



**MINISTRY OF BUSINESS,  
INNOVATION & EMPLOYMENT**  
HĪKINA WHAKATUTUKI



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

Submissions NZBA to Plus4

**5 September 2018**

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

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# Submission

to the

Ministry of Business,  
Innovation and Employment

on the

Discussion paper:  
Disclosure requirements in  
the new financial regime

28 May 2018

## About NZBA

1. NZBA works on behalf of the New Zealand banking industry in conjunction with its member banks. NZBA develops and promotes policy outcomes that contribute to a strong and stable banking system that benefits New Zealanders and the New Zealand economy.
2. The following seventeen registered banks in New Zealand are members of NZBA:
  - ANZ Bank New Zealand Limited
  - ASB Bank Limited
  - Bank of China (NZ) Limited
  - Bank of New Zealand
  - MUFG Bank, Ltd
  - China Construction Bank
  - Citibank, N.A.
  - The Co-operative Bank Limited
  - Heartland Bank Limited
  - The Hongkong and Shanghai Banking Corporation Limited
  - Industrial and Commercial Bank of China (New Zealand) Limited
  - JPMorgan Chase Bank, N.A.
  - Kiwibank Limited
  - Rabobank New Zealand Limited
  - SBS Bank
  - TSB Bank Limited
  - Westpac New Zealand Limited

## Background

3. NZBA welcomes the opportunity to provide feedback to the Ministry of Business, Innovation and Employment (**MBIE**) on the discussion paper: Disclosure requirements in the new financial regime (**Discussion Paper**) and commends the work that has gone into developing the Discussion Paper.
4. If you would like to discuss any aspect of the submission further, please contact:

Antony Buick-Constable  
Deputy Chief Executive & General Counsel

S9(2)(a)

## Introduction

5. NZBA supports the underlying principles identified by MBIE in the Discussion Paper, in particular that the regulations will take a flexible approach to disclosure which can be applied differently to a wide range of advice situations (subject, however, to our responses to the questions set out in the Discussion Paper). We believe that

flexibility, supported by appropriate processes and controls of the Financial Advice Provider and a heightened focus on ethical conduct, will best reconcile the aims of increasing access to advice and ensuring quality of advice.

### Question one

6. NZBA agrees with the objectives identified.

### Question two

7. NZBA supports a principles-based approach to disclosure. We believe that the intent to provide flexibility in how information is provided should result in a better customer experience, more effective disclosure and will minimise compliance costs.
8. While NZBA agrees with the points of the advice process that have been identified (paragraphs [22]-[25] of the Discussion Paper), we believe that it should be made clear that Financial Advice Providers (**FAPs**) have flexibility to determine when information should be disclosed depending on the scale and operation of their business and nature of the advice. For example, whether or not they provide the required information at each point, or combine disclosure at, for example, one or two points. Simple advice situations (eg opening a transaction or savings account) illustrate this point; disclosure at a number of points in the process is unlikely to be useful for the customer. In fact, such disclosure may have the opposite effect if the customer is overwhelmed by receipt of small amounts of disclosure on multiple occasions, some of which may be duplicative (as set out in the table in paragraph 73 of the Discussion Paper).
9. The detail of any requirements should take into account that once the nature and scope of the advice required is established, the customer may be referred between staff at an FAP. There should be flexibility for disclosures to be provided by the person to whom the referral is made (B), rather than by the member of staff making the referral (A) who has identified the nature (and scope) of the advice. This takes into account that B will have more knowledge of the limitations and commission and other incentives compared to A.

### Question three

10. Please see our response to Question two. We believe that in simple advice situations when the FAP's business structure is relatively simple, disclosure at a number of points in the process will be unlikely to materially increase customer understanding and may in fact have the opposite effect (as discussed above).

### Question four

11. NZBA agrees that FAPs should be required to tell consumers they can access general information about the provider, particularly if the FAP places reliance on disclosure through publicly available information (eg online).
12. Where FAPs rely on this approach, customers should also be able to request hard copies of the information. This approach is similar to that which already exists in relation to Qualifying Financial Entities (**QFEs**) (Financial Adviser (Disclosure) Regulations 2010 (**FAA Disclosure Regulations**)). We are not aware of any issues with the existing approach.

## Question five

13. We believe that the regulations could be drafted in a similar way to the existing disclosure requirements for QFEs under the FAA Disclosure Regulations (Regs 8-10). Those requirements prescribe disclosure by QFEs and, in some cases, allow for the provision of 'brief particulars'.
14. NZBA considers that its members may also benefit from FMA guidance setting out the FMA's expectations with respect to enforcement of the new disclosure requirements.

## Question six

15. NZBA considers that an FMA stop order or similar regulatory response is appropriate in these circumstances. We also note that civil liability may be excessive for low-level breaches, given the high costs of litigation for both parties.

## Question seven

16. NZBA agrees. However, we believe that this information should be made available online. It should be clear that information relating to the duties is high level (as set out in the examples in the consultation paper). Question eight
17. NZBA agrees that this may be beneficial to some extent.
18. To enable flexibility there may need to be different levels of prescription. Some matters may sensibly be specified (such as name of FAP) while others may require a more descriptive response i.e. 'brief particulars'. See the existing disclosure requirements for QFEs under the FAA Disclosure Regulations in this regard.

## Question nine

19. See our response to Question seven. We believe that information on the complaints process should be made available online.
20. However, we also note that providing information on the availability of free dispute resolution services at the point of making a complaint may be likely to cause confusion given that the Banking Ombudsman won't generally consider complaints unless the consumer has attempted to resolve the issue with their bank in the first instance. This could cause frustration for the consumer if they approach the Banking Ombudsman in the first instance then are referred back to the bank.

## Question ten

21. NZBA considers that FAPs should be able to rely on the information disclosed publicly (eg online). Further disclosure should not be required unless there is a material change that differs from the publicly available information.

## Question eleven

22. Regulations can ensure that consumers receive an accurate indication of the extent of the market that can (and will) be considered through disclosure of limitations of the nature and scope of advice. The regulations could take a similar approach to the FAA Disclosure Regulations, whereby Authorised Financial Advisers are required to make disclosures where their use of product providers is limited.

## Question twelve

23. NZBA agrees with the proposal in relation to fees for advice; an estimate (and basis) should be provided before the customer incurs a fee for advice.
24. However, we do not consider that this requirement should necessarily extend to product related fees and expenses. Products are often be subject to their own disclosure regimes. Customers could instead be separately provided with (or notified of) any disclosure documentation related to the product.

## Question thirteen

25. Please see our response to Question 12.

## Question fourteen

26. NZBA agrees that information relating to commissions and other incentives should be disclosed early.
27. However, we also note the duty set out in cl 27 of the Financial Services Legislation Amendment Bill (s 431Q(b)); FAPs that engage nominated representatives must not use payment or incentive structures that are intended to encourage the nominated representatives to engage in conduct that contravenes certain duties, including the duty to give priority to a customer's interests. Customers are therefore unlikely to benefit from disclosure of nominated representatives' incentives and commissions. We consider that, if anything, high-level disclosure published online would suffice.
28. We also suggest that, to the extent Financial Advisers operate on the same basis, they also could rely on disclosure online.

## Question fifteen

29. NZBA supports a materiality threshold to determine the commissions and incentives that must be disclosed. Please also see our response to Question 14.

## Question sixteen

30. Yes, NZBA agrees that it is necessary for the regulations to be prescriptive for both soft commissions and up front commissions. However, we believe that the level of prescription should be sensibly anchored so that there is still some flexibility in how these are disclosed. Otherwise, there is a risk of repetition, undermining the efficacy of the disclosure.

## Question seventeen

31. NZBA would prefer Option 1 or Option 2 – 'Require a comparison of commission rates' and 'Require the disclosure of commissions and incentives in dollar terms'. We believe that it will be beneficial for customers to receive both a comparison of incentives as well as being able to better understand the incentives by seeing these in dollar terms. However, we consider that FAPs should be able to achieve this disclosure by way of examples in the publicly available information where that may be appropriate. As discussed in our response to Question 14, we consider that this disclosure may not be required in certain circumstances.

