MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

Submissions on: Disclosure requirements in the new financial advice regime

Submissions QBE to Westpac

5 September 2018

New Zealand Government

Submissions on: Disclosure requirements in the new financial advice regime.

Contents

QBE Insurance (Australia) Limited
ABN 78 003 191 035 (incorporated in Australia).
QBE Centre, Level 21, 125 Queen Street, Auckland, New Zealand
PO Box 44, Auckland 1140, New Zealand
telephone +64 9 366 9920 • facsimile +64 9 366 9930
www.qbe.co.nz

25 May 2018

Financial Markets Policy
Building Resources and Markets
Ministry of Business, Innovation & Employment
PO Box 1473
Wellington 6140
New Zealand

By email to: faareview@mbie.govt.nz

Submission on disclosure requirements in the new financial advice regime

Thank you for the opportunity to submit feedback on the discussion paper on disclosure requirements in the new financial adviser regime (**Paper**). QBE Insurance (Australia) Limited is a member of the Insurance Council of New Zealand (**ICNZ**) and supports its submission on the Paper.

In relation to specific questions in the discussion paper, we also submit as follows:

Responses to discussion document questions

1	*Do you think that the regulations should provide prescribed text for the disclosure of these pieces of information?*
	QBE supports a prescriptive approach in relation to these pieces of information. The less clarity there is on disclosure requirements, the more conservative (and therefore longer form and/or more complex) these disclosures end up being.
15	*If the regulations were to include a materiality test that would determine the commissions and incentives that needed to be disclosed, what would an appropriate test be?*
	QBE strongly supports there being clear obligations set out in regulations on advisers to disclose details of their sources of remuneration to consumers. QBE does not support a materiality threshold for remuneration disclosure, because of the subjective nature of such a threshold.
19	*Are there any additional factors that might influence financial advice that should be disclosed?*
	In our view, the disclosure on conflicts of interest should include disclosure of any relevant agency relationship and the extent of this, in particular as to whether financial advice is provided on behalf of a principal. For example, in the insurance industry, brokers often operate under binding authorities but may not have authority to provide advice on behalf of the insurer. We believe being informed of this would also be of value to consumers who are unlikely to be familiar with agency law.

36	*Should the regulations require the provision of additional information regarding the wholesale designation in some circumstances? If so, when would it be appropriate for this to take place?*
	If this were the case, then we would recommend the provision of this information would only be required to be carried out on a one-off basis (at the entity level), at the outset of the relationship.

QBE will be more than happy to provide any further assistance or explanation, should you wish to contact us

S9(2)(

Terry Lawrence
CFO QBE New Zealand Branch

MONEYTREE
FINANCIAL SERVICES

Submission

to:

FAA Review
Ministry of Business, Innovation & Employment

Disclosure requirements in the new financial advice regime

Submitted by:

Regan Thomas
Managing Director
MoneyTree Financial Services Ltd

1 This is a submission by MoneyTree Financial Services relating to the Code Working Group (CWG) consultation paper on the Code of Professional Conduct for Financial Advice Services (the Code). The Code will apply when regulated financial advice is given to retail clients.

2 The Consultation Paper seeks feedback on the key concepts and high-level approach for the Code generally, and on certain suggested questions provided in a Submissions Template.

About MoneyTree Financial Services Ltd

3 MoneyTree is a small adviser firm, employing one adviser − myself, Regan Thomas. I have been practicing since 2002, mostly working in life, disability and health insurance advice. I also provide some mortgage services, and through a partnership with a Broker I offer Fire and General insurance.

4 Until 2010 I offered KiwiSaver advice. I was part way through a Graduate Diploma of Business Studies endorsed in Personal Financial Planning until 2010, which I stopped in order to pursue and complete the National Certificate in Financial Services Level 5 in time for the Financial Advisers Act 2008 being enacted.

5 I am a member of the IFA, and Chairman of Financial Advice New Zealand's Member Advisory Committee − Risk. While my involvement with these two professional bodies gives me greater insight into the issues, and the concerns of fellow advisers, the opinions, comments and suggestions in this document are entirely my own.

MONEYTREE
FINANCIAL SERVICES

My comments relate to questions found pp25-28:

- Should there be a prescribed summary disclosure document?
  Yes. All advisers making (equivalent to the current) AFA-level disclosure.

- Should it be possible to disclose verbally?
  No, unless followed immediately by full written disclosure by email

- Should there be additional requirements if disclosure is verbal or online?
  Yes. Full written disclosure by email/download immediately following.

- Should there be additional disclosure requirements for replacement business, e.g. the risks of replacement?
  Yes.
  First I would like to see full participation from all providers and their advisers/sales staff making replacement business advice declarations (EG FSC Replacement Policy Advice form) where they are suggesting or advising a retail client to replace a financial product.
  Where the client has engaged a "sales" process in which no comparison is being made, suitability is not being assessed; the client must be in no doubt that they have not engaged an Adviser, and have not been involved in an Advice Process. Suitable disclosure about this matter as part of Step One (defining the scope and nature of engagement) is vital.

- Should there be reduced requirements when disclosing to existing clients?
  No

- Will there be enough time to adapt, or should there be a transition period?
  No need for transition.

- Should wholesale clients be informed of their ability to opt-out, and be treated as retail clients?
  Yes. Currently certain clients are *Wholesale Clients* by default under FAA S5C. Some retail clients may not be aware that they are *Wholesale Clients* and do not know about S5G. They should enjoy the protection of the regulations if they prefer.

One question not asked in the submission template is in regards to disclosing commission in dollar terms.

I submit that insurance commissions vary substantially and there are many options from upfront to more spread commission. Consumers will find it very difficult to make an informed choice based on dollar terms disclosure and advisers will find it extremely difficult to disclose in dollar terms prior to a policy actually being issued, because the premiums for a policy when issued may vary from those proposed during the advice process.

It may be useful to disclose the proportion of the premium that is allocated to adviser remuneration, however much more work is needed on understanding how and why consumer trust and confidence is enhanced by commission disclosure in any form other than percentage rates as per current practice.

If you have any queries about any matter raised in this submission, please contact me.

Regan Thomas
Managing Director
Registered Financial Adviser
S9(2)(a)

Submission template

Disclosure requirements in the new financial advice regime

Instructions

This is the submission template for the discussion document, *Disclosure requirements in the new financial advice regime*.

The Ministry of Business, Innovation and Employment (MBIE) seeks written submissions on the issues raised in the discussion document by 5pm on **Friday 25 May 2018**. Please make your submission as follows:

1. Fill out your name and organisation in the table, "Your name and organisation".
2. Fill out your responses to the consultation document questions in the table, "Responses to discussion document questions". Your submission may respond to any or all of the questions in the discussion document. Where possible, please include evidence to support your views, for example references to independent research, facts and figures, or relevant examples.
3. We also encourage your input on any other relevant issues in the "Other comments" section below the table.
4. When sending your submission:
    a. Delete these first two pages of instructions.
    b. Include your e-mail address and telephone number in the e-mail or cover letter accompanying your submission – we may contact submitters directly if we require clarification of any matters in submissions.
    c. If your submission contains any confidential information:
        i. Please state this in the cover letter or e-mail accompanying your submission, and set out clearly which parts you consider should be withheld, together with the reasons for withholding the information. MBIE will take such objections into account and will consult with submitters when responding to requests under the Official Information Act 1982.
        ii. Indicate this on the front of your submission (e.g. the first page header may state "In Confidence"). Any confidential information should be clearly marked within the text of your submission (preferably as Microsoft Word comments).
        iii. Please provide a separate version of your submission excluding the relevant information for publication on our website (unless you wish your submission to remain unpublished). If you do not wish your submission to be published, please clearly indicate this in the cover letter or e-mail accompanying your submission.

    Note that submissions are subject to the Official Information Act 1982.

5. Send your submission:
    - as a Microsoft Word document to ***faareview@mbie.govt.nz*** (preferred), or
    - by mailing your submission to:

      Financial Markets Policy
      Building, Resources and Markets
      Ministry of Business, Innovation & Employment
      PO Box 1473
      Wellington 6140
      New Zealand

Please direct any questions that you have in relation to the submissions process to ***faareview@mbie.govt.nz***.

Submission on discussion document: *Disclosure requirements in the new financial advice regime*

Your name and organisation

Name	Richard Toon S9(2)(a)
Organisation	Abacus Group Ltd

Responses to discussion document questions

1	*Do you agree with the objectives that we have identified? Are there any further objectives that the disclosure requirements should seek to achieve?*
	I am a Life Insurance Adviser and have been giving advice to consumers for 30 years. I have got many more working years ahead. I have a large client base but my company is small and consists of three advisers (my business partner of 21 years and my son that has worked with our company for 9 years) and four support staff. I have been remunerated in the form of commissions for 30 years. I have achieved a level five certificate in Financial services. I have complied with all aspects of the FAA and other Acts that affect me giving advice but have been concerned that this legislation has done nothing to promote consumer protection or remove confusion in our market place. Accordingly I am concerned that future legislation will affect my ability to trade and still not do anything to promote certainty and security for consumers. The broad objectives you have identified are reasonable. You have not asked about education. After 30 years' experience completing several recognised courses and a Level Five cert I do not feel that a university degree will do anything to enhance my client's experience. I have knowledge of policies, people, business and insurance companies that no university can teach.
The timing and form of disclosure	
2	*What are your views on the proposal that information be disclosed to consumers at different points in the advice process?*
	Disclosure should be simple but include all detail in 22/24/25 included but the inclusion of what a retail client is causes confusion within the market place. Does not make any sense for insurance clients. Why the differentiation?
3	*Will this approach improve the effectiveness of disclosure by increasing consumers' engagement and understanding of the information they receive? Why or why not?*
	Only if it is simple and consistent. Do the legislators understand every part of the so called financial services industry? I.e. We are a small company that is recognised in our communities as being honest and knowledgeable life insurance advisors. We are well known and

	respected. We have achieved this by years of "doing the right thing" Disclosure must expose those that are not compliant rather than adding a layer of confusion to those already complying.
4	*Should those giving advice be required to tell consumers that they can access general information about the provider or refer to this general information in advertising material?*
	Yes
The form of disclosure	
5	*If the regulations were to provide flexibility on the form and timing of disclosure, how can they be drafted in such a way to provide certainty to the industry of what is required?*
	Depends on how far disclosure is going to go. Layers of complication will not assist.
6	*Should a person who contravenes the presentational requirements under the proposal be subject to civil liability or should it be dealt with by an FMA stop order or similar regulatory response?*
	Should be exposed to the full force of all laws.
What information do customers require?	
7	*Do you agree that information relating to the licence, duties and complaints process should be made available to consumers?*
	Yes
8	*Do you think that the regulations should provide prescribed text for the disclosure of these pieces of information?*
	Yes
9	*Should consumers be informed of their ability to access a free dispute resolution service when making a complaint? Should this apply to all financial service providers who provide services to retail clients (in which case it might be implemented via the scheme rules rather than in regulations under the Bill)?*
	Yes. I have no requirements to place an amount of business with any insurer. No insurance company will "own" our advice so those that choose to enter into that agreement should have to disclose.
Information about the financial advice	
	Limitations in the nature and scope of the advice
10	*Do you agree with the proposal in relation to the disclosure of nature and scope of advice, as set out on page 19? Why or why not?*
	Yes. Disclosure should be 1. Who am I

2. Who do I represent
3. What qualifications have I got?
4. What type of advice can I give you?
5. Any limitations
6. Any disciplinary issues.
7. Direct costs to clients and/or do I receive commissions. NOT DETAIL OF COMMISSION.
8. Conflicts of interest.

11	*How can the regulations ensure that consumers receive an accurate indication of the extent of the market that can (and will) be considered?*
	No comment
	Costs to client
12	*Do you agree with the proposal in relation to disclosure of costs to clients, as set out on page 20? Why or why not?*
	No Comment
13	*What role, if any, should the disclosure regulations play in ensuring that consumers are aware of the other fees that they might be charged should they follow the advice (e.g. bank fees, insurance premiums, management fees)?*
	No comment
	Commission payments and other incentives
14	*Do you agree that commissions and other incentives should be disclosed in more general terms early, followed by more detailed disclosure later in the advice process?*
	This is very complicated. b. I do many hours of work before completing an insurance proposal and then many hours of work is done before this insurance proposal is put in force and commissions received. I then have a two year responsibility period i.e. if premiums cease commissions are clawed back. The IRD have ruled that commissions with clawback clauses are in fact an advance of payment and will be treated as such by the IRD. So the question is.....what actually is my commission is and under the current tax law when will I receive it. My own company receives the commission and my business partner and I receive a wage and any company profits after expenses. My clients understand we receive commissions but the disclosure of gross commissions only tell part of the story. I deal with ten providers all with several product types and all with several variation of wordings to meet the premium the consumer wishes to pay. All of these product types have varying forms of commission that are not only complicated but also they change. To comply with a law that says commission needs to be specific in disclosure will mean that the law will be

broken by every adviser including the banks daily.

c. Incentives have never made me change my business behaviour but I understand it has the potential of doing so. Once again although companies offer sales incentives how is this disclosed in a balanced manner without taking so much administration time for little or no gain to the end consumer. It is such a moving target with incentives i.e. Christmas sales targets that some companies offer, mid-year sales incentives, trips and conferences. It's so complicated there will be no process to disclose these so accurately that the law is not broken every day because the means of disclosure is so arduous.

d. I see very bad advice almost daily dished out by banking staff. The misconception is that they are on a salary and are not affected by commission or incentives. The reverse is true. To keep their jobs they need to reach very specific KPI targets (usually a point system that does not relate to a client's best interest) If you do decide to disclose "incentives" the disclosure of these "point systems" and the implication of failure to comply must also be disclosed to ensure the consumers are protected.

6. Please note Table page 24. I have never heard of a client being asked to repay clawback commission. Surely this is illegal.

