As per the comments in previous answers to questions, the FSF submits that many of the amendments proposed in this discussion document are covered by the suite of legislation and regulation (listed in our introductory comments) that are already in force or very soon to be in force, particularly those that are part of the CCCFA regulatory reforms, and which will result from the impending Insurance Contract Law review.

Question 17: Do you have any comments on the Status Quo (no regulation)?
The FSF supports MBIE's comments regarding the unlikeliness that the status quo will remain, and also acknowledges the previous policy decisions that Cabinet has made to prohibit sales targets based on value and volume.

Question 18: Do you have any comments on the option to prohibit sales incentives based on volume or value targets?
The aim to promote better customer outcomes by prohibiting such incentives is admirable and the FSF agrees that irresponsible behaviour should most definitely be the focus of these regulations. However, such regulations should not be so broad as to unintentionally capture other intermediaries and cause unintended consequences.

Firstly, before commenting, the FSF refers to section 446P of the Financial Markets (Conduct of Institutions) Amendment Bill, in which it defines incentives based on value. Further, section 546 of this Bill then states that such incentives are prohibited.

The FSF queries the need for this question in the Discussion Document when it has already been articulated in the Bill that those incentives based on value and volume are prohibited. The legislation is fairly clear and, assuming that the FSF's view that the progress of the Bill itself should be stopped is not agreed with or carried out, then the FSF sees no further need to comment on the necessity of this regulation.

The FSF supports MBIE's aim of disincentivising bad behaviour by providing incentives to staff who then turn such incentives into unfair conduct. However, the FSF does agree with MBIE's proposal to exclude linear targets from the regime.

Within the discussion documents, the FSF notes that there seems to be some confusion between the definitions of commission and incentives, and there needs to be further guidance to distinguish between the two. Further examples drawn on throughout this chapter of the discussion document present the theme that incentives, as per s 546 of the Bill, are distributed in addition to regular income and to motivate more sales.

However, the payment of commission can be what some people solely rely on for income and the payment of it should therefore not be prohibited. The examples of incentives listed in the discussion document are in no way analogous to a commission as an ordinary source of income.

Persons, commonly those in contractor positions, have their whole wage determined on commissions. Regulating to prohibit commissions will entirely remove some forms of employment, therefore, the FSF urges that MBIE reflect on the differences between incentives and commissions in any further decisions that follow from this policy. If commission is captured entirely under the regulations, then there will be many significant unintended consequences for persons under this model of employment, and because of the flexible nature of a commission-based employment and its suitability to particular positions, such consequences may cause drastic changes in employment across captured financial institutions.

Some entities have also expressed concern regarding the confusion with respect to financer to dealer margins, and this confusion is also implicitly articulated in the discussion document. The definitional ambiguities warrant the FSF to urge MBIE to take care when drawing such distinctions.

Question 19: What would the likely impacts be for financial institutions, intermediaries and/or consumers of prohibiting sales incentives based on volume or value-based targets?
The FSF agrees that sales incentives based on volume or value-based targets have the potential to drive behaviour that is in conflict with the aim of better customer focussed outcomes which can translate into unfair conduct.

Question 20: Do you have any feedback on a more principle-based approach to prohibiting some incentives?
The FSF urges caution when considering commission-based income in the potential adoption of a more principles-based approach. As per the arguments outlined in answer to the above questions, commissions can be a distinct remuneration model in employment and therefore, FSF encourages MBIE to adopt a principle which excludes commission when used as a reasonable remuneration model.

There are no further comments to make on a principle-based approach.

Question 21: How could a more principles-based approach to prohibiting some incentives be made workable?

The FSF has nothing further to submit on a principles-based approach.

Question 22: If a more principles-based option was chosen, should there be some incentives specifically excluded?
As the FSF has articulated throughout the submission, commission-based employment within a reasonable perimeter should be excluded, otherwise prohibiting this would prohibit a whole model of remuneration that is not just used in the financial sector but in almost all sectors.

Question 23: Do you think there are any other viable options other than what has been put forward by this discussion document? Please explain in detail.
The FSF has no other options to put forward.

Question 24: Are there sales incentives based on volume or value targets that should be excluded from the regulations (i.e., allowed to be offered/given)?
This is the same question as Question 22, please refer to that answer.

Question 25: Do you think there are any other types of incentives that should be excluded from the regulations? Please provide reasons for your comments.
The FSF suggests no other types of incentives to be regulated. This Question is also very similar to Questions 22 and 24.

Question 26: Do you think that the scope of who can be covered by the regulations poses a risk of unintentionally capturing other intermediaries that are paid incentives but should not be covered?
The FSF queries MBIE's intentions of capturing brokers under this regulation. Institutions have questions as to how they are to remunerate brokers as a result of this regulation when considering the nature of the relationship.