32. If the intention is to progress with Option 2, we suggest that development of the detailed requirements includes work on real examples and schemes to consider practical implications of calculation for FAPs and for how amounts will be presented to customers. As the paper highlights, calculations may be complex and requirements will need to be interpreted for a wide range of incentive models. In particular, many FAPs will have balanced scorecard approaches to incentives with a number of qualifying gateways, or awards may be team based. Schemes and other incentives may also vary by channel.

### **Question eighteen**

33. Yes, NZBA agrees that those giving financial advice should be required to disclose all relevant potential conflicts of interest. However, please also note our response to Question two.

### **Question nineteen**

34. No, NZBA does not agree that any additional factors that might influence financial advice should be disclosed.

### **Question twenty**

35. No comment.

### **Question twenty-one**

36. We agree that bankruptcy, insolvency and decisions from an external disciplinary tribunal, regulatory or other formal external proceedings should be disclosed. However, we do not agree that disclosure should include internal performance or disciplinary action, given the different standards that may apply across FAPs.

### **Question twenty-two**

37. No, NZBA does not agree that the disclosure of information relating to disciplinary history and bankruptcy or insolvency history should also apply to the directors of a financial advice provider. We anticipate that this will be considered during licensing by way of the Financial Service Providers (Registration and Dispute Resolution) Act and 'fit and proper' requirements.

### **Question twenty-three**

38. No, NZBA does not agree that FAPs should be required to disclose if they have been found to have contravened a financial advice duty.

### **Question twenty-four**

39. No, NZBA does not agree with a prescribed template, however some level of prescription may be helpful, particularly in relation to the information that is to be publicly available. Please see our comments regarding a flexible regime in response to Question two.

### **Question twenty-five**

40. Please see our response to Question 24.



## Question twenty-six

41. Yes, NZBA agrees that the regulations should allow for disclosure to be provided verbally. The FAA Disclosure Regulations currently provide exemptions for verbal disclosure in certain cases (category 2 products). NZBA considers that its members may also benefit from FMA guidance setting out the FMA's expectations with respect to verbal disclosure.
42. If verbal disclosure is not permitted, we consider it is unlikely that the new disclosure regime will achieve its objectives as outlined in the Discussion Paper.

## Question twenty-seven

43. No, NZBA does not consider verbal disclosure should carry any additional requirements. It should be sufficient that the customer is informed that further disclosure is available online.

## Question twenty-eight

44. NZBA considers that certain requirements of the Financial Advisers (Personalised Digital Advice) Exemption Notice 2018 should be carried over to the new regime, in particular a description of how the service works.

## Question twenty-nine

45. Please see our response to Question 28.

## Question thirty

46. Yes, NZBA agrees that those advising consumers to replace financial products should be required to provide a prescribed notification. However, we consider that this could be dealt with under the suitability requirements in the Code of Professional Conduct for Financial Advice Services.

## Question thirty-one

47. No, NZBA does not agree that a prescribed notification should apply to the financial advice given on the replacement of all financial advice products. In some instances there is little or no potential risk when replacing a product. That may overtime degrade the efficacy of the disclosure.

## Question thirty-two

48. Yes, NZBA considers that there needs to be some flexibility with respect to reduced disclosure requirements, and that further disclosure should not apply unless there has been some material variation to the adviser service.

## Question thirty-three

49. No, NZBA does not agree there should be a limit on the length of time that relief would apply.

### **Question thirty-four**

50. Yes, NZBA considers that it is necessary for the disclosure regulations to provide a transitional period for the industry to comply with the new requirements beyond this nine-month period. Depending on the final requirements, a nine-month period may not be sufficient to design and implement new disclosure processes to ensure compliance with the regime.

### **Question thirty-five**

51. No comment.

### **Question thirty-six**

52. No, NZBA does not agree that disclosure to wholesale customers is necessary.

### **Question thirty-seven**

53. NZBA does not have any suggestions for how the regulations could ensure that wholesale clients are aware of what it means to be deemed a wholesale client.

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

## Your name and organisation

<b>Name</b>	Malcolm Scott
<b>Organisation</b>	NZ Financial Services Group Limited / Loan Market 22 Kings Crescent Lower Hutt  Please note: This submission contains the opinions of several senior managers within NZ Financial Services Group, and does not represent the collective opinion of our members. Some members may choose to provide their own submission.

## Responses to discussion document questions

1	<i>Do you agree with the objectives that we have identified? Are there any further objectives that the disclosure requirements should seek to achieve?</i>
	Agree with objectives.
<b>The timing and form of disclosure</b>	
2	<i>What are your views on the proposal that information be disclosed to consumers at different points in the advice process?</i>
	Generally agree however the disclosure of information at different points should not overwhelm the client or create unnecessary compliance costs for the FAP.  We agree with paragraph 34; consumers want disclosure to be provided upfront. This helps them decide if they want to deal with the Financial Adviser. As much as possible needs to be provided upfront.
3	<i>Will this approach improve the effectiveness of disclosure by increasing consumers' engagement and understanding of the information they receive? Why or why not?</i>
	Possibly. Will depend on the form of the disclosure.
4	<i>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?</i>
	Yes but will be hard to measure from an audit perspective.
<b>The form of disclosure</b>	
5	<i>If the regulations were to provide flexibility on the form and timing of disclosure, how can</i>

*they be drafted in such a way to provide certainty to the industry of what is required?*

Although the concept of flexibility is great, a standard template document does provide certainty and proof of receipt is easy. Alternatively a video disclosure may be engaging for a client, and acknowledgement of receipt could be an online tick box, but content and size would be more difficult to manage.

Flexibility may mean disclosure is in a foreign language. This would be more engaging for a client where English is their second language.

Paragraph 39 says information must be clear, concise and effective. This will be hard to measure and open to interpretation if a prescribed format is not followed.

We believe the AFA Primary and Secondary Disclosure Statements would form a good base from which to work. These could be shorter and more concise. There could be some flexibility for a FAP / FA to add something themselves that makes the document more personalised, for instance their background, interests, a photo etc.

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?*

FMA stop order if going down the flexibility path. Flexibility could mean innocent contraventions occur in which case civil liability is too severe.

#### 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 - will ensure consistency.

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 / Yes. The only exception to the free service should be where the complaint is vexatious in which case the dispute resolution service could reserve the right to invoice the client.

#### 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. The consumer should be made aware of what providers and products the financial adviser is offering, and any volume requirements to a particular provider.

In addition we suggest that the financial adviser disclose the percentage of business placed with each product provider over the previous rolling 12 month period. This would show if the FA favoured any particular provider and open discussion with the client as to the reason for this (FAs with less than 12 months experience would need to be exempt from this disclosure).

Another suggestion is that there should be a requirement for a FA to disclose whether they have had accreditation (mortgage adviser) or an agency (insurance adviser) cancelled by a provider for whatever reason.

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 extent of the market is difficult to define. With mortgage advisers there are many specialist lenders and an adviser may choose to deal with only a handful of these. This does not mean the FA is offering a lesser service. The FA should disclose the providers they deal with together with the providers they cannot deal with due to cancellation of accreditation or agency.

#### 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 - disclosure of any fees that come from the consumer's pocket should be disclosed such as a fee for service.

If an adviser has a business practice of charging clients for claw backs of commission then this needs to be disclosed up front. However such charges should be limited to that which is fair, reasonable and justifiable. We recognise that the majority of advisers do not charge clients for claw backs as they consider it just another cost of doing business.

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)?*

There needs to be a demarcation between what the FA needs to disclose and what the product provider needs to disclose. For example a mortgage adviser arranges a loan with a lender. The lender may offer other bank products such as a credit card. The onus should be on the lender to disclose the credit card fees. Insurance premiums or mortgage instalments will be disclosed as part of the advice process.

#### 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?*

We agree that a consumer should know early in the process how the financial adviser is remunerated (commission or salary plus bonus).

More detailed disclosure on remuneration and incentives should occur later in the advice process.

Whilst we support transparency and full disclosure of anything that causes a conflict of interest, or might materially influence the advice given, we believe disclosure of remuneration in dollar terms could create unnecessary complexity, and an uneven playing

field.