15	*If the regulations were to include a materiality test that would determine the commissions and incentives that needed to be disclosed, what would an appropriate test be?*
	Way too complicated for a commission structure with 10 different companies and complicated structures within policies and types of policies to be of any worth to the client. Also spread commissions of the length of the policy is so difficult to disclose.
	Options for how to disclose commissions and other incentives
16	*Is it necessary for the disclosure regulations to be prescriptive regarding the disclosure of commissions and other incentives? If so, why?*
	No comment
17	*Which of the options (as set out in pages 21-22) do you prefer? What are these costs and benefits of the options?*
	Option 3. The problem is "There is no INDUSTRY". You are lumping insurance advice with investment advice with banking advice. Investment companies and insurance companies have no interest in making it difficult for the distribution systems to put more roadblocks in the way of seeking good quality advice.
	Other conflicts of interest and affiliations
18	*Do you agree that those giving financial advice should be required to disclose all relevant potential conflicts of interest?*
	No I do not. Conflict of interest is alive and well in every industry. The warning should be general. "Please be aware that I receive commission for the sale of insurance products and it

	is important that you make up your own mind if that causes a conflict of interest"
19	*Are there any additional factors that might influence financial advice that should be disclosed?*
	Salaried employees such as bank staff must have to disclose the need to achieve "sales targets" to keep their job or retain their position or salary package.
20	*Should these factors be disclosed alongside information about the conduct and client care duties that financial advice will be subject to (as discussed on page 17)?*
	Yes
Information about the firm or individual giving advice	
	Details of relevant disciplinary history
21	*Do you agree with the proposed requirement to disclose information relating to disciplinary history and bankruptcy or insolvency history? Why or why not?*
	Yes. This is very relevant to a consumer's choice of provider and also gives some "teeth" to the regulatory body.
22	*Should the disclosure of information relating to disciplinary history and bankruptcy or insolvency history also apply to the directors of a financial advice provider?*
	Yes
23	*Should financial advice providers also be required to disclose if they have been found to have contravened a financial advice duty?*
	Yes
Additional options	
	A prescribed summary document
24	*Do you think that a prescribed template will assist consumers in accessing the information that they require?*
	No. Consumers are reckless when choosing their product and product advisors. They are reckless when disclosing information and usually want to shift any liability onto an advisor.
25	*How could a prescribed template work in situations when advice is not provided in person (i.e. if it is provided over the phone or via an online platform)?*
	No comment
	Requirements for disclosure provided through different methods
26	*Should the regulations allow for disclosure to be provided verbally? Why or why not?*
	Should always be backed up with signed off statement of advice.
27	*If disclosure was provided verbally, should the regulations include any additional*

	requirements?
	I cannot see this adding to the protection of the consumer.
	Requirements for financial advice given through different channels
28	*Should the regulations provide for any additional requirements that would apply when advice is given via a robo-advice platform or over the phone?*
	Buyer beware warnings.
29	*Do consumers require any additional information when receiving financial advice via an online platform?*
	Buyer beware. The delivery of life insurance advice is so complicated with so many variations.
	Disclosure when replacing a financial product
30	*Should those advising consumers to replace financial products be required to provide a prescribed notification? If so, what should a prescribed notification contain?*
	Full detail of existing policies and new policies. Including sums assured premiums wording etc. In the majority of cases the consumer is better off with the new product but the problem is who is the judge and when should it be judged? Using two companies that compare products they regularly come up with different answers because they weight benefits differently. Also at claim time you have the behaviour of the insurers. Sometimes very bad behaviour and sometimes very good behaviour.
31	*Should this apply to the financial advice given on the replacement of all financial advice products?*
	Yes.
	Information to existing financial advice clients
32	*Should the regulations provide for reduced disclosure requirements for existing clients? If so, in what situations should it apply and what information should consumers receive?*
	Yes. I have known many of my clients for over 25 years with annual review notes for each review. To put another road block in the way of a consumer obtaining the right insurance is counterproductive.
33	*Should there be a limit on the length of time that this relief would apply?*
	Transitional requirements
34	*Is it necessary for the disclosure regulations to provide a transitional period for the industry to comply with the new requirements beyond this nine-month period?* No comment
	More than giving people time to adapt the time given should be about ensuring that any law

	enacted does not have unsuspected consequences to good honest business people attempting to do "the right thing" and comply.
35	*Should the regulations include specific transitional provisions for AFAs authorised to provide personalised DIMS under the FA Act?*
	No comment
	Disclosure to wholesale clients
36	*Should the regulations require the provision of additional information regarding the wholesale designation in some circumstances? If so, when would it be appropriate for this to take place?*
	This term "retail" "wholesale" are confusion and should not be used. I fully disclose every day to clients that under the law do fall into a category or that means they should be aware of disclosure but are not aware. i.e there capital worth.
37	*Do you have any alternative suggestions for how the regulations could ensure that wholesale clients are aware of what it means to be deemed a wholesale client?*
	As per 36

Other comments

Submission on discussion document: *Disclosure requirements in the new financial advice regime*

Your name and organisation

Name	Ron Flood
Organisation	Ron Flood & Associates, PO Box 822,Hamilton 3240

Responses to discussion document questions

1	*Do you agree with the objectives that we have identified? Are there any further objectives that the disclosure requirements should seek to achieve?*
	Yes. No further objectives come to mind.
The timing and form of disclosure	
2	*What are your views on the proposal that information be disclosed to consumers at different points in the advice process?*
	I agree that the relevant disclosure should be made as soon as it becomes apparent that the consumer is going to proceed with ones services.
3	*Will this approach improve the effectiveness of disclosure by increasing consumers' engagement and understanding of the information they receive? Why or why not?*
	It will be effective by not overwhelm the consumer all at once and confusing them and only disclosing information that is relevant to them.
4	*Should those giving advice be required to tell consumers that they can access general information about the provider or refer to this general information in advertising material?*
	Yes, unless there is no avenue available to them, e.g. an adviser may not have a website or do any advertising.
The form of disclosure	
5	*If the regulations were to provide flexibility on the form and timing of disclosure, how can they be drafted in such a way to provide certainty to the industry of what is required?*
	Disclosure needs to be prescriptive as this is the only way to ensure consistency and certainty as to what is being disclosed.
6	*Should a person who contravenes the presentational requirements under the proposal be subject to civil liability or should it be dealt with by an FMA stop order or similar regulatory response?* **Any person contravening the presentational requirements should be dealt with a temporary cessation of business for a minimum period (say 3 months) until they comply.**

	Toothless warnings, as we have seen in the past, do little to penalise the offenders.
What information do customers require?	
7	*Do you agree that information relating to the licence, duties and complaints process should be made available to consumers?*
	Yes.
8	*Do you think that the regulations should provide prescribed text for the disclosure of these pieces of information?*
	Yes.
9	*Should consumers be informed of their ability to access a free dispute resolution service when making a complaint? Should this apply to all financial service providers who provide services to retail clients (in which case it might be implemented via the scheme rules rather than in regulations under the Bill)?*
	Yes.
Information about the financial advice	
	Limitations in the nature and scope of the advice
10	*Do you agree with the proposal in relation to the disclosure of nature and scope of advice, as set out on page 19? Why or why not?*
	Any contractual requirements to place a certain percentage of ones business with a provider should be disclosed.
11	*How can the regulations ensure that consumers receive an accurate indication of the extent of the market that can (and will) be considered?*
	Financial Advisers and Nominated Sales Representatives should be required to disclose details of only the companies/products they actively supply, not a list of providers they hold agreements with. They would only be allowed to include providers they have actively placed business with during the past 12 months.
	Costs to client
12	*Do you agree with the proposal in relation to disclosure of costs to clients, as set out on page 20? Why or why not?*
	Partly. I don't believe clawback of commissions, paid to the adviser, by the product provider, can be 'clawed back' from the consumer. This is not in the consumer's interests, and is a business risk the adviser must absorb in running a successful business. However, if an adviser charges an upfront fee that is rebated to the client on implementation of a product, and that product is cancelled, the agreed fee should be able to be 'clawed back'.
13	*What role, if any, should the disclosure regulations play in ensuring that consumers are*

	aware of the other fees that they might be charged should they follow the advice (e.g. bank fees, insurance premiums, management fees)?
	Any ongoing or associated fees should be disclosed.
	Commission payments and other incentives
14	*Do you agree that commissions and other incentives should be disclosed in more general terms early, followed by more detailed disclosure later in the advice process?*
	Yes. Disclosure in general terms such as, "if you implement products with any of the following providers, I will receive the following commission..... and may qualify for the following incentives....".
15	*If the regulations were to include a materiality test that would determine the commissions and incentives that needed to be disclosed, what would an appropriate test be?*
	I don't believe there should be a materiality test. Given that the recent report on churn highlighted the fact that many AFA's did not know or recognise what constituted a conflict, I believe all commissions and incentives should be disclosed. This would not include any retrospective gifts given to an adviser who had no prior knowledge that they were to receive a gift. This could include say, a bottle of wine or a lunch provided by a BDM as a thank you for past support..
	Options for how to disclose commissions and other incentives
16	*Is it necessary for the disclosure regulations to be prescriptive regarding the disclosure of commissions and other incentives? If so, why?*
	Disclosure must be prescriptive so as to ensure consistency in the way it is presented. Many important facts can be hidden on page 2 of a document if an adviser so wished.
17	*Which of the options (as set out in pages 21-22) do you prefer? What are these costs and benefits of the options?*
	Option 1 would, in my opinion, be the most practical and workable option. Often client's insurance premiums are altered with premium loadings, unavailability of some proposed covers, change of proposed covers due to cost and other reasons. In the case of a couple applying at the same time, and with different risk start dates due to awaiting of medical evidence, if dollar amounts were required we could end up with having to provide 5-6 different disclosure statements before completion of the cover being issued. By only having a percentage of premium requirement, this will avoid the multiple disclosures mentioned above.
	Other conflicts of interest and affiliations
18	*Do you agree that those giving financial advice should be required to disclose all relevant potential conflicts of interest?*
	Yes. Including Nominated Sales Representatives selling only products provided by their employer, including incentives, bonuses and sales targets.
19	*Are there any additional factors that might influence financial advice that should be disclosed?* **Nothing comes to mind**

20	*Should these factors be disclosed alongside information about the conduct and client care duties that financial advice will be subject to (as discussed on page 17)?*
	N/A
Information about the firm or individual giving advice	
	Details of relevant disciplinary history
21	*Do you agree with the proposed requirement to disclose information relating to disciplinary history and bankruptcy or insolvency history? Why or why not?*
	Yes.
22	*Should the disclosure of information relating to disciplinary history and bankruptcy or insolvency history also apply to the directors of a financial advice provider?*
	Yes
23	*Should financial advice providers also be required to disclose if they have been found to have contravened a financial advice duty?*
	Yes
Additional options	
	A prescribed summary document
24	*Do you think that a prescribed template will assist consumers in accessing the information that they require?*
	Yes. It would provide consistency and a format that would most likely remove confusion. It needs to have the most important information on the front page, especially the scope of advice that can be provided by the adviser.
25	*How could a prescribed template work in situations when advice is not provided in person (i.e. if it is provided over the phone or via an online platform)?*
	In the event of a telephone call, an emailed disclosure statement should be sent to the consumer at the earliest possible time and confirmation of receipt required. In the event of 'Robo Advice', the consumer has already made the choice to not deal with a 'human' and therefore, as long as the platform is approved by the regulator, the disclosure should sit within he plan selected.
	Requirements for disclosure provided through different methods
26	*Should the regulations allow for disclosure to be provided verbally? Why or why not?*
	No. There needs to be evidence, either by email or document, that disclosure has been provided. This will assist should a dispute or litigation arise in the future.
27	*If disclosure was provided verbally, should the regulations include any additional*

	requirements?
	Refer above.
	Requirements for financial advice given through different channels
28	*Should the regulations provide for any additional requirements that would apply when advice is given via a robo-advice platform or over the phone?*
	Refer above. No further thoughts.
29	*Do consumers require any additional information when receiving financial advice via an online platform?*
	No.
	Disclosure when replacing a financial product
30	*Should those advising consumers to replace financial products be required to provide a prescribed notification? If so, what should a prescribed notification contain?*
	Yes. The minimum requirement would be to list any benefit covered under an existing product that is not covered under the new one.
31	*Should this apply to the financial advice given on the replacement of all financial advice products?*
	Yes.
	Information to existing financial advice clients
32	*Should the regulations provide for reduced disclosure requirements for existing clients? If so, in what situations should it apply and what information should consumers receive?*
	No thoughts on this.
33	*Should there be a limit on the length of time that this relief would apply?*
	No thoughts on this.
	Transitional requirements
34	*Is it necessary for the disclosure regulations to provide a transitional period for the industry to comply with the new requirements beyond this nine-month period?*
	No.
35	*Should the regulations include specific transitional provisions for AFAs authorised to provide personalised DIMS under the FA Act?*
	No thoughts on this.
	Disclosure to wholesale clients
36	*Should the regulations require the provision of additional information regarding the wholesale*

	designation in some circumstances? If so, when would it be appropriate for this to take place?
	No thoughts on this.
37	*Do you have any alternative suggestions for how the regulations could ensure that wholesale clients are aware of what it means to be deemed a wholesale client?*
	No thoughts on this.

Other comments

If it is decided that commissions be disclosed in dollar terms, I would hope that advisers be allowed to only have to make the disclosure twice during the process of implementing the plan. Firstly, at time of application and secondly once the plan has been fully implemented.

In general, if the disclosure is to be prescriptive then there needs to be a table included showing consumers at what point of a policy term commissions are earned, e.g.

0-12 months Nil
13-18 months 50%
19-24 moths 75%
25+ months 100%

The above table represents the claw back process of one of the providers I use.

SIA | SECURITIES INDUSTRY ASSOCIATION

25 May 2018

Attention: Financial Markets Policy
Building, Resources and Markets
Ministry of Business, Innovation & Employment
PO Box 1473
Wellington 6140
New Zealand

Email: faareview@mbie.govt.nz

Dear Sir or Madam,

Submission on discussion document: Disclosure requirements in the new financial advice regime

I attach the submission prepared by the Securities Industry Association (SIA) in respect of the *Disclosure requirements in the new financial advice regime* discussion document.

The SIA represents the New Zealand sharebroking industry, including leading NZX firms:

- ANZ Securities Ltd.
- ASB Securities Ltd.
- Craigs Investment Partners Ltd.
- First New Zealand Capital Securities Ltd.
- Forsyth Barr Ltd.
- Goldman Sachs NZ Ltd.
- JBWere (NZ) Pty Ltd.
- Macquarie Securities (NZ) Ltd.
- OM Financial Ltd.
- Somerset Smith Partners
- UBS New Zealand Ltd.

No part of this this submission is required to be kept confidential.

Contact information:

Nick Hegan Chairperson, SIA & Head of Legal & Compliance, Forsyth Barr
S9(2)(a)

If there are further questions or areas of the submission where you would appreciate further input or clarification, in the first instance, please contact:

Bridget MacDonald Executive Director, Securities Industry Association
S9(2)(a)
Mobile: S9(2)(a)

Yours faithfully

S9(2)(a)

Nick Hegan
Chairperson

Submission on discussion document: *Disclosure requirements in the new financial advice regime*

Name	Nick Hegan, Chairperson
Organisation	Securities Industry Association (SIA) The SIA advocates for an effective and resilient capital markets ecosystem and represents the New Zealand sharebroking industry, including leading NZX firms: · ANZ Securities Limited · ASB Securities Limited · Craigs Investment Partners Limited · First New Zealand Capital Securities Limited · Forsyth Barr Limited · Goldman Sachs NZ Limited · JBWere (NZ) Pty Limited · Macquarie Securities (NZ) Limited · OM Financial Limited · Somerset Smith Partners · UBS New Zealand Limited. The SIA provides a forum for discussing industry issues and developments, and managing industry change. We represent the industry on non-competitive legislative, operational and regulatory issues to support, strengthen and grow New Zealand's capital markets. SIA members employ more than 400 Authorised Financial Advisers. The combined businesses of our members deal with over 300,000 New Zealand retail investors with total investment assets exceeding $80 billion, including $40 billion held in custodial accounts. Members also work with global institutions that have the ability to invest in New Zealand.

