Submission template

Treatment of intermediaries under the new regime for the conduct of financial institutions

Your name and organisation

Name	Privacy of natural persons
Email	
Organisation/Iwi	Partners Life

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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'?
	No additional response.
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?
	No additional response.
Option 2: Refine scope of who is covered as an agent	
3	Do you have any comments on Option 2?
	No additional response.
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?
	No additional response.
5	Do you think any explicit exclusions are needed for particular occupations or activities? If so, which ones, and why?
	No additional response.
Objectives	
6	Do you have any comments on the objectives regarding the treatment of intermediaries?
	No additional response.
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'?

	Partners Life is not supportive of this option for its intermediary relationships most of whom are Financial Advice Providers (FAPs) regulated under Financial Services Legislation Amendment Act (FSLAA). By removing the requirement set out in 446M(1)(b) for intermediaries to 'follow the procedures or processes that are necessary or desirable to support the financial institution's compliance with the fair conduct principle', we do not believe there would be sufficient leverage for the Financial Institution (FI) to ensure that an intermediary then comply with the other requirements regarding training, completion of training and managing or supervising that intermediary. Furthermore, our view is that a requirement for a FI to manage or supervise an intermediary would be undesirable and difficult to implement, could be a contractual overreach, and would potentially impinge on FMA's regulatory oversight remit (where that intermediary was regulated under FSLAA). Partners Life would prefer to see an outsourcing licence requirement along the lines of those for other Financial Markets Conduct Act (2013) (FMCA) licences. FMCA licences contain a requirement regarding the minimum standards that relate to the outsourcing of material services to third parties. That concept could be applied here by requiring that a FI has robust, right-sized, and fit-for-purpose initial and ongoing due diligence requirements for all intermediary relationships captured by the Conduct of Financial Institutions Bill (CoFI).
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?
	No additional response.
Option 4: More significant changes to intermediaries obligations	
9	Do you have any comments on Option 4: 'More significant changes to intermediaries obligations'?

Partners Life is supportive of the intention to reduce the potential duplication between FSLAA and CoFI but we are concerned that, as currently described, this option does not create a level playing field for intermediaries regulated by FSLAA, and those that are not.

Partners Life appreciates that there is a broad church of intermediaries captured by the CoFI regime, and not all will presently be subject to conduct obligations. It is important however to ensure that the regulations do not inadvertently apply higher, or lower, requirements to different intermediary groups. Nor should the regulations risk assess intermediaries on behalf of FIs based on the service being provided to the consumer.

When determining whom to engage as an intermediary, Partners Life has a robust risk assessment process. That process considers a number of areas, not just the service that the intermediary will be providing on Partners Life's behalf. Therefore, FSLAA intermediaries should not be treated differently to other intermediaries based solely on the service they are providing (i.e. regulated financial advice). If any differentiation is to occur, and it is our~~t~~ view that it should to prevent dual regulation, it should be based on whether existing, like for like conduct obligations that apply to an intermediary.

We do not believe that a carve out specifically for FSLAA intermediaries at a FAP level deals with this issue in its entirety. Regulated financial advice as defined by FSLAA applies at a point in time, i.e. when the advice is given (either by a FAP, or on behalf of a FAP) to acquire or dispose of a financial advice product (or not to acquire or dispose of it).

However other aspects of the regime apply on a continuum. FSLAA intermediaries are required to comply with the standards of ethical behaviour, conduct, and client care required by the Code. Some of these standards are not time bound, such as Code Standard 1 that requires a person to 'always' ensure customers are treated fairly or Code Standard 2 that requires an adviser to 'always' act with integrity.

Despite this complexity, our experience is that advisers apply the spirit and requirements of FSLAA and the Code across all their customer interactions (and this is what we encourage both through our internal requirements and the terms and conditions of our agency agreements).

Given these overarching conduct and client care requirements, our view is that Option 4 would create overlap, dual regulation and confusion for FSLAA regulated intermediaries. For this reason, if Option 4 were to be selected, Partners Life's stance would be that non-FSLAA intermediaries should be subject to the CoFI regulations. However, FIs dealing with FSLAA intermediaries should be able to rely on the fact that a FSLAA intermediary is subject to FSLAA and the Code when regulated financial advice is given and this could provide the evidence of meeting the conduct obligations intended by both FSLAA and CoFI.

A further option contemplated in the Discussion Document in paragraph 68 is that s403 of FMCA is amended to impose conditions on FAP licence holders acting as intermediaries of FIs to ensure customers are treated fairly. This could, in theory, place a requirement on those FAPs to ensure that conduct obligations apply throughout the customer interaction, formalising what we see advisers doing in practice with their clients.

Partners Life would fully support this option.

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?
	No additional response.
11	What standard do you think financial institutions should have to oversee their intermediaries to?
	No additional response.
Option 5: Distinguish between FSLAA and non-FSLAA intermediaries	
	Do you have any comments on Option 5: 'Distinguish between FSLAA and non-FSLAA intermediaries'?
12	Partners Life is supportive of this option because it seeks to avoid dual regulation and overlap for FSLAA intermediaries. Our view is that wherever possible dual regulation and overlap between the FSLAA and CoFI regimes should be avoided. The step change in relation to the introduction of the new financial advice regime, particularly for small and medium-sized FAPs should not be underestimated. Dual regulation issues or additional compliance burden is likely to erode the policy intentions of FSLAA. However, for the reasons set out in question 9, we think the regulations will need to be drafted carefully to ensure there are no unintended consequences or overlaps but that the policy intentions of the regime are still achieved.
13	How far do you think financial institutions' oversight of FSLAA intermediaries under Option 5 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)?
	No additional response.
Obligations in relation to employees and agents	
14	Do you have any comments on the proposals regarding obligations in relation to employees and agents?
	No additional response.
15	Do you think there should be a distinction drawn between employees and agents? Why/why not?

	No additional response.
16	Do you think any amendments should be made to the obligations in section 446M(1) that would apply to employees and agents?
	No additional response.
17	Do you have any other comments or viable proposals?
	No additional response.

Other comments

Partners Life has played an active part, and has provided significant input into, the submission made by the Financial Services Council (FSC) for this consultation. We are fully supportive of FSC's submission. Partners Life has therefore only provided comments in this submission where we feel we can provide specific insights into, or context applicable to, the life insurance industry and the Partners Life business model that differs from the financial services industry as a whole, or where we wish to make a point not picked up in the FSC submission.