### Scenarios to Consider

The following should be taken into consideration:

- A financial adviser is running a business with business expenses, salaries, rent etc being paid from commission income.
- A client may perceive the commission paid to an adviser as excessive without understanding the expenses an adviser incurs.
- Commission structures can be complex. Disclosure of trail or service commission over the life of a product in dollar terms would not take into account the actual duration the product might remain in force (for example home loans can be restructured, increase, decreased by lump sum payment). Home Loans invariably do not run full course.
- Disclosure of commission in dollar terms puts financial advisers at a disadvantage when compared to employees of Vertically Integrated Organisations who may only have to disclose a bonus (not their salary which is costed into the organisations overheads). This may drive consumers away from advisers and towards the banks.
- Head Groups such as NZFSG receive a split of adviser commission dependent on the type of adviser. Disclosure of commission to a Head Group in dollar terms may complicate commission disclosure further.
- Many advisers operate within an adviser business under a principal adviser company. Commission goes to the principal to run the business and the adviser might receive a salary and bonus based on volume into the business. If the client deals personally with the adviser operating within the business, disclosure of commission paid to the principal could introduce complexity that the client would not necessarily be interested in. We would recommend that the adviser disclose that they receive a salary and may receive a bonus based on volume of business into that organisation.
- Alternatively an adviser may split a percentage of commission to the principal. Again does the disclosure of this benefit the client? Or would a simple statement around the splitting of commission suffice?
- Commission is normally paid into the adviser's limited liability company. The adviser would then draw a salary from their own business. They should not be considered a salaried adviser in this scenario to avoid the need to disclose commission.
- If commission is to be disclosed in dollar terms for new business, then conversely claw backs should be disclosed. However the client doesn't necessarily want to know about commission clawed back.
- Commission disclosure within the financial services industry is at variance to other industries. For example a retailer who sells a washing machine does not need to disclose their mark up. A builder who deals with say Mitre 10 or Bunnings does not need to disclose to clients the incentive trips they may receive.
- A financial advice provider using robo advice needs to be on the same playing field. They should disclose how they are remunerated and the commission rates they receive should be disclosed. However it would be difficult for robo advice providers to disclose actual dollar commission received.
- The disclosure of the actual amount of commission received could also mean multiple ongoing disclosures. (Initial disclosure / disclosure when the insurance application is submitted / disclosure after the application is underwritten and terms known/ disclosure when cover is altered as a result of terms imposed). If disclosure of actual commission earned occurs after the business was placed and in force (to avoid multiple disclosures) it is then too late for the client to question this.

Disclosure requirements will need to cover many scenarios, from individual self employed FAs, more complex adviser businesses, to bank employees and robo advice providers. Cash flow required to run a business may come from fees that the consumer pays or commission that comes from a product provider.

We question whether the disclosure of dollar amounts of commission at any part of the advice process achieves a better outcome for the client. The exception to this is investment business where the client's investment could be directly impacted by commission charged.

If there was a consumer demand for disclosure of actual commission received by a FA then we would support this, however we do not believe this demand exists.

#### What is the Problem that Requires Resolution?

We need to identify what the problem is that we are trying to resolve with disclosure of commission and incentives. The advice given must focus on the best outcome for the client and not the adviser. The client needs to know if the adviser is being influenced by an offer from a particular product provider and this needs to be disclosed as a conflict of interest.

If the adviser recommends a product provider that is offering some form of soft dollar incentive (for example an overseas trip), and the adviser has a chance of qualifying for this, then this needs to be disclosed. The rates of commission from various product providers should be disclosed so that the client can see if the recommendation relates to the product provider offering the highest commission rate. However the provider offering the best commission rate may also have the best product for the client's needs.

#### Proposed Approach

Early in the process the FA should disclose how they are remunerated.

When making a recommendation, the FA should disclose details of the commission rates (percentages for up front and trail/renewal commission) and incentives offered by all providers that the adviser deals with that the adviser could potentially receive. This will show whether the provider selected in the recommendation is the one offering the most commission, or the best incentive, and lead to a discussion if the client has concerns.

The information should be presented in such a way that the client can calculate the actual remuneration the FA will receive if they so desire.

If the adviser is salaried (as part of an adviser business or vertically integrated organisation) then they should disclose any potential remuneration they may receive in addition to salary, and the terms upon which this is paid. This would apply to those on employment contracts or contracts for service.

If the adviser is the director of a limited liability company that receives commission, and draws a salary from the company, they should disclose details of commission rates and incentives offered by providers.

#### Commission Model

The commission model allows competition within the industry.

If high rates of commission are an issue, then we believe that a decrease should be driven by competition and not disclosure. The Royal Commission Enquiry in Australia may result in a cap on commissions for lending that will flow through to NZ. Insurance advisers can dial back commission to give the client a reduced premium.

We do not believe the commission remuneration model is broken, and that it provides the

best method of remuneration to keep advisers in business, thus creating competition with the banks, and making financial advice more accessible to the NZ consumer.

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?*

A materiality test should not be applied to commission as it would be hard to set a level. Soft dollar incentives should be disclosed if they have the potential to materially affect the advice given. It is difficult to apply a dollar value above which such incentives should be disclosed.

Some incentives are based on loyalty or support a FA may give a provider. These incentives may include a dinner out or a trip to a local rugby match. These types of incentives are not based on volume and would not influence the placement of business.

However any incentive based on volume (regardless of timespan) should be disclosed.

#### 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 believe it is necessary to be prescriptive in relation to commissions and incentives. This will ensure consistency and 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 1 - refer to Q14. A tiered approach where commission rates are disclosed initially, followed by specific dollar values later could result in information overload for the client. The exception to this is in relation to investment business where the two tiered approach should apply as per current disclosure requirements for AFAs.

#### 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?*

Where financial advisers have conflicting roles, this should be disclosed. For instance a mortgage adviser who is also a real estate agent should disclose this conflict of interest (a client could be encouraged to buy a more expensive property to maximise the loan and resultant commission). A mortgage adviser who is also a solicitor should not be doing conveyancing work in addition to arranging the mortgage for a client.

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. The client should be aware so that they can enquire further and make an informed decision as to whether they wish to deal with that adviser.

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 - The culture of an organisation may be affected by the history (character) of a director.

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

Possibly - depends on the contravention. If it was an innocent omission that did not result in disciplinary action, and they took immediate steps to rectify, then disclosure may be a bit harsh.

## Additional options

### A prescribed summary document

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

A generic summary in plain english may help. This could be a prescribed format covering all types of advice provided as soon as a consumer starts any form of dialogue with a financial adviser. It could be issued under the MBIE banner and include:

Things to consider when seeking financial advice:

- different sources of financial advice.
- what the financial adviser must provide to you.
- the regulations that govern financial advice.
- consumer rights and complaint processes.

It could sit on all adviser and provider websites. Should be limited to one page at most.

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)?*

Should be on the website.

### Requirements for disclosure provided through different methods

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

The issue here is a record to revert back to if a dispute arises. Any verbal (phone/ video) should be recorded and attached to a client record within a client management system where it can be easily retrieved if required.

Applications such as Suitebox are being used more by financial advisers. The regulations need to allow for electronic media as a means of engaging with clients.

27

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

Yes - to retain an electronic record.

#### 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?*

The regulations should be the same for everyone. They should be written taking into account robo advice. Some financial advisers may incorporate robo advice into part of their advice process incorporated with face to face advice.

29

*Do consumers require any additional information when receiving financial advice via an online platform?*

Disclosure should be consistent across all forms of financial advice. As part of the advice process, an online offering should state what process was used and how the recommendation was arrived at, without the need to prescribe specific details that need to be disclosed for robo advice.

#### 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 if the replacement is instigated by the financial adviser. Replacement can be instigated by the client, for example moving house and refinancing, or replacing insurance because it is too expensive to retain. Replacement instigated by the adviser should include:

- Advice on what the client will lose and gain from the replacement. Example - pre existing medical conditions covered under the original policy that would be excluded under the new policy.
- Reason for replacement.
- Comparison analysis with product being replaced.
- Disclosure of type of remuneration to be received together with any soft dollar incentives.
- Disclosure of any fee changes (eg KiwiSaver).

31

*Should this apply to the financial advice given on the replacement of all financial advice products?*

Yes as 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?*

Yes - in some circumstances. For example - a mortgage adviser doing a loan refix for an

existing client. In this case the adviser should disclose that they receive a refix fee.