Responses to discussion document questions

1	*Do you agree with the objectives that we have identified? Are there any further objectives that the disclosure requirements should seek to achieve?*
The timing and form of disclosure	
2	*What are your views on the proposal that information be disclosed to consumers at different points in the advice process?*
	1. The SIA agrees that disclosure at the point the scope of service is known is the most useful point for clients. However, we would not support a further (repeat) disclosure in our industry at the "time that advice is given". This is because:

(a) The relationships between NZX participant firms and their clients are typically of an ongoing nature.

(b) Clients of SIA firms generally receive advice on a regular basis, under a single scope of service. This means that a firm may make recommendations on an ongoing basis throughout the year, all relative to an original scope of service to advise on a portfolio that meets the client's risk profile and objectives. In many cases, there will be no material change in cost at the time a recommendation is made (for example, if the client is paying a basis point fee relative to the portfolio size, there may be no new charge from buying and selling securities of an equivalent value). There also may be no new conflicts at each recommendation.

(c) Firms regularly receive feedback that clients resent repetition of disclosure and would prefer to receive all paperwork at one time.

(d) In relation to fees, clients will generally receive other regular written notice of charges, including in contract notes and/or portfolio reports.

2. In these circumstances, the SIA recommends that disclosure is made at the time that the scope of service is known, with additional disclosure if the scope of service changes where the change makes the original disclosure materially incorrect.

3. If there is a concern that clients may 'forget' information previously disclosed, the regulations could prescribe a requirement for a repeat (or reminder) disclosure, for example, at an interval agreed with the client.

3	*Will this approach improve the effectiveness of disclosure by increasing consumers' engagement and understanding of the information they receive? Why or why not?*

4. Yes, this would help improve the effectiveness of disclosure. NZX firms receive feedback from clients that there is that there is too much paperwork and that they would prefer to receive all at one time. The SIA approach noted in question 2 meets this requirement.

4	*Should those giving advice be required to tell consumers that they can access general information about the provider or refer to this general information in advertising material?*

The form of disclosure

5	*If the regulations were to provide flexibility on the form and timing of disclosure, how can they be drafted in such a way to provide certainty to the industry of what is required?*

5. The regulations will apply to a wide range of advice businesses and advice situations, from one-off formal written advice to verbal advice provided in the context of an ongoing advice relationship. As a result we think that the regulations should provide for the general structure of the disclosure, but otherwise largely take a principles-based approach to the content and (in some cases) timing of disclosure – it will simply be impractical to prescribe forms and timings that apply to every advice business and situation.

6. As noted in the consultation document, the prospect of over-disclosure can be

managed through presentational requirements.

6	*Should a person who contravenes the presentational requirements under the proposal be subject to civil liability or should it be dealt with by an FMA stop order or similar regulatory response?*

What information do customers require?

7	*Do you agree that information relating to the licence, duties and complaints process should be made available to consumers?*

7. The SIA agrees that this information should be made available to consumers.

8. In relation to information about conduct and client care obligations, it is not clear to us when that is to be provided – the second bullet point on page 17 of the consultation paper suggests that this would be required "when making a recommendation". We disagree with that suggestion, particularly in the case where there is an ongoing advice relationship, as this would lead to disclosure of the same information over and over again. In this case, we think that information should be provided when the nature and scope of the service is described to the consumer.

9. Similarly, we disagree that information about complaints processes and dispute resolution options should be provided "when making a recommendation". This should be provided when the nature and scope of the service is described to the consumer, and again when a complaint is made.

8	*Do you think that the regulations should provide prescribed text for the disclosure of these pieces of information?*

10. In our experience, it is very difficult to get the template for prescribed text disclosures to cover all cases. For the provider, it often becomes a case of attempting to get a square peg into a round hole. If there is to be prescribed text, then it should be clear that this can be tailored to the extent required.

9	*Should consumers be informed of their ability to access a free dispute resolution service when making a complaint? Should this apply to all financial service providers who provide services to retail clients (in which case it might be implemented via the scheme rules rather than in regulations under the Bill)?*

11. Yes, consumers should be informed of this option when making a complaint (but not at the point the advice is given, see question 7 above). We believe this requirement should apply to all financial service providers who provide financial services to retail clients.

Information about the financial advice

Limitations in the nature and scope of the advice

10 *Do you agree with the proposal in relation to the disclosure of nature and scope of advice, as set out on page 19? Why or why not?*

12. The SIA generally agrees that there should be disclosure of the types of advice that can be provided, the types of products dealt with, and the providers considered.

13. In terms of timing, we think that the disclosure at the time the advice is given should go beyond what is suggested. In particular, we think that where a customer is in an existing product and the advice relates to a new product that would replace that product, there should be clear disclosure of whether the advice relates to only the new product, or the switch from the existing product to the new product. When, for example, a customer is told "Of our KiwiSaver funds, I recommend the XYZ KiwiSaver balanced fund for you", what the customer hears can be "I recommend you switch from your existing provider to the XYZ KiwiSaver balanced fund." To avoid this confusion, the provider should be required to clearly disclose either that they are, or are not, giving a switch recommendation. In the latter case, there should also be disclosure of whether or not a switch recommendation is able to be provided.

14. The SIA agrees that material changes to the nature and scope of the advice should trigger a new disclosure, where the change makes the original disclosure materially incorrect. However, financial advice providers should be free to describe the scope of service in any way, provided that the limitations are clear.

15. The example repeated in the consultation paper refers to a scope that prescribes the number of products that will be considered. That approach may suit a bank or insurer, but will not be fit for purpose for a wealth management client.

16. Clients of SIA firms generally agree to scopes that have different limitations. For example, a common scope of service would be to list classes of financial products, such as, equity and fixed income, for which published research is available. It would not be a change in scope of service if one of the hundreds of researched securities was not considered.

11 *How can the regulations ensure that consumers receive an accurate indication of the extent of the market that can (and will) be considered?*

Costs to client

12 *Do you agree with the proposal in relation to disclosure of costs to clients, as set out on page 20? Why or why not?*

17. The SIA agrees with the disclosure of costs to clients, however we are of the view that a principles-based rather than a prescriptive approach needs to be taken. The industry is diverse, and the regulations need to allow for this. We think that fees and costs should be disclosed at the outset of the relationship and also when there is a material change. As currently drafted, the proposal to advise of fees and costs at each time before the client incurs a fee is not practicable for NZX firms, because of

	the ongoing nature of the typical client relationship (as described in our responses above).
13	*What role, if any, should the disclosure regulations play in ensuring that consumers are aware of the other fees that they might be charged should they follow the advice (e.g. bank fees, insurance premiums, management fees)?*
	18. We think that relevant third-party fees should be disclosed, however this needs to be in a generic manner adopting a principles-based approach (i.e. disclosure of the kinds of fees that might arise) as opposed to a detailed disclosure.
	Commission payments and other incentives
14	*Do you agree that commissions and other incentives should be disclosed in more general terms early, followed by more detailed disclosure later in the advice process?*
	19. The SIA agrees that disclosure needs to be made, however it should only be at the outset of the relationship and in the event of a material change in the commissions or incentives. As noted, for NZX firms disclosure at the time of recommendation would not be practicable. Please also refer to our responses to question 2 and 3.
15	*If the regulations were to include a materiality test that would determine the commissions and incentives that needed to be disclosed, what would an appropriate test be?*
	20. The SIA believes that strictly defining a materiality threshold may create opportunities for avoidance. Adopting a more high-level approach to materiality in our view would provide for a greater catchment and accordingly better information with respect to commissions and incentives for the consumer. It is our view that the regulations should enable consumers to have access to all the relevant commission and incentive information.
	Options for how to disclose commissions and other incentives
16	*Is it necessary for the disclosure regulations to be prescriptive regarding the disclosure of commissions and other incentives? If so, why?*
	21. No, the SIA does not believe the disclosure of commissions and incentives needs to be prescriptive. We submit that Option 3, the principles-based approach, is the best approach. Placing the onus on the industry ensures that those with the greatest expertise and experience in the industry are making the disclosure decisions within a clear framework. As noted above, the industry is diverse, and adopting a prescriptive approach risks current parts of the industry or new products still to be developed within the industry being excluded from the disclosure regulations.
17	*Which of the options (as set out in pages 21-22) do you prefer? What are these costs and benefits of the options?*
	22. As noted in question 16, the SIA supports Option 3.

	Other conflicts of interest and affiliations
18	*Do you agree that those giving financial advice should be required to disclose all relevant potential conflicts of interest?*
	23. Yes, however as noted, this should be at the outset of the relationship and at the time of any material change. Disclosure of conflicts of interests at the point in time of each recommendation is not practicable.
19	*Are there any additional factors that might influence financial advice that should be disclosed?*
20	*Should these factors be disclosed alongside information about the conduct and client care duties that financial advice will be subject to (as discussed on page 17)?*
	Information about the firm or individual giving advice
	Details of relevant disciplinary history
21	*Do you agree with the proposed requirement to disclose information relating to disciplinary history and bankruptcy or insolvency history? Why or why not?*
	24. The SIA agrees that information relating to disciplinary history and bankruptcy or insolvency history of financial advisers and financial advice providers should be disclosed in accordance with the proposal. However, we disagree with the sentiment in paragraph 72 that nominated representatives should not be required to disclose on the basis that they are following the financial advice provider's processes and limitations. 25. It is our view that the disciplinary and bankruptcy/insolvency history of a nominated representative is very likely to have an effect on the confidence that a consumer may have with respect to the advice. Without disclosure, the consumer has no knowledge of the actions of the nominated representative and has to rely on the processes and procedures of the financial advice provider, of which the consumer may not be aware. 26. We are of the view that it is in the interests of the consumer to be fully informed with respect to the expertise and experience of the person providing the advice, being the nominated representative. As previously highlighted in submissions on the bill, we maintain significant concerns that due to there being no public register of nominated representatives, there is very little protection for the consumer.
22	*Should the disclosure of information relating to disciplinary history and bankruptcy or insolvency history also apply to the directors of a financial advice provider?*
	27. No, it is our view that the Companies Act 1993 (section 151 Qualifications of Directors and the sections referred to in the same) sufficiently deals with directors of a financial advice provider, and accordingly is not required to be included in these disclosure

regulations.

23 *Should financial advice providers also be required to disclose if they have been found to have contravened a financial advice duty?*

Additional options

A prescribed summary document

24 *Do you think that a prescribed template will assist consumers in accessing the information that they require?*

28. The SIA agrees with the goal of identifying techniques to make it easier for consumers to access important information they need to be aware of before obtaining financial advice. We also believe a concise, prescribed form could provide clarity for consumers. However, we believe it is important to recognise its potential limitations. We presume the intended role of a prescribed template is to allow consumers to compare the information across two or more providers. In our experience, very few clients appear to do this.

29. In our view, the focus here should be on prescribing what information needs to be disclosed, and requiring this information to be communicated candidly, clearly and effectively, rather than prescribing how this information is presented.

30. A prescriptive template may also have an unintended consequence of making disclosure less effective.

25 *How could a prescribed template work in situations when advice is not provided in person (i.e. if it is provided over the phone or via an online platform)?*

31. Further to our response to question 24, we believe a prescribed template could quickly become obsolete. The rapid technological advances we are currently seeing could mean that advice is delivered in many different ways, some of which we perhaps cannot even contemplate today.

32. This supports our view in question 24 that these regulations would be better focused on outlining what needs to be disclosed, rather than prescribing the format of this disclosure. Such rigidity could become unworkable in situations where advice is delivered online.

Requirements for disclosure provided through different methods

26 *Should the regulations allow for disclosure to be provided verbally? Why or why not?*

33. The SIA believes that some consumers may find that a verbal explanation is the most effective means of understanding the information being disclosed. Therefore, it should be permitted under the regulations.

27 *If disclosure was provided verbally, should the regulations include any additional*

	requirements?
	34. To protect the interests of both consumers and firms, the SIA would expect a written or electronic record of this disclosure would be retained as part of the normal documentation of advice.
	Requirements for financial advice given through different channels
28	*Should the regulations provide for any additional requirements that would apply when advice is given via a robo-advice platform or over the phone?*
	35. It may be appropriate for a disclosure to be made to consumers using a robo-tool that the advice is generated automatically based on an algorithm. The implications of this should also be outlined, such as the inability to take into account any broader issues or recognise potential risks that a 'human' adviser may be able to identify in the course of a discovery discussion. Any limitations on the ongoing service and advice should also be disclosed, such as when no further proactive service will be provided.
29	*Do consumers require any additional information when receiving financial advice via an online platform?*
	36. Please refer to our response to question 28.
	Disclosure when replacing a financial product
30	*Should those advising consumers to replace financial products be required to provide a prescribed notification? If so, what should a prescribed notification contain?*
	37. Please refer our response to question 10.
31	*Should this apply to the financial advice given on the replacement of all financial advice products?*
	38. Please refer our response to question 10.
	Information to existing financial advice clients
32	*Should the regulations provide for reduced disclosure requirements for existing clients? If so, in what situations should it apply and what information should consumers receive?*
	39. Please refer to our response to questions 2 and 10. If full disclosure is provided at the time that the scope of service is known (and, if necessary, repeated at agreed intervals), with additional disclosure if the scope of service changes materially, then there is no need for a reduced disclosure for existing clients.
33	*Should there be a limit on the length of time that this relief would apply?*

	40. Please refer to our response to question 32.
	Transitional requirements
34	*Is it necessary for the disclosure regulations to provide a transitional period for the industry to comply with the new requirements beyond this nine-month period?*
35	*Should the regulations include specific transitional provisions for AFAs authorised to provide personalised DIMS under the FA Act?*
	Disclosure to wholesale clients
36	*Should the regulations require the provision of additional information regarding the wholesale designation in some circumstances? If so, when would it be appropriate for this to take place?*
	41. The SIA agrees that certain wholesale clients should be advised of the consequences of being classified as wholesale at the time the provider classifies the client as wholesale. Alternatively, this could occur earlier, for example, when a client certifies themselves as wholesale or is asked for evidence of their wholesale status. This is only relevant to clients in the investment activity and large investor categories, not for investment businesses.
37	*Do you have any alternative suggestions for how the regulations could ensure that wholesale clients are aware of what it means to be deemed a wholesale client?*

Other comments

Andra Lazarescu
S9(2)(a)

28 May 2018

Financial Markets Policy
Building, Resources and Markets
Ministry of Business, Innovation & Employment
PO Box 1473
Wellington 6140
New Zealand

By email to: ***faareview@mbie.govt.nz***

Dear Madam/Sir

Submission on Disclosure Requirements

I am making this submission in my personal capacity, and have limited my comment to the area of **conflicts of interest**.

1. The aim of conflict of interest (COI) disclosure, should be to equip the consumer with all necessary knowledge to be able to make an informed decision whether to engage the advisor/ provider, and/or accept their advice. Any limitation imposed on this requirement, will essentially cut matters out which would otherwise be brought to the attention of the consumer.