As with our answer to Question 18, the FSF has identified ambiguities in the discussion document which have translated into confusion regarding the various intermediaries that may be unintentionally captured. The FSF's comments regarding commissions versus incentives apply to this question as well. Commissions and incentives should be distinguished again, as one is most definitely not analogous to the other. Prohibiting commission entirely will prohibit a model of employment, which is a consequence that MBIE should not be aiming for.

Question 27: Do you agree/disagree that within financial institutions and intermediaries sales incentives regulations should apply to all staff? Why/why not?
The FSF supports other statements made by MBIE in the discussion document, particularly paragraph 156, which imposes the prohibition on those who are immediately involved with in the sale of financial products. The FSF does not see any necessity in regulating all employees of a financial institution when incentives may not even be relevant to all staff nor relevant to the aim of the Bill or discussion documents.

If this option is also adopted, there can be unintended consequences, particularly with the principles-based approach, as staff that may have a role in the innovation and amendments of a financial product, or who have an effect on the uptake on the product only indirectly, may also be captured. Potentiality to reduce innovation of financial products, and sales strategy, can occur and therefore, the FSF disagrees with this proposal.

Question 28: Do you agree/disagree that within financial institutions and intermediaries sales incentives regulations should only apply to frontline staff and their managers? Why/why not?
At this stage, it is very unclear to the FSF who the term "frontline staff" will capture. Further definitions and guidance need to be provided in order for this question to be answered appropriately.

On the basis that "frontline staff"' would only capture those who are directly "selling" the products to consumers, then the FSF agrees. Whether managers should also be captured by sales incentives regulation should depend on how "intermediaries" are defined.

The FSF is unable to answer the questions appropriately and to their full extent due to this ambiguity and uncertainty with respect to the definitions of each position in this question, and throughout the entirety of the discussion document. Appropriate definitions as to who these regulations will cover should be determined initially before consulting on such questions, as answers will be variable until definitions are provided for.

Question 29: Do you think that external incentives should apply to any incentive paid to an agent, contractor, or intermediary? Why/why not?

It has already become obvious from the Bill and discussion documents that it is intended that external incentives will apply to any incentive paid to an agent, contract or intermediary, and therefore, the FSF has no comments to submit on this question.

Question 30: Do you agree that both individual and collective incentives should be covered? Why/why not?
The FSF agrees that both individual and collective incentives should be covered as they still have the possibility of influencing unfair conduct, no matter the distribution of the incentive.

Question 31: Do you have any other comments on the discussion related to incentives?
The FSF has no further comments on the discussion related to incentives.

Question 32: Is more detail needed to outline what information should be published regarding financial institutions' fair conduct programmes to assist financial institutions to meet this requirement, or to assist consumers in their interactions with financial institutions?
The FSF points to comments made in our introduction in answer to this question and the existing regimes. Fair conduct programmes are already in force in various existing regimes, although not explicitly labelled as a fair conduct programme.

The Responsible Lending Code particularly has had extensive amendments made to it recently which give guidance to lenders as to how to meet prescriptive and principle-based regulations and how to manage and operate their institutions in relation to customer focus and customer vulnerability. The review of Insurance Contract Law will do much the same, once this is commenced with its focus on improving consumer understanding of products and mitigating vulnerability. Further reviews of principal legislation, and existing legislation, require entities to have appropriate risk management plans and other operational plans which account for fair conduct again.

The Bill itself has definitional ambiguities around what the Fair Conduct Programme is, as a result of the rushed drafting. Given this and the fact that the FSF does not believe that this legislation should be proceeded with any further, the FSF does not see how guidance on the fair conduct programme requirements could resolve the ambiguities and unnecessity of what has been drafted in the Bill itself.

FSF members, already comply with, and surpass, existing guidance set out by the FMA on conduct without the need for this legislative regime. Rather than further regulating with the introduction of this regime, the FSF suggests the FMA enforce their already existing guidance on conduct to fill the 'gaps' identified in their desktop reviews.

Question 33: Do you have any comments on the options outlined above? What do you think the costs and benefits would be to financial institutions and consumers of the two options?

The FSF fails to see any direct benefits to consumers as a result of the two options, as currently the existing regimes provide for enough guidance for financial institutions to conduct operations fairly. The FSF suggests that it is more a case of the need for enforcement than it is to further regulate and prescribe unnecessarily.

Obvious costs associated with regulation compliance would be applicable here, as entities will then need to redistribute and allocate resources to ensure that their existing fair conduct is compliant with this new proposed regime – resources which can be utilised for the improvement of other customer focussed innovations and services.

Question 34: This discussion document outlines two options regarding the requirement to publish information about the fair conduct programmes. Do you have any other viable options?