A review of a mortgage or insurance plan should not require full disclosure if the FA is the regular adviser for the client, nothing material has changed since the last full disclosure, and there is no comparison with the market or new product recommendations.

33 *Should there be a limit on the length of time that this relief would apply?*

Yes

#### 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 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?*

Yes. Perhaps a standard wording to say that the adviser has determined that they are a wholesale client and as a result of this they will not receive certain information. We have concerns around the definition of a wholesale client and that this definition may capture unsophisticated mum and dad property investors with net assets over \$5 million (FMCA Clause 39).

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 above.

## Other comments

# Submission template

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## 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](mailto: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](mailto:faareview@mbie.govt.nz).

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

## Your name and organisation

<b>Name</b>	Sumita Paul
<b>Organisation</b>	Openly Investing 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?*

Yes. The stated objectives are relevant to provide the investor information to help them make an informed decision.

### 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?*

Agree with the stages and the disclosure information relevant at each stage. It is important to standardise the manner in which the information is disclosed to make it easier for retail investors to compare the information from different service providers.

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

The approach of providing information relevant as the engagement progresses will be effective as it will make it pertinent to the decision the client is making at that stage and is more likely to be received and understood by the consumer.

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 consumer should be made aware of the sources they can access general information about the company and the financial adviser.

### 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?*

By standardising the disclosure requirement and the format in which it is presented so it is easier for consumers to compare information from different providers.

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?*

FMA stop orders will be more appropriate and effective than a civil liability that may require a lengthy court process.

### 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. This is important for consumers to know they have options to hold the financial adviser accountable for their actions. Access to independent, free dispute resolution service also helps in building trust and integrity within the sector. It is also in line with other professions as well as the Scheme's own guidelines.

### 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. This transparency is desirable for consumers and can provide good opportunities for an adviser/company to explain their approach and philosophy up-front. Clear guidelines around how to communicate this will also improve the ability to make comparisons.

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

Regulations can provide comfort and/or improvement, but not necessarily ensure. The proposals should go a long way to delivering this. Guidance Notes would also help steer the industry to best practise.

#### 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. It is in line with current rules elsewhere in the FMCA/Regulations (eg Class DIMS)

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)?*

Regulation should stipulate the requirement to disclose any additional charges the consumer will have to pay as part of that any additional expense or charge that will directly impact the client.

Awareness of the various charges impacting the consumer should also be part of education and information that is publicly made available through resources to help build financial capability.

#### Commission payments and other incentives

14

*Do you agree that commission and other incentives should be disclosed in more general terms early, followed by more detailed disclosure later in the advice process?*

Yes

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?*

No comment.

#### 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. It is necessary to bring all participants to a level playing field and important to maintain clarity and make it easy to understanding for consumers.

17

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

No comments

#### 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 they should to allow the consumer in making an informed decision.

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)?*

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.

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)?*

If it was concise and clear it can be read out or pre-recorded. Alternatively there could be a requirement to email/post immediately following the conversation (the latter also providing a reliable record that it was delivered).

#### Requirements for disclosure provided through different methods

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

Yes

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

Yes, there could be a requirement to confirm via a mobile or online application/email immediately following the conversation (the latter also providing a reliable record that it was delivered). If online access is limited postal delivery of the same information should be made possible.

#### 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?*

As in the examples, a clear warning that the recommendation is generated by a computer for

	robo-advice. As above at Q27 for phone advice.
29	<i>Do consumers require any additional information when receiving financial advice via an online platform?</i>
	Yes. Information should be provided on the level of automation of advice vs human involvement.
	<b>Disclosure when replacing a financial product</b>
30	<i>Should those advising consumers to replace financial products be required to provide a prescribed notification? If so, what should a prescribed notification contain?</i>
	Yes. Consumers have to understand the risk and benefits of replacing an existing product, any loss of benefits to cancelling an existing insurance policy vs the gains they have with the new policy. Similarly information on capitalising the positions in an investment portfolio and the benefits of moving to a new investment and how it aligns to meeting the client's objectives.
	Where there are material charges (eg. commission clawbacks; break/early withdrawal costs) these should be brought to the consumer's attention and where possible quantified.
31	<i>Should this apply to the financial advice given on the replacement of all financial advice products?</i>
	Yes.
	<b>Information to existing financial advice clients</b>
32	<i>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?</i>
	Full disclosure is required to existing clients if there is a substantial change to the circumstances of the adviser or client.
33	<i>Should there be a limit on the length of time that this relief would apply?</i>
	Annual confirmation (eg at review time) should be required.
	<b>Transitional requirements</b>
34	<i>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?</i>
	The transitional period should be alongside those of the Code and Bill so that all changeover work can be done at the same time.
35	<i>Should the regulations include specific transitional provisions for AFAs authorised to provide personalised DIMS under the FA Act?</i>
	N/a
	<b>Disclosure to wholesale clients</b>
36	<i>Should the regulations require the provision of additional information regarding the wholesale</i>

*designation in some circumstances? If so, when would it be appropriate for this to take place?*

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Yes, there should be requirement for advisers to educate clients on the distinction between retail and wholesale clients.

The information should be provided when the nature and scope of financial advice is known.

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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?*

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Wholesale clients should acknowledge their understanding of their position as a wholesale client.

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## Other comments

# Submission template

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## Disclosure requirements in the new financial advice regime

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  - c. If your submission contains any confidential information:
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PO Box 1473  
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New Zealand

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

## Your name and organisation

Name	Malcolm Papworth
Organisation	Papworth Financial Advisers 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?*

**Yes, however, with Objective 2 I suggest you actually make the “right information at the right time” noted as a sign off by the consumer within the ‘Scope of Advice’. Objective 3 will be interested to see MBIE reduce the total of 10-12 pages within present AFA Disclosure process down to concise, uncomplicated information a 12 year old would understand.**

### 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?*

**Suggest you seriously consider following the present ‘Disclosure advice process’ that 1800 AFA’s have been using since 2011, where they disclose the right information at 3-4 different points relevant to the advice given at the right time.**

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

**The results of your consumer testing with AFA clients will have provided you with the answer to this question, as to how effective the current understanding and engagement is from consumers. Again, I agree that present AFA Disclosure advice process includes too much jargon and is too long. Don’t chuck the baby out with the bath water, when you just need to change the water.**

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. We need to be able to direct prospective and existing consumers to websites, advertising material and social media pages to assist consumers understand and have confidence in seeking financial advice.**

### 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?*

**Regulation needs to provide templates of the set-out and what wording needs to be include in each document point of the Disclosure process otherwise the Legal profession has to be involved and as happen in 2011, AFA's end up with 10 different interpretations of what should be in their Disclosure documents. It took three years before there was a general consensus on Disclosure document wording and set out, and that only came about through the independent FMA auditing process brought everyone onto the same page.**

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?*

**Be dealt with by an FMA stop order.**

### 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.**

### 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?*

**No. Insurance company incentives do not attract all advisers and there is always a limited number of advisers who qualify, so it doesn't have a great impact on the market. The consumer is not disadvantaged for NEW business because every Insurance company in NZ has to offer similar benefits at a competitive cost and in the end the consumer will receive the insurance solution that meets their needs, even if they are placed with a company that is offering the adviser the opportunity to be one of the limited people to receive the incentive.**

**With FMA clamping down on replacement insurance business in the last 2 years, the Insurance providers and advisers have made necessary changes to negate this proposal being required in the Disclosure process.**

11

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

Again using MBIE's approach of 'right information at the right time', in respect to the extent of the market. If an adviser had AMP and OnePath listed as companies they had a relationship with, would they be confident in recommending an AMP product as first choice to a consumer in light of the current issues that company is experiencing in Australia. Or alternatively should that adviser recommend a OnePath insurance product as first choice to a consumer in light of this company being on the market to be sold to an unknown purchaser.

Regulations can't ensure that consumers receive accurate indication of what is in the financial providers market because the market keeps changing every day.

#### 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. Where I agree with MBIE proposal on page 20 is in relation to fees charged for advice and reasonable estimate of advice fees which may result in no financial providers product being used. FOR EXAMPLE many consumers are approaching our firm for retirement advice to determine if they are on track or not and/or if their nest egg of funds will last through to age 89.