2. The reference to 'material' conflicts of interest (COI) is too legalistic and not in the interests of consumers. Under the proposed 'material' model, the consumer will have already had some of the thinking done for them and be presented with much more limited information. All conflicts should be declared or included in a register which is available for the consumer to access, to decide whether to engage the advisor in the first place, and/or accept the advice and proceed to implementation. All conflicts of interest, regardless of how subtle, will have a bearing on the service offered or not offered.

3. Including a qualifying reference of 'material' appears as a legal practicality. However, it opens the possibility, regardless of legislative intention, for selective disclosure by financial services providers. What is 'material' to one client may not be regarded as 'material' to another, and the provider may wish to differentiate even between different pieces of advice given to the same client.

4. From the perspective of a financial services provider and its compliance or legal advisors, a material threshold will be welcomed. It allows for a scaled response, which in the absence of regulatory guidance and/or enforcement, and the operative

necessity to streamline disclosures, will remain open to being applied on an individual basis.

5. The limitation of 'material' may ignore key relationships within the industry which support and therefore influence financial services business. Financial advisors have in the past benefited from subsidised marketing, IT, training and other support from issuers of financial products or their related entities. These kinds of relationships end up binding advisors to those products, and thereby restricting their Approved Product Lists – not because of any inherent merit of those products, but because of the underlying commercial relationships. Without additional guidance, it's unlikely that financial advisors will gladly volunteer the extent to which they benefit from such business services.

Thank you for considering my comments. I can be contacted on S9(2)(a)

Kind regards

Andra Lazarescu LLB LLM

SIFA Incorporated

c/- P O Box 28-781
Remuera
Auckland 1541

Submission to

MBIE

Disclosure requirements in the new financial advice regime

25 May 2018

Because of submission fatigue, we have decided not to use the template you have provided. Our submission will focus mainly only on selected matters.

Our over-riding thought that while disclosure is important, there is a real danger of potential clients being over-burdened with disclosure material. Some matters look likely to require to be disclosed on three or four separate occasions if all the proposals in the Paper are adopted.

1. Disclose as you go (DAYGO)

We agree with the principle of DAYGO, as it should ensure client get the information at the time that it should matter to them.

2. Principles not prescription

We endorse the requirements being set down in principled terms, not prescriptive.

3. MBIE should produce default leaflet for common material

We believe there could be as many as 2000 Financial Advice Provider licensees and up to 30,000 financial advisers and nominated representatives who will be providing advice on behalf of these financial advice providers.

We think it would be economic for MBIE to produce a leaflet that covers the following matters that each licensee and adviser will be required to disclose; these are some of the things summarised in par 22 a. b. and c. of your paper

- Who needs to get a FMCA financial advice licence, and what are the standard conditions
- What are the conduct and client care duties that a FAP/FA/NR is subject to
- What is an internal complaints process
- The requirement to have an External Disputes Resolution provider.

Advisers should be able to refer to and rely on this leaflet as part of their own public disclosure. They would then need to refer specifically only to conditions outside of standard (e.g. any specific conditions that apply to their own licence), any peculiarities of their internal complaints process and who their individual EDRS is.

However advisers would not be forced to use the leaflet and could use their own words if they so chose.

4. Adverse disciplinary findings / bankruptcy/company insolvent liquidation

We agree with the need to disclose such matters, but we think they should have to be disclosed much earlier in the process than you have suggested.

We think such matters will be most important at the time a client is deciding to approach a particular FAP and its FA or NR. This is always before a scope of service would be agreed. The latest appropriate time is probably when the adviser first meets with the client.

We believe the following matters should be included:

- Adverse disciplinary findings by FADC in the last 10 years. There is clearly an issue to be resolved where the name of the adviser disciplined was suppressed by FADC. If suppression led to no requirement to disclose, any defendant in a FADC hearing would seek suppression!
- Civil pecuniary penalties imposed in the last 10 years in terms of FMCA provisions
- Personal bankruptcy of the adviser within the last 10 years. This should apply equally to nominated representatives and financial advisers.
- If a Director of a licensee had been personally bankrupt or had been a Director of a company that had had an insolvent liquidation within the last 10 years (there is no policy reason to disclose a solvent liquidation).

We are not totally hung up on the relevant time being as long as 10 years, but given the amount of trust implicit in a client advisor relationship, we think the time should be longer rather than shorter.

5. Disclosure should not be able to be solely verbal

We do not think disclosure that is only given verbally is adequate. This is both to protect the client and the adviser. Re the latter, human nature suggests that a complainant will assert total recall of everything that was said and not said, regardless how much time has elapsed between the disclosure and the hearing. We think all disclosure should have to be confirmed in writing.

6. Disclosure when replacing a financial product

We believe that where an adviser is recommending replacing an existing product with a new product, if there are any benefits of the existing product that will be lost by its replacement, they should be specified.

This will be particularly important with insurance contracts and superannuation arrangements with associated insurance benefits

Where the adviser does not know the answer to the question of whether any benefits might be lost, then the adviser should be required to give a general warning that there may be benefits that may be lost but the adviser doesn't know, and perhaps even be required to recommend that the client seek advice from someone who would know. That at least puts a client on warning. If the client chooses to ignore the warning, then *caveat emptor.*

Maybe MBIE or FMA could design a standard warning about the general risks of switching an insurance policy (e.g. possible loss of cover for health conditions that have arisen post acceptance of the original contract but before the new contract.

We do not think the issue figures to the same extent with investment products.

7. Conflict of Interest (COI) disclosure by persons giving advice on behalf of a Vertically Integrated Organisation (VIO).

MBIE has not specifically addressed the actual disclosure that will be required when someone giving advice on behalf of a VIO recommends the VIO's own product?

We believe that where an adviser for a VIO gives "advice" to purchase the VIO's own product (where VIO includes the lead firm and all its associates both upstream and downstream) then the adviser should have to disclose all the fees and charges that the VIO will be paid right up the vertical integration.

We can hear the screams of "NO" from the VIO's even before they know of this submission. But we submit that is what a full disclosure including associates under the proposed law requires.

[We would however give the VIOs an easy out – admit that the transaction is really a sale, in which case there would be no disclosure requirements at all]

This submission is made on behalf of SIFA Inc by Murray Weatherston AFA (Immediate Past Chair)

Submission on discussion document: *Disclosure requirements in the new financial advice regime*

Your name and organisation

Name	Shannon Nicholls, Senior Legal Counsel and Mark Flaherty, General Counsel
Organisation	Southern Cross Medical Care Society ("Southern Cross")

Responses to discussion document questions

1	*Do you agree with the objectives that we have identified? Are there any further objectives that the disclosure requirements should seek to achieve?*
	We support the proposed objectives identified.
The timing and form of disclosure	
2	*What are your views on the proposal that information be disclosed to consumers at different points in the advice process?*
	We believe effective disclosure timing should be based on the principle of "when is it relevant/appropriate", rather than at three set points and regulations and the principal legislation should be flexible enough to give effect to this. Notwithstanding this observation, generally speaking for many products and consumers a two-step process should suffice. For example a general disclosure and a more specific disclosure, the timing of which should be such that it is meaningful to the consumer (and before a decision is made). We recognise more complex interactions and planning may need more disclosure points (and more content). However, setting single limits across the industry is likely to result in over/meaningless disclosure on simple products and the loss of nuanced more personalised and interactive approach to complex products. We propose that the 'general information publicly available' should remain but that remaining disclosure ought to be flexible, providing the required content is covered and it is given at a relevant and appropriate time. This would allow some flexibility in the timing of disclosure but still ensure the relevant information is provided prior to a recommendation being made or an opinion being given. We also recommend care is taken to ensure the disclosure content is streamlined and does not become repetitious. There is a real risk with over disclosure that consumers will miss important information. For example, disclosure information required to be included in the 'General information publically available' section is expected to be repeated later. For example, details of the dispute resolution scheme could be provided in 'general information publically available', in the product's terms and conditions and then at the time a complaint is received. Providing this information a fourth time when making a recommendation or giving an opinion seems to offer little in the way of effective consumer protection and may distract from information important at that point in the process.

3	*Will this approach improve the effectiveness of disclosure by increasing consumers' engagement and understanding of the information they receive? Why or why not?*
	As noted we do not believe the proposed three step process will improve the effectiveness of disclosure by increasing consumers' engagement and understanding of the information they receive. We believe consumers' engagement and understanding of the information they receive is more likely to increase if information is relevant to the product, delivered when appropriate and not duplicated.
4	*Should those giving advice be required to tell consumers that they can access general information about the provider or refer to this general information in advertising material?*
	We do not consider the general information should have to be specifically referred to in advertising material or called out specifically by persons giving advice, however we are not opposed to a requirement for consumers to be informed of a website address where the general information (amongst other things) can be found.
The form of disclosure	
5	*If the regulations were to provide flexibility on the form and timing of disclosure, how can they be drafted in such a way to provide certainty to the industry of what is required?*
	See response to question 1 above. In addition while we support flexibility on the form and timing of disclosure and agree with a general principle approach (i.e. that the information be provided in a clear, concise and effective manner), We do not agree that the regulations should include specific requirements such as word limits, as this may lead to disclosure being inaccurate or misleading (including by omission) and more complex products may require further explanation.
6	*Should a person who contravenes the presentational requirements under the proposal be subject to civil liability or should it be dealt with by an FMA stop order or similar regulatory response?*
	We do not believe that a contravention of presentational requirements should be subject to civil liability. The appropriate penalty will depend on what the presentational requirements include in their final form (for example – both civil liability and an FMA stop order seem excessive for breach of a word limit).
What information do customers require?	
7	*Do you agree that information relating to the licence, duties and complaints process should be made available to consumers?*
	Yes we agree this information should be made available to consumers but we do not believe it is necessary to duplicate this information numerous times. In relation to the complaints process specifically, we agree with the MBIE proposal for this to be provided 'at the time a complaint is received', however we do want to propose that the wording be revised to 'at the time or as soon as practicable after a complaint is received' to recognise different channels of communication and to allow a provider to check a complaint (as opposed to an enquiry or question) has been received.
8	*Do you think that the regulations should provide prescribed text for the disclosure of these*

	pieces of information?
	Whilst we would support guidance in this area, we would prefer a principle based approach rather than prescribed text as a principle based approach would allow for more flexibility and ensure the wording chosen is suitable for (where relevant) the specific products, particular industry and for the type of customer.
9	*Should consumers be informed of their ability to access a free dispute resolution service when making a complaint? Should this apply to all financial service providers who provide services to retail clients (in which case it might be implemented via the scheme rules rather than in regulations under the Bill)?*
	Yes, we agree that consumers should be informed of their ability to access a free dispute resolution service when making a complaint, but revised as set out in answer 7 above.
Information about the financial advice	
	Limitations in the nature and scope of the advice
10	*Do you agree with the proposal in relation to the disclosure of nature and scope of advice, as set out on page 19? Why or why not?*
	Yes, we support the proposal in relation to the nature and scope of advice.
11	*How can the regulations ensure that consumers receive an accurate indication of the extent of the market that can (and will) be considered?*
	We believe that the existing requirement to disclose 'any limitations in the nature and the scope of the financial advice that the individual or firm will provide, including the providers whose products they will consider' is sufficient to ensure that consumers receive an accurate indication of the extent of the market that can and will be considered.
	Costs to client
12	*Do you agree with the proposal in relation to disclosure of costs to clients, as set out on page 20? Why or why not?*
	We agree with the proposal in relation to disclosure of costs to client, however we recommend that the number of times costs information needs to be disclosed be reduced to avoid repetition and potential confusion (see Q2 above). We note insurance premiums are also mooted to be captured. We consider this problematic, if read literally, in the case of insurance products being advised on and presumably unintended. The insurance premium is not a fee provided by the FAP for the advice provided and the client would expect to pay an insurance premium for the financial product / service being provided though the insurance premium may not be finalised until later in the advice or underwriting process.
13	*What role, if any, should the disclosure regulations play in ensuring that consumers are aware of the other fees that they might be charged should they follow the advice (e.g. bank fees, insurance premiums, management fees)?*
	See our response to Q12 above.

	Commission payments and other incentives
14	*Do you agree that commissions and other incentives should be disclosed in more general terms early, followed by more detailed disclosure later in the advice process?*
	Yes, in principle, we agree with this approach.
15	
	Options for how to disclose commissions and other incentives
16	*Is it necessary for the disclosure regulations to be prescriptive regarding the disclosure of commissions and other incentives? If so, why?*
	As per our earlier responses, we consider a principles based approach appropriate and are not of the view that the regulations should be more prescriptive for the disclosure of commissions (and it is likely unworkable in practice).
17	*Which of the options (as set out in pages 21-22) do you prefer? What are these costs and benefits of the options?*
	There is, in our view, a real risk that in forcing disclosure of commission arrangements beyond those that are genuinely attributable to a given "transaction" or a high level explanation, a misleading or partial impression may be given and this would greatly outweigh any benefit. Given this, any rules or principles should only require disclosure where the actual commission is attributable and known at the time of advice. In our view: Option 1 would create significant practical compliance issues for advice providers. Comparative models ordinarily have a high potential to inadvertently create fair trading issues (i.e. misleading information by omission or error etc) if commission rates are not up to date, complete or true/fair comparisons across products that are not usually identical. (We also note comparison of commission rates with different providers would seem inappropriate and potentially unworkable for nominated representatives, who only sell products of the FAP they are employed by and will not have access to up to date data). Option 2 would seem to require the adviser to know exactly how much, in dollar terms, at a particular point in the process. This will often cause delays to the delivery of the advice and sales process and again have the potential to be calculated incorrectly if they are in effect estimates. Notwithstanding these practical issues, we accept that pragmatic disclosure of incentives, including commission is needed and our preference is for a principles based approach (option 3) that allows for flexibility and ensures the information provided is accurate and relevant to the product and consumer (so it could be tailored to fit the various commission / incentive models and help eliminate unintended consequences of inaccurate calculations and fair trading issues). Nonetheless, even using option 3, the level of detail and the specific output required by principle based regulation we believe needs to be very carefully thought through and draft principles would need further industry and consumer engagement.
	Other conflicts of interest and affiliations
18	*Do you agree that those giving financial advice should be required to disclose all relevant*

	potential conflicts of interest?
	We agree in principle to MBIE's proposal for those giving financial advice to disclose all relevant potential conflicts of interest, though note it is not free from problems. We also recommend that this aspect is clarified to 'conflicts of interest that could materially influence the advice that they can give' (as per the wording used in the 'general information publically available' section (this wording is not carried through to the specific disclosure sections). We are unsure as to the actual benefit / utility of the proposed requirement given the 'best interests' duty set out in the legislation. E.g. is this issue limited to "direct or indirect financial interests" in the product/product provider or adviser (which ought to be disclosed). Could actual conflicts not arise if the duties are properly discharged? We note there is some risk that labelling a financial interest a "conflict" could undermine (from a consumer's perspective) advice outcomes that are in the consumers' best interest.
19	
20	
Information about the firm or individual giving advice	
	Details of relevant disciplinary history
21	*Do you agree with the proposed requirement to disclose information relating to disciplinary history and bankruptcy or insolvency history? Why or why not?*
	We support the proposed requirement to disclose information relating to disciplinary history and bankruptcy or insolvency history including professional or regulatory based disciplinary proceedings, FMA orders, relevant criminal convictions (e.g. fraud) and adverse findings made against them by a court or disciplinary tribunal within the past five years (including if they have been found to have contravened a financial advice duty). We agree (as per paragraph 72) that nominated representatives, acting exclusively and as part of the FAP, should not be required to disclose details of relevant insolvency or bankruptcy issues as unlike financial advisers, they are following processes and limitations of the FAP who has engaged them and it is the FAP and its owners/directors whose history is relevant.
22	*Should the disclosure of information relating to disciplinary history and bankruptcy or insolvency history also apply to the directors of a financial advice provider?*
	As noted above yes.
23	
Additional options	
	A prescribed summary document
24	*Do you think that a prescribed template will assist consumers in accessing the information that they require?*
	As per our earlier responses, whilst we support guidance in this area being issued under regulation and guidance notes etc (in terms of required content and principles etc), we believe a principle based approach rather than prescribed templates, wording or