The FSF proposes no further options.

Question 35: Do you have any comments on the proposal to declare contracts of insurance as financial products under Part 2?

The FSF queries the need for this question. Contracts of insurance are presently considered as financial products.

Question 36: Do you think it would be appropriate to exclude people who are subject to professional regulation from the definition of an intermediary (e.g., lawyers, accountants, engineers)?
The FSF suggests it would be appropriate to adopt the exclusion suggested. Without this, there is an inevitable increase in compliance cost for such intermediaries and that cost is then transferred to those institutions which require their professional services which will have to be recovered through increased fees or charges to consumers.

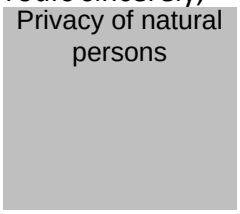
With the inevitable regulatory cost that many financial institutions will be incurring as a result of the numerous regimes coming into force, any legislation resulting in further increases in compliance costs should be carefully considered to ensure there is sufficient benefit to justify their imposition, particularly for those smaller regulated entities.

It is also important to note that financial institutions are in no position to manage or supervise such third-party independent intermediaries and therefore, if they were not excluded from the definition of an intermediary, this provision could not be complied with.

Question 37: Do you think that any other occupations or activities should be excluded from the new proposed definition of an "intermediary? If so, why?
The FSF will provide an appropriate answer to this question in our second submission to the discussion document regarding the treatment of intermediaries.

Please do not hesitate to contact me if you have any questions or wish for us to clarify any points made.

Yours sincerely,



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FINANCIAL SERVICES FEDERATION

Appendix A

Membership List as at June 2021

Non-Bank Deposit Takers Leasing Providers	Vehicle Lenders	Finance Company Diversified Lenders	Finance Company Diversified Lenders	Credit Reporting & Debt Coll Agencies	Affiliate Members
<u>Rated</u> Asset Finance (B) <u>Non-Rated</u> Mutual Credit Finance Gold Band Finance ➢ Loan Co <u>Credit Unions/Building Societies</u> First Credit Union Nelson Building Society <u>Leasing Providers</u> Custom Fleet Fleet Partners NZ Ltd Lease Plan ORIX New Zealand SG Fleet	AA Finance Limited Auto Finance Direct Limited BMW Financial Services ➢ Mini ➢ Alphera Financial Services Community Financial Services European Financial Services Go Car Finance Ltd Honda Financial Services Mercedes-Benz Financial Motor Trade Finance Nissan Financial Services NZ Ltd ➢ Mitsubishi Motors Financial Services ➢ Skyline Car Finance Onyx Finance Limited Toyota Finance NZ Yamaha Motor Finance	Avanti Finance ➢ Branded Financial Caterpillar Financial Services NZ Ltd Centracorp Finance 2000 Finance Now ➢ The Warehouse Financial Services ➢ Southsure Assurance Flexi Group (NZ) Limited Future Finance Geneva Finance Harmoney Home Direct Instant Finance ➢ Fair City ➢ My Finance John Deere Financial Latitude Financial Metro Finance Pepper NZ Limited Personal Loan Corporation	Pioneer Finance Prospa NZ Ltd Smiths City Finance Ltd South Pacific Loans L & F Group ➢ Speirs Finance ➢ Speirs Corporate & Leasing ➢ Yoogo Fleet Thorn Group Financial Services Ltd Turners Automotive Group ➢ Autosure UDC Finance Limited	Baycorp (NZ) ➢ Credit Corp Centrix Collection House Equifax (prev Veda) Illion (prev Dun & Bradstreet (NZ) Limited Intercoll Quadrant Group (NZ) Limited <u>Credit-related Insurance Providers</u> Protecta Insurance Provident Insurance Corporation Ltd	255 Finance Limited Buddle Findlay Chapman Tripp Credit Sense Pty ltd Experian EY FinTech NZ Finzsoft Green Mount Advisory Happy Prime Consultancy Limited HPD Software Ltd KPMG LexisNexis PWC Simpson Western Verifier Australia Total 71 members

Appendix B

FINANCIAL SERVICES FEDERATION

The Financial Services Federation (FSF) is the association for responsible finance and leasing companies operating in New Zealand.
This infographic is a snapshot of our 40 lending members, the membership list can be found at our website www.fsf.org.nz.

Consumer Lending

1.6 million
Consumer Loans

$7.5 billion
Total Assets

$355,039,962
Secured

$2,996,322,244
Unsecured

$2,484,376,195
Motor Vehicle

$654,604,625
Mortgage

Business Lending

172,4000
Businesses Loans

$7.6 billion
Total Assets

$609,678,636
Secured

$79,625,359
Unsecured

$4,134,085,468
Motor Vehicle

$133,896,221
Mortgage

$186,477,244
Operating Lease

FSF lending members data survey period as at 29 February 2020 . Data collected and aggregated by KPMG. Values in NZ$.