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)?*

Please consider following the role, existing regulations which already stipulates that all fees mentioned in this question need to be prominently displayed in both the financial providers "Product Disclosure Statements" and an AFA's "Secondary Disclosure Statements".

#### 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.

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?*

Just keep it simple as a PERCENTAGE of the consumers lump-sum deposit or yearly insurance premium, as opposed to MBIE's transparency concern as MBIE do not require the consumer to be made aware when they buy a Heat Pump from a retailer or Service company, that there is a regulation that now makes the retailer or Service company provide three different manufacturers Heat Pump prices, the different amounts of mark-up they get on each Heat Pump and any rebates they may receive on top of their mark-up because they sold a large number of a particular manufacturers Heat Pump and whether there was a holiday incentive also available for Heat Pumps sold in April & May.

PLEASE REMEMBER "OBJECTIVE 1"



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.**

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 should rest with the provider 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. I believe disclosure regulations should be prescriptive regarding other conflicts and affiliations as set out in point 67 on page 22 as this area has the greatest effective on consumers outcomes as we all witnessed with fall-out from NZ Stockbrokers and Bank owned Fund managers failed 'Yield Funds' in 2009.**

**This is more important for consumers to know for their future well-being, than the exact amount of commission or incentive an adviser has received for the insurance policy they have purchased.**

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

**"Over rider" payments to dealer groups and aggregators which is usually made by Insurance companies is a glaring omission from your disclosure proposal.**

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?*

**Not Disciplinary, as that could be a minor warning for not getting an independent AML/CFT**

audit completed because no auditor was able to travel to the adviser's office in Fox Glacier that particular year.

No one who has been bankrupt or become insolvent should be allowed to work as a financial adviser in the first place, Surely, MBIE must have learn't something from these building developers who seem to be able to start again in that industry and then 3-5 years later go into liquidation again.

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 MBIE defines as a "financial advice duty" as it's not clarified in the Disclosure paper, 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)?*

**The adviser has within the proposed regulations the ability to email the prescribed template either after a phone call, an online enquiry, a meeting to consumer.**

##### Requirements for disclosure provided through different methods

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

**No, but during the verbal conversation the regulations should outline that the adviser must inform verbally that a Disclosure Statement will be emailed or posted to consumer after the conversation has ended or make reference to it being available on their website.**

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

**Refer above comments.**

##### 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?*

**Yes, they need to be informed that the advice is not personal to their specific needs and is generic in nature and could be used as a guide only. 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, replacing financial insurance products is when regulation should be used to require the exact dollar amount of commission/brokerage being paid to the adviser/institution, along with incentives on offer and conflicts of interest/affiliations.**

31

*Should this apply to the financial advice given on the replacement of all financial advice products?*

**Not KiwiSaver or Managed Lump-sums.**

#### 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, but for only existing AFA clients, as they have already received and understood the current comprehensive Disclosure process for over 6 years.**

33

*Should there be a limit on the length of time that this relief would apply?*

**No**

#### 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, current QFE's and RFA's and proposed PAPs etc are going to need at least 12 months to come up to speed with Disclosure regulations as there is potentially 18,000 advisers that the new Disclosure obligations will affect as opposed to the 2,000 AFAs in 2011.**

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?*

---

*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?*

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## Other comments

**MOST IMPORTANTLY, PLEASE REMEMBER "OBJECTIVES 1 & 5"**

Financial Markets Policy  
Ministry of Business, Innovation and Employment  
[faareview@mbie.govt.nz](mailto:faareview@mbie.govt.nz)

21 May 2018

Dear Financial Markets Policy team

Thank you for the opportunity to submit on your consultation paper about disclosure requirements in the new financial advice regime. We commend you for your work on this difficult project, with such a broad industry mandate across product types and business models.

Partners Life are a New Zealand life insurance company who distribute products through non-aligned financial advisers. We fully support the goals of the Financial Services Legislation Amendment Bill and its regulations, particularly improving the quality of financial advice, and increasing access to financial advice. We also support the broad themes addressed by this consultation paper. Our specific feedback is included in the consultation template (attached).

In this covering letter, we discuss key themes relevant to our detailed responses.

### *The need for advice*

Most consumers do not understand financial advice products, or the need for them. A large part of the financial adviser's role is to educate their clients, to improve their financial literacy and capability. When comparing financial advice products, the differences can be very significant, and difficult to detect. For example, choosing the house insurance policy with the lowest premium left many Christchurch residents homeless because their policies had limited temporary housing benefits, where more expensive policies would have provided accommodation much longer. In critical illness insurance, one policy may pay out for a client's heart attack where another would not, depending upon the severity of the heart attack and the wording of the heart attack definitions in the policies. The effects of these differences can amount to hundreds of thousands of dollars (e.g. a paid claim, or a denied claim).

For many financial advice products, financial advisers are remunerated by commission paid by the product provider. The government wisely continues to allow this practice, because many financial advice products are purchased in the present to satisfy the needs of the future, and behavioural research show unequivocally that consumers prioritise themselves today over their future selves. This means that if commission is banned, financial advisers would need to charge an upfront fee of up to a few thousand dollars. This would effectively reduce access to advice, and many consumers would not buy financial advice products, which would harm consumers and our economy in the future.

Life insurance products (including income protection, critical illness, total permanent disability, and other products) are an extreme case. If consumers were required to pay an upfront advice fee in addition to the product premium, we would exacerbate a significant under-insurance problem in New Zealand. Those who need insurance most are those who would suffer financial hardship if a close family member were unable to work or died – particularly low- and middle-income New Zealand. These are the people least likely to afford or prioritise an upfront advice fee of a few thousand dollars.

Alternatively, the industry would have to revert to its 1980s structure. Life insurers paid salaries, marketing costs, lead generation and referral costs, operational support costs, and other expenses for advisers. In return, advisers were aligned to insurers (that is, insurers required all adviser clients be sold the insurer's policies). A major disadvantage of this system is that the outcome for the client – which insurer's products will be recommended – is decided before recommendations are made. Partners Life strongly advocates for the importance of advisers who can choose from a range of products, because this forces insurers to compete on the quality of their products. With aligned advisers, competition changes to be about the size and spread of distribution networks, rather than the quality of products.

#### *Adviser preferences*

Life insurers essentially compete in three areas: product, price and service. Products are independently rated by research entities such as Quality Product Research and IRESS, and many advisers use these tools to identify who has the best products, and to compare prices. Advisers have opinions about provider service, from new applications, to underwriting and claims.

Each adviser has their own perception of how providers rate in each of these three areas. Each adviser also has their own opinion about the relative importance of each area. While an adviser may have agencies with multiple providers, their opinions usually result in one preferred insurance provider. If all else is equal, the majority of the adviser's new applications are very likely to go to their preferred provider.



An adviser may apply to an alternative provider if:

- The alternative provider offers (or is expected to offer) better terms to the client, due to differences in underwriting.
- The client has relative preferences for the three areas that differ from the adviser, and the client asserts their own preferences.

#### *The impact on disclosure*

As we detail in our templated answers, Partners Life supports both dollar disclosure, and comparative disclosure. However, we caution that comparative disclosure, if not designed carefully, will suggest advisers are motivated by remuneration, when they are actually motivated by the product, price and service of their preferred provider.

This could occur because of the remuneration structures of life insurers. These include a base commission, a bonus commission, and various non-monetary incentives. When an adviser places most new policies with a preferred provider, they are likely to earn bonus commission and non-monetary incentives from their preferred provider, and not from other providers. This means that comparative disclosure to a client could look something like this:

	Provider A	Provider B	Provider C	Provider D
Commission percentage	100%	110%	200%	95%
Estimated commission	\$2,000	\$2,200	\$4,000	\$1,900
Other incentives earned last year			Attending conference in Spain in 2018.	
Other incentives I could earn with this policy	Conference in China in 2019	Conference in Italy in 2019	Conference in San Francisco in 2019	Conference in New York in 2019

If the adviser is recommending Provider C's product to the customer, the customer is likely to believe that the adviser is motivated by the higher remuneration, even if the adviser is motivated by their preference for the provider's products, price and service.