	notifications would ensure the wording chosen is suitable for (where relevant) the specific products, particular industry and type of customer. In our view, a prescriptive approach will more likely lead to a "tick box" approach to disclosure and reduce its effectiveness. E.g. it may not be relevant, meaningful or fit for purpose.
25	*How could a prescribed template work in situations when advice is not provided in person (i.e. if it is provided over the phone or via an online platform)?*
	As per our response above, we believe a flexible principles based approach that requires certain principles and content to be covered is sufficient and more practical.
	Requirements for disclosure provided through different methods
26	*Should the regulations allow for disclosure to be provided verbally? Why or why not?*
	Yes, the regulations should allow for disclosure to be provided verbally – either in person, over the phone or by interactive voice recordings. In our view, verbal disclosure is not a concern providing suitable evidence of the disclosure is retained on record e.g. via notes and records and or telephone calls being recorded.
27	*If disclosure was provided verbally, should the regulations include any additional requirements?* No, providing evidence is retained and it is made clear during the process that written disclosure is available and can be provided on request.
	Requirements for financial advice given through different channels
28	*Should the regulations provide for any additional requirements that would apply when advice is given via a robo-advice platform or over the phone?*
	We do not believe any additional requirements should apply when financial advice is given over the phone (See our response to Q27 above). We would support an additional disclosure principle to identify any particulars or limitations of the robo-advice service. However, we do not think the wording should be prescriptive as the disclosure should be based/will depend on the nature of the robo-advice platform, the product and potentially the customer type.
29	*Do consumers require any additional information when receiving financial advice via an online platform?*
	We don't believe there would be any consumer benefit if it is general advice (and perhaps only downside if the disclosure is irrelevant). Otherwise we expect it should fall within robo-advice requirements.
	Disclosure when replacing a financial product
30	*Should those advising consumers to replace financial products be required to provide a prescribed notification? If so, what should a prescribed notification contain?*
	As per our earlier comments, given the new duties, we do not support a prescribed notification when advising consumers to replace financial products, as advisers should properly cover off any risks and benefits of replacing existing products.

31	*Should this apply to the financial advice given on the replacement of all financial advice products?*
	See Q30 above.
	Information to existing financial advice clients
32	*Should the regulations provide for reduced disclosure requirements for existing clients? If so, in what situations should it apply and what information should consumers receive?*
	Southern Cross supports the concept of optional reduced disclosure requirements to existing clients where they have already received disclosure from the FAP or adviser and the adviser service is for the same type of product/service. The choice whether to use a reduced or a full disclosure should sit with the FAP as it may in some cases be more efficient to comply with the full disclosure.
33	*Should there be a limit on the length of time that this relief would apply?*
	Southern Cross suggests annually.
	Transitional requirements
34	*Is it necessary for the disclosure regulations to provide a transitional period for the industry to comply with the new requirements beyond this nine-month period?*
	We believe a nine month transitional period is sufficient, provided that the actual disclosure requirements are finalised and well understood by industry soon and prior to the commencement of the nine month period.
35	
	Disclosure to wholesale clients
36	*Should the regulations require the provision of additional information regarding the wholesale designation in some circumstances? If so, when would it be appropriate for this to take place?*
	We do not support the provision of additional requirements regarding the wholesale designation. This will lead to unnecessary complexity and undermines the distinction.
37	*Do you have any alternative suggestions for how the regulations could ensure that wholesale clients are aware of what it means to be deemed a wholesale client?*
	As part of the generally available public information / generic disclosure, advice providers could include a high level statement if/where they treat certain clients as wholesale and what this means.

SOVEREIGN

Sovereign House,
74 Taharoto Road,
Takapuna,
Auckland 0622
-
Private Bag Sovereign,
Victoria Street West,
Auckland 1142
-
Telephone +64 9 487 9000
Fax +64 9 487 8003
Freephone 0800 500 103
Freefax 0800 329 768
-
enquire@sovereign.co.nz
sovereign.co.nz

8 June 2018

Financial Markets Policy
Building, Resources and Markets
Ministry of Business, Innovation & Employment
PO Box 1473
Wellington 6140
New Zealand

By email: faareview@mbie.govt.nz

Dear Sir/Madam

DISCLOSURE REQUIREMENTS IN THE NEW FINANCIAL ADVICE REGIME

1 Introduction

1.1 Thank you for the invitation to provide feedback on the discussion paper, Disclosure requirements in the new financial advice regime ("**Discussion Paper**"), dated April 2018 ("**Consultation**").

1.2 Sovereign welcomes the opportunity to provide industry-based feedback on the proposed changes to the disclosure requirements applicable in the new financial advice regime. We support the development of an effective consumer-focused disclosure regime, that will promote the confident and informed participation of businesses, investors and consumers in financial markets.

1.3 Sovereign has contributed to, and endorses, the submission of the Financial Services Council ("**FSC**") in response to the Consultation, except where modified by this submission.

1.4 In addition to the FSC submission, we wish to highlight Sovereign's specific responses in relation to the Consultation, in the Appendix. We have generally followed the order of the Discussion Paper but have not completed the template submission form because we do not wish to address all of the questions raised in the Consultation.

2 Our submission

2.1 Our submissions are, in summary:

- We support the approach to the disclosure proposed in the Discussion Paper, with some exceptions.
- We support a principles-based approach to disclosure under the new financial advice regime, to enable flexibility and avoid "gaming" of the system.
- We support general public disclosure in respect of financial advice providers ("**FAPs**") and financial advisers.

SOVEREIGN

- We support the phased approach to disclosure, but consider that requirements to make detailed disclosure of information early in the advice process may not be practicable, and may be unhelpful for consumers.
- We support the disclosure of commissions (both hard and soft) and incentives, subject to sensible limitations for practicality, consumer usefulness and commercial sensitivity.
- We have a number of other comments on various other aspects of the Consultation.

2.2 We set out further detail on these submissions in the attached Appendix.

2.3 We consent to the details of our submission being made public.

Please do not hesitate to contact us if you wish to discuss any aspect of the above.

Yours faithfully,

S9(2)(a)

Nicholas Stanhope
Chief Executive Officer
Sovereign Assurance Company Limited

Appendix – Submission detail

1 General comment - principles-based disclosure

1.1 We endorse the FSC's submission supporting the move towards a principles-based regime, and MBIE's commentary on this in the Discussion Paper.[1] A principles-based approach will be more effective in achieving accurate client disclosure, ensuring more than a "tick-box" compliance approach to disclosure. The more prescriptive and detailed the disclosure regime is, the less likely consumers are to receive the information they require in a clear and concise manner.

1.2 A clear description of the applicable principles, together with clear guidance and examples, will be important to encourage effective disclosure. We agree with the suggestion in the FSC's submission that template disclosures could be developed that are usable at the option of FAPs/advisers.[2]

2 Timing and form of disclosure

2.1 Broadly, we agree with the approach in the Discussion Paper that information should be disclosed to consumers at different points in the advice process[3], but have the specific comments set out in the following paragraphs.

General disclosure of information

2.2 We support the approach that FAPs provide general disclosure of information about themselves and the financial advice they can give,[4] which is publicly available (for example on the FAP's website) or made available on request. This main disclosure can then be supplemented with additional specific disclosure on prescribed matters once the specific impacts on the advice to be provided to the customer are apparent (such as conflicts – discussed further below).

2.3 We support those giving advice being required to tell consumers how they can access general information about the FAP, and a requirement to refer to this general information in advertising material (provided that a sufficiently succinct formulation is permitted so as not to impede digital advertising or other new forms of media).[5]

2.4 In addition, we support the FSC's submission that information about licensing should be made available publicly on request, but should not be required to be given to a consumer at the time the scope is known.[6]

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[1] Discussion Paper, paragraph 28.
[2] See paragraph 1 of the FSC's submission on the Discussion Paper.
[3] Discussion Paper, question 2.
[4] Discussion Paper, paragraph 32.
[5] Discussion Paper, question 4, page 15.
[6] See paragraph 2 of the FSC's submission on the Discussion Paper.

Disclosure of commissions, incentives and fees, at the at the point at which the nature and scope of the financial advice is known

2.5 We generally support the provision of further information to a client at the point at which the nature and scope of the financial advice is known.[7] However, we would need to see the detailed regulations to understand better how a FAP can, at this stage, practically provide "details of any particular material commission or incentives" or "a reasonable estimate of fees".[8]

2.6 For example, what if a consumer is seeking life insurance advice from a FAP/financial adviser, who advises on a substantial number of different policy types from multiple different product providers who may have different commission structures and different fees (depending on factors such as term, level of cover, etc.)? Our view is a FAP/financial adviser should not have to provide extensive disclosure on each possible commission, incentive or fee. To do that may lead to confusing, complicated and non-consumer friendly disclosure. Instead, it should be sufficient to indicate there are commissions and that at the time a specific policy is recommended provide details of the commission relating to the recommended policy.

2.7 General disclosure on the types of incentives, commissions and fees may be appropriate at this stage in the advice process, but we submit that the appropriate time for detailed disclosure on these points is at the time of making the recommendation (once a full fact-finding has occurred, and the options for financial products being advised upon have been narrowed down).

Disclosure at the time of making a recommendation

2.8 We broadly agree with the suggested disclosures required at the time of providing advice.[9] However, we consider that disclosures should be appropriately limited to disclosure relevant to the recommendation or opinion being given, e.g. any material financial incentives, or material conflicts of interest, in relation to the advice.[10]

2.9 We agree that clawbacks should be disclosed to clients, and support the FSC's submission on this point.[11]

Event-based disclosure updates

2.10 Disclosure should be updated when changes are identified which would materially impact the nature of the recommendation or influence the customer's decision. Guidance on the nature of "materially impact" should be provided either in guidance from the Financial Markets Authority ("**FMA**"), the Code or examples in the regulations. See also our discussion of materiality in paragraph 3.11, below.

[7] Discussion Paper, paragraphs 23, 34 and 35.
[8] Discussion Paper, paragraph 23(c) and (d). See also bullet point two in paragraph 59.
[9] Discussion Paper, paragraphs 24 and 36.
[10] Discussion Paper, paragraphs 24 and 36.
[11] See section 3 of the FSC's submission on the Discussion Paper.

2.11 Specifically in the case of insurance policies, we consider that a triggering event for disclosure of an advice provider's complaints process should be when a claim is declined.

Flexibility and certainty

2.12 We consider that principles-based approach to drafting the regulations (as discussed above) with sufficient FMA guidance and Code and regulations examples, can provide a flexible yet clear disclosure regime.[12]

Liability for presentational requirements

2.13 The liability regime needs to balance having suitable "teeth" to protect consumers on the one hand, with flexibility to enable a proportionate regulatory response depending on the severity of non-compliance.[13]

2.14 We support the FSC's submission on this point.[14] In our view this balance can be met by empowering the FMA to take action on disclosure using the existing tools in the Financial Markets Conduct Act 2013 ("**FMCA**"), ranging from informal intervention to enforcement actions.[15] This should be supported by clear guidance when regulators will take action.

3 Information consumers require

Licensing, conduct and client care and complaints and disputes information

3.1 We agree that information relating to the licence, duties and complaints processes should be made available to consumers, and it is sensible for this information to be shared publicly.[16]

3.2 In our view, the appropriate means of disclosing this information is through public provision on a FAP's website (for ease of consumer access) and on a FAP's/financial adviser's Financial Service Providers Register entry. This information should also be provided on request. In our view requiring this information to be provided at the point of giving advice could possibly detract from the more salient and specific information to be provided to customers in relation to the advice, at that time.

3.3 We consider that regulations should prescribe minimum standard text, which can be altered where necessary, for the disclosure of information relating to licences, duties and complaints processes. A model is the prescribed disclosure requirements in the FMCA for documents such as product disclosure statements. We believe this would ensure consistency of disclosure across the industry, as well as strike the right balance between ensuring that all industry participants make the required disclosures (and therefore keeping consumers informed) and limiting the length and content of such

[12] Discussion Paper, question 5 on page 15.
[13] Discussion paper, question 6 on page 15.
[14] See paragraph 7 of the FSC's submission on the Discussion Paper.
[15] See the FMA's Regulatory Response Guidelines, https://fma.govt.nz/assets/Policies/160824-Regulatory-response-guidelines-policy.pdf
[16] Discussion Paper, question 7, page 18.

disclosures (and therefore avoiding consumers being overloaded with unnecessary information).[17]

3.4 We agree that consumers should be informed of their ability to access a free dispute resolution service when making a complaint, both in the general information on an advice provider and when a customer seeks to lodge a complaint with a provider. This should apply to all financial service providers who provide services to retail clients.[18]

Limitations in the nature and scope of the service

3.5 We support the proposals regarding disclosure of nature and scope of service, and support a principles-based approach to disclosure to ensure that FAPs/advisers are required to proactively disclose any changes to nature and scope.[19]

3.6 As discussed above, we consider a principles-based regime supported by regulatory guidance (and examples in the Code and regulations) should provide the flexibility and certainty to ensure clients understand the limitations in the nature and scope of the service. A prescriptive approach risks inflexibility and overly legalistic "tick box" compliance.[20]

Costs to client

3.7 We generally agree with the proposals to require disclosure of costs to clients, and re-iterate that a principles-based approach to disclosure, subject to a materiality threshold, is the preferred approach.[21]

Commission payments and other incentives

3.8 As stated above, we support a principles-based approach to disclosure of commissions (both soft commissions and hard commissions), supported by a clear and well understood materiality threshold. This approach gives consumers the most relevant information, without overloading disclosure, and reduces the possibility of advisers or product providers structuring incentives to avoid prescriptive disclosure requirements.

3.9 In many instances, calculating the quantum of potential commissions is complex and would lead to inconsistent disclosure. There is also not always one clear stage where the applicable commission is known and the commission may not be quantifiable until well after the advice is provided. Taking a principles-based approach to disclosure of commissions encourages market participants to effectively disclose the types of commissions attainable.

