

# Submission template

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

### Your name and organisation

<b>Name</b>	Privacy of natural persons
<b>Email</b>	
<b>Organisation/Iwi</b>	Trustee Corporations Association of New Zealand Inc

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

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

*We agree that the amended definition addresses the specific risks associated with sales and distribution while avoiding the unintended consequence of capturing a wide range of entities that are involved in the service in some way.*

1 *Under the current definition of 'intermediary', it is possible that Public Trust's role as a licensed supervisor, in particular, as a custodian and in approving KiwiSaver significant financial hardship and serious illness withdrawal applications, would be captured as "administration and performance of a service or terms and conditions of a product".*

*Requiring the financial institution (Public Trust's supervised entity) to manage or supervise Public Trust's support of the financial institution's compliance with the fair conduct principle creates a circular supervision or monitoring model that is likely to be confusing for all parties and consumers. While it is likely that a narrower definition of 'intermediary' would avoid this circular model, we recommend that for the avoidance of doubt, there is an explicit exclusion for licensed supervisors (including in relation to custodial activities). Please refer to our comments at question 5 below.*

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 comment.*

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

3 Do you have any comments on Option 2?

*No comment.*

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 comment.*

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

*As noted in question 1 above, we support the narrower definition of 'intermediary' under which we would consider supervisor activities such as acting as custodian and in approving KiwiSaver withdrawal applications to be excluded. However, for the avoidance of doubt we recommend that there is an explicit exclusion for supervisors. Such an exclusion would avoid a circular supervision or monitoring model where the supervisor generally supervises the financial institution, however the financial institution supervises and monitors the supervisor's support of the financial institution's compliance with the fair conduct principle. We consider that an exemption is appropriate as:*

- *Licensed supervisors have a duty to act honestly and in good faith, and to act in the best interests of scheme participants, so there is already an expectation of a level of good conduct;*
- *Licensed supervisors are licensed by the Financial Markets Authority, who must be satisfied as to the supervisor's experience, skills and qualifications and governance structures;*
- *Licensed supervisors are subject to regular monitoring visits by the Financial Markets Authority;*
- *The role of custodian and in approving certain KiwiSaver withdrawals are designated to the supervisor in legislation. Such legislation sets out the parameters and requirements of those functions, with the supervisor directly responsible for fulfilling those roles;*
- *Licensed supervisors hold regular meetings with their supervised entities at which any issues or concerns with conduct or performance are able to be shared and discussed constructively.*

## Objectives

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

6

*No comment.*

## 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'?

7

*No comment.*

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?

8

*No comment.*

## Option 4: More significant changes to intermediaries obligations

9

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

*No comment.*

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 comment.*

11

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

*No comment.*

#### 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'?

*No comment.*

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 comment.*

#### 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 comment.*

15

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

*No comment.*

16

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

*No comment.*

Do you have any other comments or viable proposals?

17

*No comment.*

Other comments

*No comment.*