A more balanced view could look something like this:

	Provider A	Provider B	Provider C	Provider D
Commission range	100%-210%	110%-200%	90%-200%	95%-190%
Other incentives earned last year			Attending conference in Spain in 2018.	
Other incentives I could earn with this policy	Conference in China in 2019	Conference in Italy in 2019	Conference in San Francisco in 2019	Conference in New York in 2019
<p>I estimate that I will earn \$4,000 commission if you adopt my recommendations. Last year, 80% of insurance policies that I recommended and implemented for clients were with Provider C. I usually recommend Provider C because their products are well rated by Research Entity 1, and I get excellent service consistently, which enables me to get good underwriting and claim results for my clients.</p>				

### Standard disclosure templates

We support the Ministry's flexible approach to disclosure, to prescribe what is disclosed and when, and not prescribe how. This enables innovative entities to identify and implement disclosure in ways that are most effective for their advice process.

We submit that it is important to ensure that disclosure is *prominent*, not hidden in fine print. Financial advice providers must ensure that disclosure is provided because it is important that their clients know its contents, not because it is required by regulation. This idea of *prominent disclosure* does not come across as a strong theme in the consultation paper.

While we support the flexible approach, we also submit that many financial advice providers will provide better quality disclosure to their clients if they are provided sample templates that comply with the regulations. We submit that useable templates should be included with the regulations. These templates could be structured as a series of questions that clients should ask their financial advisers, and financial advice providers could complete the templates by answering the questions.

Innovative entities can develop their own approaches and documents; less innovative entities can adopt the templates. While this approach may reduce innovation, it will lift the quality of disclosure at the lower end, and we submit that the lift at the lower end will be far greater than the reduction at the higher end.

We are available to discuss our response further, if you have any questions. Our contact person for this submission is:

Mark Banicevich  
S9(2)(a)

Regards  
S9(2)(a)

Naomi Ballantyne  
Managing Director



## About Partners Life

Established in 2010, Partners Life is a NZ financial services company specialising in life insurance and medical insurance. Our individual risk protection products target middle and upper income New Zealanders, and key personnel of established New Zealand businesses. Our medical products are designed to pay for non-acute medical costs where the customer elects to have tests or treatment provided privately, rather than through the public system.

Partners Life has grown rapidly since inception, and now has a leading market share of life insurance new business annual premium income. The Partners Life philosophy is to share the value it creates with all stakeholders, including customers, advisers, shareholders and staff, by “rewarding partnership – for life”.

Partners Life has been built from the ground up by a highly experienced team with an outstanding track record as a model growth life insurance business:

- proven best-in-class products;
- powerful adviser distribution proposition;
- highly efficient, scalable systems and processes;
- global partners provide reinsurance support;
- best practice underwriting; and
- highly capable management team with extensive experience.

Partners Life aspires to become the most valuable and valued life insurance company in New Zealand as measured by: profitability, product value, employee engagement, customer satisfaction, brand awareness, adviser satisfaction, customer retention and efficiency. Partners Life is focused on achieving its ambitions without creating legacy systems or processes.

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

## Your name and organisation

<b>Name</b>	Naomi Ballantyne, Mark Banicevich
<b>Organisation</b>	Partners Life

## 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 agree with these objectives.

### 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 support the proposal.

Consumers are more likely to understand disclosure if it is delivered:

1. In small amounts
2. At a time that is relevant
3. Specific to their own circumstances.

Disclosing at different points in the process meets the first two points. The proposed system's objectives and flexibility also support the third point.

3

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

Yes, this approach will improve the effectiveness of disclosure if:

1. It is prominent, and
2. It is communicated understandably.

It is also important that disclosure is customised to the services the consumer receives (for all disclosure made after the scope is agreed). For example, if an adviser offers investment, life insurance and mortgage advice, and the scope of service is limited to mortgage advice, disclosure that includes investments and life insurance will make disclosure less understandable for the client.

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.

If consumers are not told about this information, they will not know to look for it. Without being prompted, many consumers will not proactively search.

This is particularly important because the Financial Services Legislation Amendment Bill allows financial advice to be unsolicited (which we support).

## 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 suggest two approaches, that could both be adopted.

First, the regulations should include terms like “prominent”, “understandable”, and “easily accessible” (the latter for publicly available disclosure). These terms should be defined in the regulations.

Secondly, the regulations should include sample disclosure templates. Disclosure that uses the templates effectively would comply with the regulations. We suggest that these templates could be structured as a series of questions that the client should ask their adviser, and the financial advice provider can complete the template by answering the questions. Those giving advice would be free to develop their own disclosure media, or modify the templates. This would give the industry clear guidelines for minimum standards of disclosure.

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 submit that both sanctions are required, because each serves a different purpose.

If FMA stop orders are used alone, then entities have nothing to fear from poor disclosure. A non-complier could flaunt the regulations until they are caught, and the FMA issues them a stop order to desist. Therefore, civil liability is necessary to deter entities from non-compliance.

Civil liability is a resource-intensive sanction, and the FMA must prioritise its enforcement resources carefully. If civil liability is used alone, the FMA are left with few viable options to deal with minor contraventions. Stop orders can be issued quickly and efficiently for minor contraventions.

## 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.

This information should be publicly available.

Specific disclosure to the client should refer to the information that is publicly available.

How to complain should also be disclosed when the scope becomes known, and when recommendations are made. This specific disclosure to the client could be brief, with an email address and telephone number for the financial advice provider and the disputes resolution scheme. Public disclosure should be more detailed.

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

No.

Prescribed text or format is contrary to the principles-led approach of the regime, with which we agree.

We submit that the Ministry should provide suggested disclosure templates. Many will use the templates, but those who think they can do it more effectively should be permitted to do so. The templates could be structured as a series of questions that the client should ask their financial adviser, and the financial advice provider could complete the template by answering the questions.

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, consumers should be informed.

Yes, this should apply to all financial service providers with retail clients.

This should be in regulations, not in scheme rules. This has multiple advantages:

- Regulations are publicly available, and easily accessible.
- Regulations have enforcement provisions that apply equally to everyone.
- Equal rules for all financial service providers.
- If new schemes are created, there is no chance that the rules will not be implemented equally.
- Regulations are created following robust democratic processes that include wide consultation.

As we stated in our submission to the Code Working Group on their first consultation paper, we agree that the definition of “complaint” should be standardised. A modified version of the definition in ISO10002 may be suitable:

“A complaint is an expression of dissatisfaction made to an organization, related to its products *or services*, or the complaints handling process itself, where a response or resolution is explicitly or implicitly expected.”

<https://www.iso.org/obp/ui#iso:std:iso:10002:ed-2:v1:en>, words “or services”, in italics, added.

## 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, subject to our comments in question 11, below.

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 submit that providers of financial advice should disclose realistic limits to their advice, as well as actual limits. For example, a financial adviser may have distribution agencies with five product manufacturers (the actual limit), but recommend almost all customers purchase

products from one or two of them (the realistic limit). The FMA's report, "[Replacing life insurance – who benefits](#)", provides evidence that these realistic limitations are common in the industry.

We submit that those providing financial advice should be required to disclose the companies whose products they can recommend, together with the portions recommended and implemented in a recent 12-month period for those providers over a certain threshold, such as 10% or 20%.

For companies with extensive Approved Products Lists, perhaps a minimum number of companies/products should be disclosed (including those most commonly recommended), together with the total number of companies or products available to be recommended. The minimum number could be 20 product manufacturers, if more than 20 product manufacturers can be recommended.

#### 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, we agree.

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)?*

We agree that regulations should require those giving financial advice to disclose all fees and costs that the customer will incur, before the customer incurs them.

The regulations should require fee disclosure to be prominent and understandable.

We support the suggestion that fees should be disclosed in dollar terms, as well as in percentage terms where that is how they are calculated.

We note that in some cases, actual fees are not known even when products are recommended. In these cases, a reasonable estimate of fees should be disclosed, together with the most common reasons the estimate may differ from actual fees and the possible upper end of fees that could be charged.

#### 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, we agree.

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?*

We submit that if a materiality test is included in the regulations, it should be a bright line threshold to avoid inconsistency across the industry, together with "anything that might be perceived to materially influence" individually or in aggregate.

If the regulations require those giving advice to disclose anything that might be perceived to materially influence their advice, different advisers will disclose different things. Moreover, the [FMA update on inquiries into insurance replacement business](#) suggests that many advisers are unaware of their conflicts, so they are unlikely to disclose adequately.