3.10 We agree that commissions and other incentives should be disclosed in more general terms earlier in the advice process, where the advice recommendation has not yet been prepared or given.[22] As discussed in paragraphs 2.5 to 2.7 above, requiring

[17] Discussion Paper, question 8, page 18.
[18] Discussion Paper, question 9, page 18.
[19] Discussion Paper, question 10, page 19.
[20] Discussion Paper, question 11, page 19.
[21] Discussion Paper, question 12, page 20.
[22] Discussion Paper, question 14, page 21.

detailed disclosure too early in the advice process risks overloading the customer with information that may be irrelevant to the ultimate advice.

3.11 We consider an appropriate materiality threshold would be similar to the materiality definition in section 59 of the FMCA.[23] By way of example, this could read:

> ***material commission or incentive**, in relation to the provision of a financial advice service, means a commission or incentive that —*
>
> *(a) a reasonable person would expect to, or to be likely to, influence persons who commonly obtain financial advice services in deciding whether to acquire, or follow the recommendations or opinions provided in, the financial advice service being offered or given; and*
>
> *(b) relates to the particular financial advice service or particular financial advice products being advised upon, rather than financial advice services generally or financial products generally.*

3.12 Regulatory guidance (and in the Code and regulations) will be important to contextualise and create a consistent understanding of "materiality" in the industry.

Disclosure of commissions and incentives

3.13 As discussed at paragraph 3.8, we support principles-based disclosure of commissions and other incentives, and discuss two of the views put forward in the FSC's submission, below.[24]

3.14 We support Option 3 in the Discussion Paper for the reasons discussed above, and re-iterate that the regulatory guidance, along with examples in the Code and regulations, will be important in ensuring consistency of understanding of the disclosure requirements and any materiality thresholds.

3.15 We do not support Option 1 on page 21 of the Discussion Paper. As discussed in paragraphs 2.5 to 2.7 above, requiring detailed disclosure at the point that the nature and scope of the service is known (but before an advice analysis has been conducted) risks overloading the customer with information that may be irrelevant to the ultimate advice. Such an approach risks ineffective and confusing disclosure outcomes.[25]

3.16 Generally, we do not support Option 2 on page 21 of the Discussion Paper. Again, this is likely to lead to information overload for consumers and will be practically difficult to implement. As noted in the Discussion Paper,[26] this approach also risks delays in the advice process due to difficulties in calculating exact dollar amounts based on variables that will be unique to each customer. Further, the practical complications in this approach risk widespread technical non-compliance, and could raise advice costs due to the significant impost on adviser businesses (particularly smaller businesses) of calculating dollar amounts.

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[23] Discussion Paper, question 15, page 21.
[24] See paragraph 3 of the FSC's submission on the Discussion Paper.
[25] Discussion Paper, paragraphs 61 and 62.
[26] Discussion Paper, paragraph 65.

Other conflicts of interest and affiliations

3.17 We support disclosure of other conflicts of interest and affiliations that may materially influence a FAP/adviser's financial advice service. In light of the significant variation of remuneration structures in the market, a principles-based approach will be important in achieving accurate client disclosure.[27]

3.18 For example, an adviser may have a material interest in the commercial success of a product provider, in the form of actual or synthetic shares in, or right to receive revenue from, the product provider's business. This type of conflict should be disclosed. A principles-based approach is most effective because it will prevent such remuneration from being structured to "game" the disclosure requirements, which could occur where disclosure requirements are overly prescriptive.[28]

3.19 We support a general statement of the types of conflicts a FAP/adviser may be subject to, perhaps alongside information about the conduct and client care duties of that FAP/adviser.[29] We do not, however, consider that it is practicable to disclose in detail all conflicts of the FAP/adviser at the initial upfront public disclosure. Detailed disclosure of material conflicts should be made later in the advice process, once the conflicts relevant to the particular financial advice service (having regard to any scope limitations up to that point) can be ascertained. We agree with the FSC's submission in this regard.[30]

Other commissions and incentives matters

3.20 Care will need to be taken in drafting the regulations to ensure that only conflicts that could reasonably be expected to materially influence the financial advice service are required to be disclosed. For example, many advice businesses will have in place confidential commercial arrangements with product providers relating to distribution of financial advice products. The regulations should not be drafted so widely as to catch these types of arrangements (where they are not material to the particular financial advice service) or, where disclosure is required, the regulations should permit a general rather than specific description of the arrangements.

3.21 Disclosure should not be so granular so as to require constant updating by persons giving advice, which increases the risks of disclosure failure and does not improve consumer outcomes. For example, Scenario 2 on page 31 of the Discussion Paper envisages disclosure of the number of life insurance policies remaining for Emilia to write to receive a free trip (i.e. four). Presumably this disclosure would need to be updated for every client, and might need to be altered for the particular client day to day, as the number may change due to an intermediate sale of another policy or the postponement of the meeting.

3.22 An equivalently good client outcome would be for Emilia to be permitted to disclose the types of soft commissions such as trips that may be received by Emilia for writing

[27] Discussion Paper, paragraph 67 and question 18.
[28] Discussion Paper, question 19, page 22.
[29] Discussion Paper, question 20, page 22.
[30] See paragraph 6 of the FSC's submission on the Discussion Paper.

life insurance policies, without disclosure of how Emilia is tracking in terms of sales of insurance policies.

Details of disciplinary history, insolvency and bankruptcy

3.23 We support the disclosure of bankruptcy or insolvency are relevant considerations in deciding which FAP/financial adviser to use, and should be disclosed.[31] We agree that bankruptcy or insolvency information regarding the director of a FAP (which will be a market services licensee under the FMCA) is also relevant information that should be disclosed.[32]

3.24 We support the disclosure of relevant disciplinary history, over the past five years, of the firm or individual giving regulated financial advice.[33] However, we would expect to see parameters established in the regulations as to what constitutes sufficiently serious disciplinary action to require disclosure, e.g. comparatively minor breaches or unsuccessful disciplinary actions should not, always, require public disclosure.

4 Additional options

Prescribed summary document

4.1 A prescribed template document may be useful in limited circumstances, for example, where a client receives advice on a fee-for-service basis, in order to ensure up-front disclosure of fees is given. However, in other circumstances and for different remuneration structures, we consider this prescribed document will not assist good disclosure outcomes, particularly if it simply replicates disclosures to be given at the point of advice.

Disclosure through different methods

4.2 The regulations should allow for disclosure to be provided verbally, but this should be followed up with a written confirmation (which can be provided through electronic means such as email).[34]

4.3 In addition, any required generic disclosures such as for advertisements regarding financial advice services, should be careful to permit delivery of these disclosures so as not to inhibit newer forms of media, e.g. social media platforms. See also our comment at 2.3, above.

Replacement of financial products

4.4 Advice given on the replacement of financial products should include disclosure of any material risks to the customer from following the advice.[35] See also the FSC's submission on this point which we support.[36] This disclosure should be specific to the advice given, rather than being a generic statement. As raised in our submission on

[31] Discussion Paper, paragraph 72 and question 21.
[32] Discussion Paper, question 22.
[33] Discussion Paper, question 22.
[34] Discussion Paper, questions 26 and 27 on page 26.
[35] Discussion Paper, paragraph 81.
[36] See paragraph 5 of the FSC's submission on the Discussion Paper.

the Code of Professional Conduct for Financial Advice Services consultation, this requirement could be imposed through minimum standards within the Code, supported by regulatory guidance. Specific requirements should also be included in the disclosure regulations.[37]

Existing client disclosure

4.5 Existing clients should receive disclosure on the same basis as new clients.[38] Provided that a principles-based and flexible regime is enacted, advisers will be able to avoid excessive prescriptive disclosure where not required for existing clients. Further, adding a separate level of disclosure for existing clients risks complicating the disclosure regime, leading to either risk aversion or the possibility of disclosure failures.

Transitional requirements

4.6 Implementing disclosure changes will require understanding the new requirements, market and internal research, seeking advice, preparation of documentation, staff training on disclosure and printing and distribution of documentation to persons providing disclosure. Nine months risks being insufficient to achieve this implementation. These difficulties can be mitigated if the proposed legislation, regulations, Code and any regulatory guidance is prepared in advance of the Code approval date, to allow businesses sufficient time to prepare.[39]

[37] Discussion Paper, questions 30 and 31.
[38] Discussion Paper, questions 32 and 33.
[39] Discussion Paper, question 34.

Submission on discussion document: *Disclosure requirements in the new financial advice regime*

Your name and organisation

Name	Rory O'Neill
Organisation	Stewart Financial Group

Responses to discussion document questions

1	***Do you agree with the objectives that we have identified? Are there any further objectives that the disclosure requirements should seek to achieve?***
	Yes
The timing and form of disclosure	
2	***What are your views on the proposal that information be disclosed to consumers at different points in the advice process?***
	Disclosure of information should be transparent and available to consumers at every stage of the advice process and whenever the consumer wants it.
3	***Will this approach improve the effectiveness of disclosure by increasing consumers' engagement and understanding of the information they receive? Why or why not?***
	We believe so. Consumers need to have trust in their adviser. A lack of transparency in disclosure creates an environment of distrust from the outset
4	***Should those giving advice be required to tell consumers that they can access general information about the provider or refer to this general information in advertising material?***
	Those giving advice should be encouraging consumers to ensure they are fully aware of the value and expertise that the adviser can add. The adviser should be able to demonstrate how they are superior to their competitors
The form of disclosure	
5	***If the regulations were to provide flexibility on the form and timing of disclosure, how can they be drafted in such a way to provide certainty to the industry of what is required?***
	We do not believe that there should be flexibility. Disclosure should upfront and transparent. This provides a level playing field for the industry.
6	***Should a person who contravenes the presentational requirements under the proposal be subject to civil liability or should it be dealt with by an FMA stop order or similar regulatory response?***
	Contravening the presentational requirements should fall within the remit of the FMA.

	Improvement and enforcement action can then be monitored by the FMA
What information do customers require?	
7	***Do you agree that information relating to the licence, duties and complaints process should be made available to consumers?***
	Agreed
8	***Do you think that the regulations should provide prescribed text for the disclosure of these pieces of information?***
	We do not think the text needs to be prescribed but the format should be templated to ensure transparency and easy comparison with other advice providers
9	***Should consumers be informed of their ability to access a free dispute resolution service when making a complaint? Should this apply to all financial service providers who provide services to retail clients (in which case it might be implemented via the scheme rules rather than in regulations under the Bill)?***
	Yes all consumers should be informed of the right to dispute resolution. Many are not aware and generally seek legal advice from the outset
Information about the financial advice	
	Limitations in the nature and scope of the advice
10	***Do you agree with the proposal in relation to the disclosure of nature and scope of advice, as set out on page 19? Why or why not?***
	Yes agree, All advice provided needs to clearly disclosed regarding the goals and objectives for the consumer. The consumer needs to fully understand whether limited advice or a full financial plan is being undertaken
11	***How can the regulations ensure that consumers receive an accurate indication of the extent of the market that can (and will) be considered?***
	The regulations should mandate the information that is required to be included in the statement of advice and clearly define the nature and scope of the advice .
	Costs to client
12	***Do you agree with the proposal in relation to disclosure of costs to clients, as set out on page 20? Why or why not****?*
	As a fee only, independent advice firm. We believe this is the most important part of the proposals. Consumers are not fully aware of the rebates and hidden fees that their engagement is subject to. A transparent level playing field needs to be established so that consumers fully understand what they are paying and how their adviser is being remunerated.
13	***What role, if any, should the disclosure regulations play in ensuring that consumers are aware of the other fees that they might be charged should they follow the advice (e.g. bank fees, insurance premiums, management fees)?***

	The regulations should make it mandatory to state all fees that thy are subject to as well as how the adviser receives all remuneration. This should be stated as well as quantified
	Commission payments and other incentives
14	***Do you agree that commissions and other incentives should be disclosed in more general terms early, followed by more detailed disclosure later in the advice process?***
	Agree, all commissions should be fully disclosed from the outset so that a proper comparison can be made with fee only providers such as Stewart Financial Group
15	***If the regulations were to include a materiality test that would determine the commissions and incentives that needed to be disclosed, what would an appropriate test be?***
	The materiality test should include and example an investment portfolio and/or insurance premiums and the cost to the consumer and how the adviser will be remunerated
	Options for how to disclose commissions and other incentives
16	***Is it necessary for the disclosure regulations to be prescriptive regarding the disclosure of commissions and other incentives? If so, why?***
	Yes, there is too much hidden from consumers. The regulations need to ensure transparency.
17	***Which of the options (as set out in pages 21-22) do you prefer? What are these costs and benefits of the options?***
	Option 2 is best. There is no cost to the adviser. Commissions are already recorded for accounting purposes so an example is readily available. This will have huge benefits for the consumer
	Other conflicts of interest and affiliations
18	***Do you agree that those giving financial advice should be required to disclose all relevant potential conflicts of interest?***
	Yes
19	***Are there any additional factors that might influence financial advice that should be disclosed?***
	The understanding by the consumer of vertical integration and ultimate control and affiliations is key to an informed decision
20	***Should these factors be disclosed alongside information about the conduct and client care duties that financial advice will be subject to (as discussed on page 17)?***
	Yes
Information about the firm or individual giving advice	
	Details of relevant disciplinary history
21	***Do you agree with the proposed requirement to disclose information relating to disciplinary***

	history and bankruptcy or insolvency history? Why or why not?
	Yes, it provides information for effective decision making by the consumer as to an advisers track record and ability to self manage
22	***Should the disclosure of information relating to disciplinary history and bankruptcy or insolvency history also apply to the directors of a financial advice provider?***
	Yes
23	***Should financial advice providers also be required to disclose if they have been found to have contravened a financial advice duty?***
	Yes
Additional options	
	A prescribed summary document
24	***Do you think that a prescribed template will assist consumers in accessing the information that they require?***
	Yes
25	***How could a prescribed template work in situations when advice is not provided in person (i.e. if it is provided over the phone or via an online platform)?***
	A summary can be delivered to the consumer via e-mail or post for them to acknowledge and return
	Requirements for disclosure provided through different methods
26	***Should the regulations allow for disclosure to be provided verbally? Why or why not?***
	No, advice needs to be documented for the protection of the industry
27	***If disclosure was provided verbally, should the regulations include any additional requirements?***
	Disclosure should not be verbal
	Requirements for financial advice given through different channels
28	***Should the regulations provide for any additional requirements that would apply when advice is given via a robo-advice platform or over the phone?***
	Once advice is transparent and the consumer understands all fees, rebates and how the adviser is remunerated as per the points above then additional requirements are not required
29	***Do consumers require any additional information when receiving financial advice via an online platform?***
	Upfront disclosure on fees and remuneration structures

	Disclosure when replacing a financial product
30	***Should those advising consumers to replace financial products be required to provide a prescribed notification? If so, what should a prescribed notification contain?***
	The notification should include the benefits to the consumer and how it aligns with their goals
31	***Should this apply to the financial advice given on the replacement of all financial advice products?***
	Yes
	Information to existing financial advice clients
32	***Should the regulations provide for reduced disclosure requirements for existing clients? If so, in what situations should it apply and what information should consumers receive?***
	We do not believe that the requirements should be lowered from existing clients
33	***Should there be a limit on the length of time that this relief would apply?***
	No relief should apply
	Transitional requirements
34	***Is it necessary for the disclosure regulations to provide a transitional period for the industry to comply with the new requirements beyond this nine-month period?***
	No
35	***Should the regulations include specific transitional provisions for AFAs authorised to provide personalised DIMS under the FA Act?***
	No
	Disclosure to wholesale clients
36	***Should the regulations require the provision of additional information regarding the wholesale designation in some circumstances? If so, when would it be appropriate for this to take place?***
	No
37	***Do you have any alternative suggestions for how the regulations could ensure that wholesale clients are aware of what it means to be deemed a wholesale client?***
	We believe transparency and simplified information is flow is always welcome.

