

Submission template

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

Your name and organisation

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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'?

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?

[Insert response here]

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

3

Do you have any comments on Option 2?

[Insert response here]

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?

[Insert response here]

5

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

[Insert response here]

Objectives

6

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

Many intermediaries are regulated as Financial Advice Providers (FAPs) under FSLAA. *The intention of requiring financial institutions to oversee these intermediaries is not to interfere with the sales or advice interaction or to duplicate the FSLAA obligations. It is also not the responsibility of a financial institution to monitor or manage an intermediary's compliance with its own (the intermediary's) obligations under FSLAA or other enactments.*

The concern is that this sentiment will not be met by the current proposed drafting.

Following the enforcement action regulators have taken in Australia in recent years and the Hayne Inquiry, large Financial Institutions in NZ are so concerned about regulatory action and poor media headlines that however these regulations are drafted, it is likely Financial Institutions will take a very conservative interpretation and load significant compliance costs on Financial Advisers and Financial Advice Providers. FAPs may have 40 or 50 Financial Institutions demanding differing requirements from Financial Advice Providers under this proposed legislation

We have seen under FSLAA that Financial Institutions are demanding far more onerous obligations than the regulations require.

Many Financial Institutions in NZ are large and have large market share and Financial Advisers will have no choice but to comply with terms those Financial Institutions require.

The Financial Markets (Conduct of Institutions) Amendment Bill will place significant costs on both Financial Institutions and intermediaries and the effect will be wide ranging, and the full costs and effects unknown.

The concern is that Financial Advisers and FAPs will be more concerned about providing seemingly endless required information to numerous Financial Institutions than they will at providing financial advice to customers.

There will be significant costs that presumably Financial Institutions will ultimately pass some or all on to customers.

The Bill is poorly timed given FSLAA has only recently come into effect and the effects of full licensing are not yet felt.

We feel the provisions within the draft Bill will be very damaging to the industry.

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'?

446M(1)(b) should be deleted as *'managing or supervising their intermediaries to ensure they are supporting the financial institution's compliance with the fair conduct principle and monitor whether those persons are giving that support'* would be a duplication of what financial advisers need to already do under the Code of Professional Conduct for Financial Advice Services.

It needs to be understood that FAPs are often third parties who have commercial contracts with Financial Institutions.

446M(1) (bd), (be) and (bf) should also be deleted for the same reason as it is a duplication of what is covered under the Code of Professional Conduct for Financial Advice Services and what a financial advice provider licence holder is already responsible for and which can be more adequately dealt with under full licencing of FAP providers if required.

It makes sense that Financial Institutions should require intermediaries such as financial advisers to carry out Financial Institutions' provided specific training on certain products, for example how certain elements of life insurance products function. However financial advisers are already required to have sufficient capability, education under the Code of Professional Conduct for Financial Advice Services and so any training should not duplicate this. Therefore training that relates to fair conduct (b)(ii) should be deleted.

The proposed drafting will place more compliance burden on Financial Advisers and FAPS for questionable customer benefit.

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

See above.

Option 4: More significant changes to intermediaries obligations

9

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

Option 4 is a preferable option than Option 3 as it reduces some but not of all the duplication.

If Option 4 was pursued, b, and c (of section 62 in the Discussion Document) should still be deleted as the Code of Professional Conduct for Financial Advice Services covers these matters and Financial Institutions should have comfort that financial advisers and FAPs have legal obligations to comply with.

It is not clear to us how having b, and c, would provide greater customer comfort.

Financial Institutions 'monitoring' Financial Advisers and FAPs will place a significant compliance burden on a FAP who might be monitored by 40 or 50 different product providers. This will be a duplication of the Code of Professional Conduct for Financial Advice Services.

It makes sense that Financial Institutions should require intermediaries such as financial advisers to have specific training on certain products created by Financial Institutions, for example how certain elements of life insurance products function. However financial advisers are already required to have sufficient capability, education under the Code of Professional Conduct and so any training should not duplicate this. Therefore training that relates to fair conduct (should be deleted.

In point 65, If there is a concern around non-FSLLA intermediaries, then capture them in the drafting.

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?

See above.

11

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

That Financial Advisers under a FAP have done specific product training, have appropriate accreditation, and are linked to a FAP.

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'?

[Insert response here]

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)?

See our comments above.

Obligations in relation to employees and agents

14

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

[Insert response here]

15

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

[Insert response here]

16

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

[Insert response here]

17

Do you have any other comments or viable proposals?

[Insert response here]

Other comments

[Insert response here]