Appendix C

19 June 2020

The Hon Kris Faafoi

Minister of Commerce and Consumer Affairs

By email: Kris.faafoi@parliament.govt.nz

Dear Minister

The financial sector industry bodies that are signatories to this letter urgently seek your support to putting an urgent halt on the passage of the Financial Markets (Conduct of Institutions) Amendment Bill (the Bill) in order to enable a comprehensive review of what we believe to be the Bill's significant shortcomings and to allow for development of a better legislative approach to achieve the Government's policy objectives.

We all very much appreciate the support the Government has provided to the sector throughout the period of Alert Levels 4, 3, 2 and now 1 through such initiatives as the wage subsidy, the Cashflow Lending Scheme and most particularly through the deferral of other key pieces of legislation and regulation in recognition of the fact that we are each in our own way impacted by COVID-19. For the members of our organisations this is particularly manifested in the ways in which they have stepped up to provide assistance to their customers and each of us as industry bodies have stepped up to support our members in turn.

Each of us have had our opportunity to appear before the Finance & Expenditure Select Committee in the last few days and each of us have voiced our concern that the Bill in its current form is unlikely to achieve the purpose for which it has been drafted. Indeed, it has become apparent during the Select Committee process that this concern is widespread.

The Regulatory Impact Statement accompanying the Bill made it clear that the officials responsible for the Bill's drafting felt that this process was significantly hindered by the time constraints under which they were working. The RIS points to the fact that these constraints did not allow for extensive consultation with stakeholders on the development and refinement of options and that this would lead to a need for further refinements through consultation during the legislative process.

The RIS further stated that the Bill sets out a high-level framework for a broad conduct regime but that the details would need to be fleshed out over time through regulation and potentially further legislative changes once there has been an opportunity for further policy thinking. It went on to say that the time constraints had also not allowed officials to consider some of the broader options.

We agree with these points and would argue that the speed with which the Bill has been drafted has not allowed for sufficient consultation and that as a result of this, it has significant drafting issues and therefore lacks substance and clarity as to what will be required of financial institutions to demonstrate that their conduct meets the test of being fair.

Legislation which relies heavily on its form through regulations is confusing not only for the industry but also consumers. Consumers must be able to understand the meaning and intent of legislation to ensure it has been applied correctly and understand consumer redress if required.

While we all support the need for good conduct and for customers to be treated fairly we question whether or not a fair conduct regime is required as a separate piece of legislation in itself or whether it would be better incorporated into the requirements that already exist under other licensing regimes under which financial institutions and entities are covered in order to avoid regulatory overlap and to ensure that licensing requirements are clear and sufficiently streamlined as to be easily complied with.

Specific examples of anomalies or potential unintended consequences that will arise as a result of the Bill being passed in its current form which give rise to our concerns include the fact that many providers of financial products like Kiwisaver and consumer credit contracts will not be within scope of the legislation and will not therefore be required to develop a fair conduct programme or have limitations set around the way in which they structure their

incentives programme while other providers of similar products will be subject to these requirements.

This means that intermediaries working with a range of providers will be strongly incentivised to refer their customers to those providers who will not be bound by the regime's prohibition against commissions or incentives based on sales volumes or values or to those providers that will not require their intermediaries to comply with their fair conduct programme.

Conversely, there will be other providers of services to financial institutions for whom the Bill as worded would apply when it clearly should not. These providers would include any panel-beater, carpet-dryer, plumber, plasterer, painter etc carrying out repairs arising from an insurance claim because they are carrying out the intermediary financial service of reinstating the loss incurred.

We the undersigned feel that the policy aim of this Bill is too important for it not to be put through a robust process to ensure that it can achieve its aim and we therefore strongly suggest this Bill now be withdrawn and the approach to conduct legislation (if needed) rethought in the context of the current regime, to allow all stakeholders to be consulted in an effective manner to be able to sufficiently consider all the options and to provide the clarity as to what the regime's requirements will be that is currently lacking.

Thank you for taking the time to consider our request. We the below market participants request an urgent meeting with you to discuss this further.

Yours sincerely

Privacy of natural persons

Tim Grafton

Chief Executive Officer

Insurance Council of New Zealand

Privacy of natural persons

Roger Beaumont

Chief Executive Officer

New Zealand Bankers Association

Privacy of natural persons

Katrina Shanks

Chief Executive Officer

Financial Advice New Zealand

Privacy of natural persons

Lyn McMorran

Executive Director

Financial Services Federation

Privacy of natural persons

Richard Klipin

Chief Executive Officer

Financial Services Council