If the regulations stipulate a materiality threshold, entities trying to avoid disclosure will structure their incentives just below the materiality threshold, and change them regularly so they cannot be deemed to meet the threshold when aggregated.

Therefore, we submit that the regulations should stipulate that those giving financial advice must disclose commission and incentives above a specified threshold, and also any commission and incentives that might be perceived to materially influence the financial advice, whether individually or in aggregate.

#### 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.

Prescribing what must be disclosed has the following advantages:

- Consistency of what is disclosed, so the consumer receives the same level of information from all providers of financial advice.
- Those providing financial advice have clarity about what to disclose.
- It is easier for the FMA to monitor whether providers meet the requirements.
- It makes it difficult for those who seek to circumvent 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?*

We support all three options.

#### Option 1

We support this option.

If providers of financial advice only disclose commission and other incentives for the provider they recommend, then the customer has no context against which to understand whether it is normal or reasonable.

However, as discussed in our covering letter, we submit that the Ministry should design comparative disclosure carefully. Financial advisers will often have a preferred provider for reasons of product, price and service. When a financial adviser favours one provider, they are more likely to meet volume thresholds for that provider, and may receive higher commission payments. Therefore, when expected commission is disclosed, the rate for the preferred provider will be higher – and not because they are influenced by remuneration. We submit that providers should disclose equivalent remuneration ranges, as well as expected commission from the preferred provider. (See our covering letter for examples.)

If comparative remuneration is disclosed without considering the impact of preferred providers, it is likely to reduce trust in the financial services industry, because many providers of financial advice will regularly recommend products from a manufacturer who currently pays that adviser higher commission than the rest of the market.

#### Option 2

We support this option.

Recently KiwiSaver fees were required to be disclosed in dollar terms. The argument supporting this change was that most New Zealanders cannot calculate percentages.

If this argument is correct, then we support disclosing commission in dollar terms, as well as percentages (if that is how they are calculated).

We note that when advisers recommend a combination of life insurance products to a client, they do not yet know how much commission they will be paid. The amount of commission (and the client's premium) is not determined until the insurance company underwrites the client and offers terms. Providers of financial advice can estimate commission assuming that the client's policy is not loaded for pre-existing medical conditions. The commission (and the premium) can change significantly if the policy is loaded. For example, 100% loading means the commission and the premium will double.

We submit that life insurance advisers should disclose an estimate of commission based on the premium estimate when recommending products to the client. When the adviser presents the insurer's offer of terms to the client, the adviser should disclose an updated estimate of commission together with the updated premium.

### Option 3

We support this option, although it has advantages and disadvantages.

The principle advantage of this option is that it allows providers to innovate, and disclose information in the most effective way they can develop. This is particularly important for new delivery methods. For example, items of disclosure can be presented to the client at the most relevant times during an automated advice process, such as when they would impact contemporary client decisions.

One disadvantage of this option is that any entity seeking to circumvent disclosure requirements may interpret the regulations in their interests, and minimise the effectiveness of their disclosure.

We submit that the combination of licensing, the code of conduct, and competence requirements should minimise the impact of this disadvantage.

A second disadvantage of this option is that, without a standard disclosure template, it is more difficult for consumers to compare disclosure across providers of financial advice.

We submit that this disadvantage could be minimised if the regulations include sample disclosure templates and examples that providers of financial advice can choose to use. Many providers of financial advice will use the sample templates. The templates could be structured as a series of questions that the client should ask their financial advice provider, and the financial advice provider could complete the template by answering the questions. Those who think they can disclose more effectively will either modify them or design their own media.

### 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.

We further submit that they should disclose publicly (or available on request) how those conflicts are managed.

19

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

We have nothing to add.

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)?*

We submit that conduct and client care duties are best disclosed as publicly available information (or available on request).

We suggest that if these are disclosed with recommendations to the client, it will make an already substantial document(s) unnecessarily longer. Financial advisers could outline these duties in their statements of advice if they think it is valuable to do so, but requiring this disclosure does not add further benefits to retail clients.

### 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 information relates to the character and competence of the provider of financial advice. It is relevant to a consumer's decision about whether to engage the financial adviser. It should be available to potential clients in an accessible way, such as on the provider's website or in a document available on request.

Rather than specify a term relevant to discharged bankrupts, we submit that the regulations should refer to the term in the [\*Insolvency Act 2006, s449\*](#).

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.

Directors have significant influence on the culture of the business, and this information is relevant to the consumer decision about whether to engage the financial advice provider.

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

Yes, if the contravention is material.

We also submit that financial advice providers should be required to disclose if they have had complaints against them upheld by a disputes resolution scheme.

If the FMA has sanctioned a financial advice provider for contravening a financial advice duty, this information should be disclosed to clients before they engage the financial advice provider. This information is relevant to the client's decision.

The financial advice provider should disclose the duty that was breached, the time period it was breached, and what sanction(s) were imposed.

We submit equally for upheld disputes resolution scheme complaints, and they should be disclosed in the same way.

### Additional options

A prescribed summary document



24	<p><i>Do you think that a prescribed template will assist consumers in accessing the information that they require?</i></p>
	<p>No.</p> <p>Experience with existing disclosure statements suggests that prescribed templates often contain information that is irrelevant to the client. Allowing the financial advice provider to create their own disclosure formats flexibly will lead to innovative solutions that communicate relevant information to the client more effectively.</p> <p>For example, rather than providing a client with a statement of advice and a separate disclosure statement, the adviser may include disclosure information throughout the statement of advice, at various points where it is most relevant.</p> <p>However, we submit that if the regulations include optional templates and examples, these will set the standard for disclosure. These templates could be structured as a series of questions that the client should ask their financial adviser, and the financial advice provider could complete the template by answering the questions.</p>
25	<p><i>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)?</i></p> <p>We submit that prescribed templates will not work well in these situations.</p> <p>Flexibility will allow online providers to develop videos or interactive tools to help clients understand important information that is required to be disclosed. Telephone providers may develop innovative audio disclosure tools. Prescribed templates will hinder innovation to the detriment of consumers.</p>
<p><b>Requirements for disclosure provided through different methods</b></p>	
26	<p><i>Should the regulations allow for disclosure to be provided verbally? Why or why not?</i></p> <p>Yes.</p> <p>Some providers of financial advice interact with clients by telephone. Written disclosure can delay the speed of advice, which increases required contact with clients (which is less convenient for them), introduces cost to those providers, and decreases client uptake.</p> <p>These costs outweigh the benefits of written disclosure, particularly if other records of disclosure are kept and provided to the client.</p>
27	<p><i>If disclosure was provided verbally, should the regulations include any additional requirements?</i></p> <p>Yes. The regulations should require that a record of disclosure be kept, easily accessible to the client, and be available on request.</p> <p>Some financial advice providers may decide to record disclosure in innovative ways, such as audio, video, or a record of a client's online interactions with a digital tool.</p>
<p><b>Requirements for financial advice given through different channels</b></p>	
28	<p><i>Should the regulations provide for any additional requirements that would apply when advice is given via a robo-advice platform or over the phone?</i></p>

The regulations should require that a record of disclosure be kept, provided to the client, and be available on request or easily accessible.

The record should include the client details that were used to develop the recommendations.

29

*Do consumers require any additional information when receiving financial advice via an online platform?*

We have no additional suggestions.

Financial advice providers should not be required to disclose how a robo-advice programme works. Providers are likely to provide enough information about the tool to induce client trust.

It is more important that the client know the recommendations and the reasons for the recommendations, than the client understand how the recommendations were developed. This will merely add to the volume of disclosure.

#### 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.

However, consistent with the rest of this proposed regime, the regulations should prescribe what should be disclosed and when, but not how.

The following information should be disclosed when advising consumers to replace financial products:

- The general risks of replacing an existing financial product with a new financial product.
- Specific benefits to the client that will be gained with the recommended financial product (this requires a detailed comparison of both products).
- Specific benefits to the client that will be lost by cancelling the existing financial product (this requires a detailed comparison of both products, and analysing any change in the client's circumstances since the original product was purchased).
- Any other specific risks to the client of replacing the existing financial product with the recommended financial product.