Other comments

Submission on discussion document: *Disclosure requirements in the new financial advice regime*

Your name and organisation

Name	Wayne Smith
Organisation	TripleA Advisers Association

Responses to discussion document questions

1	*Do you agree with the objectives that we have identified? Are there any further objectives that the disclosure requirements should seek to achieve?*
	Yes, we agree with the objectives although note that Objective 3 may present pragmatic challenges (see comments below).
The timing and form of disclosure	
2	*What are your views on the proposal that information be disclosed to consumers at different points in the advice process?*
	This makes sense on the face of it. The challenge will be how much information requires disclosure and then whether that logically lends itself to being broken up into sensible chunks that can be digested and understood by the "average consumer".
3	*Will this approach improve the effectiveness of disclosure by increasing consumers' engagement and understanding of the information they receive? Why or why not?*
	Again, on the face of it yes but the quantum of disclosure requirements will ultimately drive what is made available to consumers. As soon as lawyers are asked to outline what an adviser must make available to cover off all the regulatory and risk requirements this is when disclosure documents blow out and become lengthy. Whether regulators can create a system that avoids this dynamic and associated business reality remains to be seen. We doubt that it will be possible **We can understand the arguments around not taking a prescriptive approach however the <u>inevitable sequence</u> of events that will follow is:** **1. Adviser firms will ask for legal advice on what they need to include to comply with legislation / regulation and to cover off any business risks of non-compliance.** **2. Under a non-prescriptive regime that list of risks will inevitably be long.** **3. Once in receipt of such legal advice an adviser firm will comply with that advice.** **4. Ipso facto you are likely to be straight back to long and difficult to understand (for the average consumer) disclosure documents.** **In a similar vein we also understand the desirability of the notion of disclosing "fees that**

	are likely to be applicable to the client". The pragmatic reality of this however is then the need to almost customize every single disclosure to the specific needs of each client. The reality is that this won't be pragmatic or workable in a real-world context.
4	*Should those giving advice be required to tell consumers that they can access general information about the provider or refer to this general information in advertising material?*
	Yes. Once again however we should be realistic about the likelihood that the "average consumer" will indeed access, read and understand such material.
The form of disclosure	
5	*If the regulations were to provide flexibility on the form and timing of disclosure, how can they be drafted in such a way to provide certainty to the industry of what is required?*
	Comments under 2 and 3 above apply. Ultimately this will be driven by the quantum of what legislation and regulation states is required. Greater "flexibility, form and timing" is a laudable notion but the likely outcome of the two factors combined may well be less certainty. **Lessons from previous attempts to establish disclosure documents need to be learned. Those lessons may no longer be remembered by current MBIE officials who may not have been around in 2011. It took over three years for any sort of consensus emerged as to what really needed to be in disclosure statements.**
6	*Should a person who contravenes the presentational requirements under the proposal be subject to civil liability or should it be dealt with by an FMA stop order or similar regulatory response?*
	Difficult to really answer this question until the actual shape of disclosure requirements and now a new term "presentational requirements" becomes clear. Again, comments under 2 and 3 may well apply here as well. That said FMA stop order is likely to be the appropriate tool.
What information do customers require?	
7	*Do you agree that information relating to the licence, duties and complaints process should be made available to consumers?*
	Yes
8	*Do you think that the regulations should provide prescribed text for the disclosure of these pieces of information?*
	Yes
9	*Should consumers be informed of their ability to access a free dispute resolution service when making a complaint? Should this apply to all financial service providers who provide services to retail clients (in which case it might be implemented via the scheme rules rather than in regulations under the Bill)?*
	Yes. However, because the service is free to consumers there also needs to be a mechanism for the dispute resolution service to determine that a compliant is vexatious so that large time and / or legal costs do not fall on a small adviser firm unreasonably.

	As evidence for this suggestion as a Professional Body we were asked to assist one of our members who was subject to a compliant. The compliant had no merit and the dispute resolution service concurred with that view post investigation and their processes being completed. The complaints process was used as a mechanism in what was an employment issue (also without merit). In the interim however the complainant was able to make opinion-based complaints (multiple). They were not required to provide any evidence to support their claims, the dispute resolution service had an obligation to investigate, the adviser firm had to refute the claims based on very large quantum of evidence and legal advice. This process went on through several "opinion based" complaint cycles. In other words, the dispute resolution process was misused to pursue other agenda's. **As a Professional Body we were successful, post investigation, in getting some change of policy by the dispute resolution service but it would be good in future if they were empowered to make such a "vexatious claim" judgement earlier on in their process.**
Information about the financial advice	
	Limitations in the nature and scope of the advice
10	*Do you agree with the proposal in relation to the disclosure of nature and scope of advice, as set out on page 19? Why or why not?*
	Our comment here is that there is an assumption here that incentives stem directly from providers to advisers which is not always true. Much of the system is currently incentivised via "over-rider" payments made by providers to dealer groups / aggregators. Currently it's a glaring omission that this issue is not identified and addressed in the proposals. If the regulators want greater transparency, then they should pick up on this form of payment and the likely pressure that advisers in such groups will come under even though they will not receive any direct incentive from the provider.
11	*How can the regulations ensure that consumers receive an accurate indication of the extent of the market that can (and will) be considered?*
	Prescribe what must be outlined to the consumer!
	Costs to client
12	*Do you agree with the proposal in relation to disclosure of costs to clients, as set out on page 20? Why or why not?*
	Yes
13	*What role, if any, should the disclosure regulations play in ensuring that consumers are aware of the other fees that they might be charged should they follow the advice (e.g. bank fees, insurance premiums, management fees)?*
	The test here is probably the fees an adviser realistically can know about and pragmatically pass knowledge onto the consumer. It would not be pragmatic for an adviser to shoulder responsibility for disclosure of the specifics of third party fees where they have no control over might these might be or when they might change.
	Commission payments and other incentives

14	*Do you agree that commissions and other incentives should be disclosed in more general terms early, followed by more detailed disclosure later in the advice process?*
	Yes. In addition, this needs to pick up on the issue of over rider payments and other soft incentives.
15	*If the regulations were to include a materiality test that would determine the commissions and incentives that needed to be disclosed, what would an appropriate test be?*
	Again, on the face of it a laudable notion but we could envisage significant complexity being injected into the system by the idea of a "materiality test". Keep it simple if possible with a straight percentage figure.
	Options for how to disclose commissions and other incentives
16	*Is it necessary for the disclosure regulations to be prescriptive regarding the disclosure of commissions and other incentives? If so, why?*
	No altogether clear until the final requirements are known to form a firm view on the best approach. The test is that consumers know what is required and what they are seeing.
17	*Which of the options (as set out in pages 21-22) do you prefer? What are these costs and benefits of the options?*
	Need to be cognisant that a small independent adviser has no control over what providers do. If the objective is to provide consumers with good advice, then this won't be enhanced by ten different providers all having different payment regimes all running on different time lines for changing. The ability of an adviser to take such information and realistically translate it into a disclosure regime presented in dollar terms to a consumer will be impossible. **The legislation and regulations need to address this issue at source (the providers) with possibly a highly prescriptive approach that an adviser can then pass onto the consumer. The responsibility for the correctness of that information <u>should rest with the provider</u> that would put both the responsibility and incentive in the right place.**
	Other conflicts of interest and affiliations
18	*Do you agree that those giving financial advice should be required to disclose all relevant potential conflicts of interest?*
	Yes, but guidance on what constitutes "relevant" will need to be provided.
19	*Are there any additional factors that might influence financial advice that should be disclosed?*
	As outlined above "over rider" payments to dealer groups and aggregators is a glaring omission currently.
20	*Should these factors be disclosed alongside information about the conduct and client care duties that financial advice will be subject to (as discussed on page 17)?*
	Yes

Information about the firm or individual giving advice	
	Details of relevant disciplinary history
21	*Do you agree with the proposed requirement to disclose information relating to disciplinary history and bankruptcy or insolvency history? Why or why not?*
	Our understanding currently is that "nominated representatives" won't be subject to the same disciplinary requirements as financial advisers. We strongly believe that they should be. The difficulty with this proposal is the assumption that a disciplinary incident means that an adviser has behaved poorly. As outlined in our response to question 9 this is often not the case. If this were to be adopted, then it should only apply if two tests are met (1) a complaint is fully upheld in its entirety and it is (2) material. **Bankruptcy or insolvency history are issues better addressed by the regulator through the licensing regime i.e. applicants are declined a license to operate so they don't come into the system in the first instance. How would bankruptcy or insolvency be managed for nominated representatives?**
22	*Should the disclosure of information relating to disciplinary history and bankruptcy or insolvency history also apply to the directors of a financial advice provider?*
	Yes, comments in 21 above apply. Arguably these issues are more important at the FAP director level as these will be key gatekeepers under the new regime.
23	*Should financial advice providers also be required to disclose if they have been found to have contravened a financial advice duty?*
	Not really sure what is meant by a "financial advice duty" so difficult to answer.
Additional options	
	A prescribed summary document
24	*Do you think that a prescribed template will assist consumers in accessing the information that they require?*
	Yes
25	*How could a prescribed template work in situations when advice is not provided in person (i.e. if it is provided over the phone or via an online platform)?*
	Easy a copy is emailed to the recipient.
	Requirements for disclosure provided through different methods
26	*Should the regulations allow for disclosure to be provided verbally? Why or why not?*
	Generally, no except referring consumers to online disclosure elements.
27	*If disclosure was provided verbally, should the regulations include any additional requirements?*

	Requirements for financial advice given through different channels
28	*Should the regulations provide for any additional requirements that would apply when advice is given via a robo-advice platform or over the phone?*
	Robo advice should not escape the same requirements as apply to a natural person.
29	*Do consumers require any additional information when receiving financial advice via an online platform?*
	Probably that it is automated advice in the first instance. Dispute resolution channels will be more important including clear statements that the entity is subject to NZ jurisdiction.
	Disclosure when replacing a financial product
30	*Should those advising consumers to replace financial products be required to provide a prescribed notification? If so, what should a prescribed notification contain?*
	Yes, there are <u>additional risks for the consumer</u> when considering replacement business. There needs to be some documented comparison of the relative benefits of the replacement product and possibly higher thresholds of disclosure possibly outlining the exact dollar amounts of commission / brokerage etc in such situations.
31	*Should this apply to the financial advice given on the replacement of all financial advice products?*
	Kiwisaver is probably something where this isn't required.
	Information to existing financial advice clients
32	*Should the regulations provide for reduced disclosure requirements for existing clients? If so, in what situations should it apply and what information should consumers receive?*
	Yes, this would be sensible. If the adviser can show that disclosures have not changed materially then this shouldn't be an issue.
33	*Should there be a limit on the length of time that this relief would apply?*
	Possibly. A two to three-year timeframe would be pragmatic.
	Transitional requirements
34	*Is it necessary for the disclosure regulations to provide a transitional period for the industry to comply with the new requirements beyond this nine-month period?*
	Nine months to a year should be sufficient. Current AFA's should be fine but there are very large numbers of other advisers that the new disclosure regime will capture.
35	*Should the regulations include specific transitional provisions for AFAs authorised to provide personalised DIMS under the FA Act?*
	Yes, they should be allowed to retain 100% under the transitional process their personalised DIMS license as the FMA have already put them through a vigorous vetting

	and compliance process.
	Disclosure to wholesale clients
36	*Should the regulations require the provision of additional information regarding the wholesale designation in some circumstances? If so, when would it be appropriate for this to take place?*
37	*Do you have any alternative suggestions for how the regulations could ensure that wholesale clients are aware of what it means to be deemed a wholesale client?*

Other comments

Submission on discussion document: *Disclosure requirements in the new financial advice regime*

Your name and organisation

Name	Michael Hendriksen, Assistant General Counsel
Organisation	Westpac New Zealand Limited

Responses to discussion document questions

1 *Do you agree with the objectives that we have identified? Are there any further objectives that the disclosure requirements should seek to achieve?*

Westpac agrees. Westpac supports the promotion of confident and informed participation of consumers in financial markets. We agree that clear and effective disclosure contributes to this principle. Broadly, Westpac agrees with the objectives identified in the consultation document. We make general and specific comments in our response on how the objectives are proposed to be applied in the regulations.

The timing and form of disclosure

2 *What are your views on the proposal that information be disclosed to consumers at different points in the advice process?*

Westpac agrees that information disclosed over time during the advice process may assist in describing concepts at the right points in the advice process. However, the regulations should not prescribe the number of times, or the specific points, that disclosure should be made. The consultation document notes that consumers receive a significant amount of paperwork when seeking advice from financial advisers, and that they can feel overwhelmed by the information, thereby reducing the effectiveness of the disclosure.

Providing flexibility around the timing of disclosure might avoid overloading consumers at the outset of the advice process. However, requiring disclosure at specific points may overwhelm consumers by accumulation of information over time. In other words, consumers may potentially become equally overwhelmed by either (i) the receipt of smaller amounts of disclosure on multiple occasions; or (ii) the receipt of a larger amount of disclosure at the outset.

The appropriate timing of, and need for, multiple disclosures will depend on the product, the delivery channel and the complexity of the advice. A consumer receiving detailed written financial planning advice from a financial adviser following a series of meetings may benefit from disclosure at different points in the advice process. By comparison, a consumer receiving telephone advice from a nominated representative about, for example, term deposits offered by a financial institution that is also a Financial Advice Provider would not require multiple disclosures.

For these reasons, we note that it may be difficult to be too prescriptive as to how the disclosure of information should be made due to the different advice-delivery channels,

products and types of advice to be covered by the regulations

Westpac makes the following recommendations in respect of the proposed disclosure process described in the consultation document (summarised at page 11 and 12 of the consultation document):

- For publicly available disclosure - Westpac agrees that it would be beneficial for providers to make available general information as described in the consultation document. However, we note that "*the limitations in the nature and scope of the advice*" would be different depending on the product and type of adviser. In other words, there could be different limitations for each permutation of nature and scope.
- For disclosure to be made when the nature and scope of advice is known – nature and scope is not something that can be determined without knowing more about the client's needs. Our concern is that a client requesting advice about a particular financial product would not of itself be sufficient information to quantify nature and scope in every case. Without the client's needs being sufficiently clear, it would be difficult to provide any more granularity of disclosure that is required to be made publicly available, particularly in respect of Financial Advice Providers who provide advice about only their own products. Therefore, the disclosure would simply be a replication of the previous disclosure.

  Using the example from the consultation document (i.e. a client receiving KiwiSaver advice), a generic disclosure required at point 1 would advise the client that the Financial Advice Provider provides KiwiSaver advice in respect of its own KiwiSaver products. If the client then advises that they want KiwiSaver advice, is there any further disclosure that could helpfully be made at this point?
- For disclosures to be made when the recommendation is made - it would be beneficial to have further clarity around what constitutes *when* the recommendation is made, particularly when multiple pieces of advice are given. Is separate disclosure required for each piece of advice? Please also see our comments in response to question 32.

The regulations should also state when certain types of disclosure is *not* required. Consumers may not, for example, require specific types of disclosure (such as a Disclosure Statement) when the advice relates to certain types of simple products.

3	*Will this approach improve the effectiveness of disclosure by increasing consumers' engagement and understanding of the information they receive? Why or why not?*
	Refer to response to question 2.
4	*Should those giving advice be required to tell consumers that they can access general information about the provider or refer to this general information in advertising material?*
	Westpac agrees. In respect of advertising material, it should be possible for the advertising material to refer to where and how consumers can access general information about the provider, rather than the advertising material itself containing the information.
The form of disclosure	
5	*If the regulations were to provide flexibility on the form and timing of disclosure, how can they*

	be drafted in such a way to provide certainty to the industry of what is required?
	The regulations should include high level headings for types of information required (e.g. nature of scope of advice) and more granular requirements for fee disclosures (however, note our comments in respect of question 13). This objective-focused approach allows flexibility in some areas where Financial Advice Providers' businesses differ and prescription in other where comparability is important between providers. In terms of the high level requirements, it would be beneficial to receive guidance as to how providers could comply with the requirements, taking account of product types and advice delivery channels The regulations should not prescribe the exact time that certain types of disclosure must be provided during the advice process, because doing so assumes that all advice follows the same pattern. Instead, advice providers should be required to provide specific types of disclosure either at the beginning of the advice process (for key disclosure), at any time during the advice process, or on a time bound basis (e.g. annually), depending on the content required.
6	*Should a person who contravenes the presentational requirements under the proposal be subject to civil liability or should it be dealt with by an FMA stop order or similar regulatory response?*
	The FMA's enforcement powers are sufficient to address contraventions of the presentational requirements. No additional civil liability regimes or regulatory responses are necessary in addition to stop orders. Civil liability for relatively low level breaches would be excessive, particularly given the high costs of litigation to both the FMA and the provider. Any regulatory consequence of contravention of the presentational requirements should be subject to a materiality threshold to ensure that immaterial breaches or isolated minor incidents are not caught. Any regulatory consequence should be commensurate with the materiality and harm to the consumer.
What information do customers require?	
7	*Do you agree that information relating to the licence, duties and complaints process should be made available to consumers?*
	Providing detailed information about Westpac's licence, adviser duties and complaints processes could be overwhelming, confusing, and is unlikely to be relevant to consumers. It should be sufficient to satisfy the requirement with a high level statement which refers to how and where more detailed information can be found (for example, on the provider's website).
8	*Do you think that the regulations should provide prescribed text for the disclosure of these pieces of information?*
	Westpac disagrees. Prescribed text or mandatory wording could be confusing and restrictive. If disclosure of this information is mandatory, then businesses should be free to determine how this disclosure is made. However, it would be beneficial to receive guidance in this regard.

9	*Should consumers be informed of their ability to access a free dispute resolution service when making a complaint? Should this apply to all financial service providers who provide services to retail clients (in which case it might be implemented via the scheme rules rather than in regulations under the Bill)?*
	Westpac agrees that consumers should be informed of their ability to access a free disputes service. However, the consumer should receive information about the provider's complaints process and be encouraged to use that in the first instance, rather than solely receiving information about the dispute resolution service. For example, the Banking Ombudsman does not generally consider complaints from consumers unless they have attempted to resolve the complaint with the bank in the first instance. It would be more useful for the consumer to understand this as it would avoid creating a loop for the consumer which may lead to more frustration. It would also be beneficial to understand what a "complaint" is for the purposes of the question. Organisations receive consumer feedback via a range of channels (e.g. social media) and whilst some such comments may express dissatisfaction, these are not intended to be "complaints". By way of example, would a provider be required to respond to a Facebook post from a consumer expressing a minor concern with information about a dispute resolution scheme? It would also be beneficial to understand whether disclosure would be required if a complaint was received and resolved immediately, for example, during a phone call to the provider.
Information about the financial advice	
	Limitations in the nature and scope of the advice
10	*Do you agree with the proposal in relation to the disclosure of nature and scope of advice, as set out on page 19? Why or why not?*
	Westpac agrees that disclosure regarding the nature and scope of advice will be beneficial in most cases. However, Westpac does not agree that it will always be necessary for the nature and scope to be disclosed, nor for it to be disclosed at the three proposed points in the advice process. For example, a consumer who phones Westpac seeking advice on term deposits may not need to be advised that they will receive advice only about Westpac term deposit products. This information is contained in the publicly available information on term deposits products. It is not necessary for the consumer to receive this disclosure again. We consider that providers should have the flexibility to design processes for disclosing the nature and scope of advice. This should permit providers to design different methods for disclosing the nature and scope of advice, which may depend on (i) the complexity of the product; (ii) the number of likely interactions with the consumer; and (iii) the level of reliance placed on the adviser by the consumer.
11	*How can the regulations ensure that consumers receive an accurate indication of the extent of the market that can (and will) be considered?*
	It should be sufficient to disclose the nature of products that will be considered when

	providing the financial advice, for example, the provider's own KiwiSaver products. It should not be necessary for disclosure to be made about all products available in the market and it would not be reasonable to expect the provider to do so, particularly as this may not be known to the provider.
	Costs to client
12	*Do you agree with the proposal in relation to disclosure of costs to clients, as set out on page 20? Why or why not?*
	Westpac agrees.
13	*What role, if any, should the disclosure regulations play in ensuring that consumers are aware of the other fees that they might be charged should they follow the advice (e.g. bank fees, insurance premiums, management fees)?*
	The regulations should prescribe how any additional fees that may be charged are disclosed to ensure comparability between providers. However, it should be possible to satisfy certain fee disclosure requirements by reference to other prescribed disclosures containing fee information or to fee information on a website or in a brochure.
	Commission payments and other incentives
14	*Do you agree that commissions and other incentives should be disclosed in more general terms early, followed by more detailed disclosure later in the advice process?*
	Westpac agrees. However, where sufficiently detailed information which meets the disclosure requirements regarding commissions and other incentives is provided in general publicly available information, it should be possible to satisfy the disclosure requirements later in the advice process by referring the consumer to that information.
15	*If the regulations were to include a materiality test that would determine the commissions and incentives that needed to be disclosed, what would an appropriate test be?*
	Westpac agrees with paragraph 59 of the consultation document that only those commissions and incentives which might be perceived to materially influence the financial advice should be disclosed. We agree that this will reduce the likelihood of the disclosure becoming overly complex or the pertinent disclosures being buried amongst wider disclosures. It would be beneficial to receive guidance on the interpretation of "materially influence".
	Options for how to disclose commissions and other incentives
16	*Is it necessary for the disclosure regulations to be prescriptive regarding the disclosure of commissions and other incentives? If so, why?*
	We agree that prescription is necessary for fees, commissions and incentives (including any

claw backs). This would provide consumers with better information to compare advisers and would disclose potential remuneration conflicts in a more transparent way. If the regulations were not prescriptive, it would be beneficial for guidance and examples or case studies to be provided to assist those providing advice to understand their obligations.

17	*Which of the options (as set out in pages 21-22) do you prefer? What are these costs and benefits of the options?*

Westpac considers that elements of both Option 1 and Option 2 are preferable for the reasons set out in our responses to questions 15 and 16. However, we note that it may not be possible to set out all incentives in dollar terms in all cases. This will be true, for example, where incentives are just one of a number of considerations (including conduct and risk and compliance "gate openers") in a "balanced scorecard" approach to remuneration.

Other conflicts of interest and affiliations

18	*Do you agree that those giving financial advice should be required to disclose all relevant potential conflicts of interest?*

Westpac agrees that financial advisers should be required to disclose all relevant and *material* potential conflicts of interest. However, nominated representatives should not be required to disclose detailed information on personal conflicts of interests as they will be following the Financial Advice Provider's processes and limitations, and the consumer will have received the Financial Advice Provider's general information on conflicts of interest.

The regulations should incorporate a materiality threshold as described in paragraph 67, i.e. only conflicts which "could be perceived to materially influence the financial advice" should be disclosed.

Disclosure should focus on material conflicts to ensure that consumers get enough detail in a clear, concise and effective form to allow them to make an informed decision about how the conflict may affect the service being provided to them. If all conflicts are disclosed, then truly material conflicts may be buried, or consumers may receive too much information.

The regulations should not prescribe what material conflict disclosure should look like or how much information should be disclosed. This should be left to guidance. The content and form of disclosure will vary depending on the circumstances and the nature of the conflict.

19	*Are there any additional factors that might influence financial advice that should be disclosed?*

Westpac does not consider that there are any additional factors requiring disclosure.

20	*Should these factors be disclosed alongside information about the conduct and client care duties that financial advice will be subject to (as discussed on page 17)?*

No comment

Information about the firm or individual giving advice

	Details of relevant disciplinary history
21	*Do you agree with the proposed requirement to disclose information relating to disciplinary history and bankruptcy or insolvency history? Why or why not?*
	Westpac agrees. We also support the statements in paragraph 72 of the consultation document that nominated representatives should not be required to disclose this information as, unlike financial advisers, they are following the financial advice provider's processes and limitations. The requirements should not be more onerous that the current requirements for AFAs. In particular, there should be no need to disclose internal disciplinary matters, particularly if such disclosures are required to be made for a period of 5 years. Requiring disclosure of internal disciplinary matters may create an uneven playing field for Financial Advisers, as different Financial Advice Providers may set different internal standards.
22	*Should the disclosure of information relating to disciplinary history and bankruptcy or insolvency history also apply to the directors of a financial advice provider?*
	Westpac does not agree that a standard requirement should be imposed requiring disclosure of information (positive and negative) relating to disciplinary, bankruptcy or insolvency history of directors of Financial Advice Providers. That information will have been considered during the licensing process. If information on directors is to be disclosed, however, this could be on an exceptions basis. In other words, where the licensing process reveals that a director of a financial advice provider has insolvency or bankruptcy issues, then disclosure of this information (on an ongoing basis) could potentially be imposed by way of a licence condition (if the provider is to be licensed despite these issues). This would reduce administrative burden on the vast majority of Financial Advice Providers who will not have any relevant information to disclose.
23	*Should financial advice providers also be required to disclose if they have been found to have contravened a financial advice duty?*
	Please see our response to question 21.
Additional options	
	A prescribed summary document
24	*Do you think that a prescribed template will assist consumers in accessing the information that they require?*
	Westpac agrees that a template would assist consumers by ensuring that information is consistent between providers and would allow for greater comparison. As noted in the consultation document, the template will be more or less effective depending on the channel of advice delivery. It may be necessary for the template to incorporate some flexibility, or for there to be multiple templates, in order for it to be relevant to different products and advice delivery models, including where the advice spans multiple advice delivery channels.
25	*How could a prescribed template work in situations when advice is not provided in person (i.e.*

	if it is provided over the phone or via an online platform)?
	The template could be printed or sent via email at the request of the consumer where the advice is not provided in person. Please also refer to comments in response to question 24.
	Requirements for disclosure provided through different methods
26	*Should the regulations allow for disclosure to be provided verbally? Why or why not?*
	Yes, disclosure should be allowed to be provided verbally. The Financial Advisers (Disclosure) Regulations 2010 currently provide exemptions for verbal disclosure for category 2 products. The regulations could seek to replicate this regime. In the absence of such a regime, it may, however, be helpful for the FMA to provide guidance to on how providers should evidence compliance with the disclosure regulations in order to ensure providers design appropriate processes for capturing evidence of verbal disclosure.
27	*If disclosure was provided verbally, should the regulations include any additional requirements?*
	Please refer to our response to question 26.
	Requirements for financial advice given through different channels
28	*Should the regulations provide for any additional requirements that would apply when advice is given via a robo-advice platform or over the phone?*
	Certain requirements of the Financial Advisers (Personalised Digital Advice) Exemption Notice 2018, including a brief description of how the tool works, could be replicated in the regulations.
29	*Do consumers require any additional information when receiving financial advice via an online platform?*
	Yes, consumers should receive information about the limitations of advice provided by online platform and, if applicable, where they can receive further information if required.
	Disclosure when replacing a financial product
30	*Should those advising consumers to replace financial products be required to provide a prescribed notification? If so, what should a prescribed notification contain?*
	We agree that those advising consumers to replace financial products should be required to provide a prescribed notification. This would put the consumer on notice of the risks of replacing or changing products. However, the prescribed notice should not require the advice provider to provide a comparison of all the products in the market or to advise on the benefits and detriments of one product over another where they do no sell these products.

	Is it intended that the prescribed notice would be required in respect of changes to *all* financial products or would the requirement be limited to material replacements or changes where harm could result (which, as noted, may not be known to the provider)? If it is the latter, would the regulations also prescribe the circumstances in which the notice is required?
31	*Should this apply to the financial advice given on the replacement of all financial advice products?*
	Please refer to the response to question 30.
	Information to existing financial advice clients
32	*Should the regulations provide for reduced disclosure requirements for existing clients? If so, in what situations should it apply and what information should consumers receive?*
	Yes. An adviser should be able to rely on previous disclosure unless that disclosure is out of date or has changed to the degree that it would materially alter the consumer's decision to proceed with the advice. We note that section 29(2) of the Financial Advisers Act 2008 sets out the situations where a previous disclosure is deemed to be out of date, such as, where there has been material change in any matter since the original disclosure was given. Section 29(3) also sets out where additional disclosure is not required, such as where additional written information, when read with the original disclosure, updates the original disclosure. The regulations could replicate the principles of section 29.
33	*Should there be a limit on the length of time that this relief would apply?*
	There should not be a limit on the length of time that the relief should apply. Please refer to our comments in response to question 32.
	Transitional requirements
34	*Is it necessary for the disclosure regulations to provide a transitional period for the industry to comply with the new requirements beyond this nine-month period?*
	Yes. An implementation period beyond nine months will be required as changes to providers' multiple systems, policies and related documentation will be required and then a further period of time will be required to train the providers' employees on the these changed systems, policies and documents. A nine month implementation period would be particularly problematic because significant IT changes will be required to implement the new requirements. There may also be IT resource constraints if the whole industry is expected to comply with the new requirements in a short timeframe.
35	*Should the regulations include specific transitional provisions for AFAs authorised to provide personalised DIMS under the FA Act?*

	No comment.
	Disclosure to wholesale clients
36	*Should the regulations require the provision of additional information regarding the wholesale designation in some circumstances? If so, when would it be appropriate for this to take place?*
	No comment.
37	*Do you have any alternative suggestions for how the regulations could ensure that wholesale clients are aware of what it means to be deemed a wholesale client?*
	No comment.

Other comments