We further submit that when a retail client already owns a financial advice product, and a provider of financial advice or other person sells that retail client a similar financial product that could be considered to replace the existing product (replacement business), the provider of financial advice should be required to compare the existing product to the new product in detail to understand the change in client benefits. (Alternatively, at a minimum, the financial advice provider should be required to prominently express their ignorance about the existing financial product, and the significant risks of cancelling the existing financial product without financial advice.)

To ensure that this does not limit access to advice, it should be clear that providers of financial advice can recommend additional products without examining the existing product, where the client should continue to hold the existing financial advice product. This would be

necessary where the client's existing product is old, particularly complex, or difficult to obtain, such as endowment or whole of life policy.

The requirement would also not apply if, in the scope agreed between the provider of financial advice and the client, the client clearly expresses a desire to replace the existing product despite the risks. (For example, the client had a poor experience with the existing provider, and wants to cancel the product.)

31

*Should this apply to the financial advice given on the replacement of all financial advice products?*

Yes.

The following examples of differences between financial advice products of the same type illustrate why it is important for an expert to compare the existing product with the recommended product, and highlight differences in benefits for the client.

Mortgage advice: if the client would like to increase their repayments on a fixed mortgage, some mortgage providers are more flexible than others. If an adviser recommends that a client move from one provider to another, it would be important to identify that the existing bank will allow increased repayments without penalty, while the new provider would require the client to pay a significant break fee and refix the mortgage. (This is particularly important if interest rates are falling, or if the client anticipates rising disposable income during the fixed rate term.)

Fire and general insurance: after the Christchurch earthquake, many people were left paying rent and repaying a mortgage because their insurance policies had limited cover for temporary accommodation. If a financial adviser recommended that a client change policy for a cheaper premium, it is important that the client is made aware of these kinds of differences in benefits.

Life insurance: if a client purchased an existing policy 10 years ago, and suffered a heart attack 2 years ago, the new provider is likely to exclude heart conditions from the new cover. Alternatively, the existing policy may have a benefit that pays a lump sum if the life insured spends a defined period in hospital, where another policy may only have the cover amount when a condition is suffered. These differences in benefits can be difficult to detect, and it is important that the financial adviser highlight them for the client.

Investments: if the existing product is actively managed and the recommended product is passively managed, the client may have unstated preferences between these two styles, and there may be significant differences in performance. Alternatively, if the existing financial advice product has a balanced strategy, and the recommended product has a growth strategy, it is important that the client understand the risks of changing investment strategy.

#### 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 support this idea in principle.

In some cases, such as investments, a client may contact his or her share broker regularly to trade shares and obtain advice. In these cases, reduced disclosure may be appropriate.

In many cases, such as life insurance, a client and his or her adviser make contact infrequently, perhaps annually. With infrequent exposure to financial advice, it is likely that

the client will forget the details that are required to be disclosed. In these cases, it is likely that the adviser should disclose to the client as if they were a new client.

33 *Should there be a limit on the length of time that this relief would apply?*

We do not know what an appropriate period is before full disclosure should be required. It will depend upon the scope of financial advice, and the aptitude of the client.

Financial advisers should not be permitted to assume that clients do not require disclosure. Perhaps existing clients should be permitted to waive full disclosure.

If disclosure is not onerous, perhaps it should be required in most instances.

#### 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?*

If the disclosure requirements are not materially different from those suggested in this consultation paper, we believe we can adapt within the nine-month period.

35 *Should the regulations include specific transitional provisions for AFAs authorised to provide personalised DIMS under the FA Act?*

We have 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?*

Yes.

We submit that some clients default to wholesale status who may not understand financial advice products (particularly wealthy individuals who meet the "large definition"). Further, clients who default to wholesale may understand some financial advice products well, and have little experience with other financial advice products. For example, someone who qualifies by experience with investments may not understand details of life or health insurance products.

Therefore, we submit that wholesale clients should be provided with standard disclosure before the nature and scope of engagement is agreed (and before the client incurs any fees or others costs from the provider). The disclosure would outline the consequences of wholesale status (relative to retail client status), and how the client can opt-out of wholesale status.

It may be possible for providers to disclose this information in innovative ways, such as audio or video. A standard written disclosure document may not be optimal.

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 have no comment.

## Other comments

We have additional comments in our covering letter, attached to this submission. These comments are repeated here.

### *The need for advice*

Most consumers do not understand financial advice products, or the need for them. A large part of the financial adviser's role is to educate their clients, to improve their financial literacy and capability. When comparing financial advice products, the differences can be very significant, and difficult to detect. For example, choosing the house insurance policy with the lowest premium left many Christchurch residents homeless because their policies had limited temporary housing benefits, where more expensive policies would have provided accommodation much longer. In critical illness insurance, one policy may pay out for a client's heart attack where another would not, depending upon the severity of the heart attack and the wording of the heart attack definitions in the policies. The effects of these differences can amount to hundreds of thousands of dollars (e.g. a paid claim, or a denied claim).

For many financial advice products, financial advisers are remunerated by commission paid by the product provider. The government wisely continues to allow this practice, because many financial advice products are purchased in the present to satisfy the needs of the future, and behavioural research show unequivocally that consumers prioritise themselves today over their future selves. This means that if commission is banned, financial advisers would need to charge an upfront fee of up to a few thousand dollars. This would effectively reduce access to advice, and many consumers would not buy financial advice products, which would harm consumers and our economy in the future.

Life insurance products (including income protection, critical illness, total permanent disability, and other products) are an extreme case. If consumers were required to pay an upfront advice fee in addition to the product premium, we would exacerbate a significant under-insurance problem in New Zealand. Those who need insurance most are those who would suffer financial hardship if a close family member were unable to work or died – particularly low- and middle-income New Zealand. These are the people least likely to afford or prioritise an upfront advice fee of a few thousand dollars.

Alternatively, the industry would have to revert to its 1980s structure. Life insurers paid salaries, marketing costs, lead generation and referral costs, operational support costs, and other expenses for advisers. In return, advisers were aligned to insurers (that is, insurers required all adviser clients be sold the insurer's policies). A major disadvantage of this system is that the outcome for the client – which insurer's products will be recommended – is decided before recommendations are made. Partners Life strongly advocates for the importance of advisers who can choose from a range of products, because this forces insurers to compete on the quality of their products. With aligned advisers, competition changes to be about the size and spread of distribution networks, rather than the quality of products.

### Adviser preferences

Life insurers essentially compete in three areas: product, price and service. Products are independently rated by research entities such as Quality Product Research and IRESS, and many advisers use these tools to identify who has the best products, and to compare prices. Advisers have opinions about provider service, from new applications, to underwriting and claims.

Each adviser has their own perception of how providers rate in each of these three areas. Each adviser also has their own opinion about the relative importance of each area. While an adviser may have agencies with multiple providers, their opinions usually result in one preferred insurance provider. If all else is equal, the majority of the adviser's new applications are very likely to go to their preferred provider.



An adviser may apply to an alternative provider if:

- The alternative provider offers (or is expected to offer) better terms to the client, due to differences in underwriting.
- The client has relative preferences for the three areas that differ from the adviser, and the client asserts their own preferences.

### The impact on disclosure

As we detail in our templated answers, Partners Life supports both dollar disclosure, and comparative disclosure. However, we caution that comparative disclosure, if not designed carefully, will suggest advisers are motivated by remuneration, when they are actually motivated by the product, price and service of their preferred provider.

This could occur because of the remuneration structures of life insurers. These include a base commission, a bonus commission, and various non-monetary incentives. When an adviser places most new policies with a preferred provider, they are likely to earn bonus commission and non-monetary incentives from their preferred provider, and not from other providers. This means that comparative disclosure to a client could look something like this:

	Provider A	Provider B	Provider C	Provider D
Commission percentage	100%	110%	200%	95%
Estimated commission	\$2,000	\$2,200	\$4,000	\$1,900
Other incentives earned last year			Attending conference in Spain in 2018.	
Other incentives I could earn with this policy	Conference in China in 2019	Conference in Italy in 2019	Conference in San Francisco in 2019	Conference in New York in 2019

If the adviser is recommending Provider C's product to the customer, the customer is likely to believe that the adviser is motivated by the higher remuneration, even if the adviser is motivated by their preference for the provider's products, price and service.

A more balanced view could look something like this:

	Provider A	Provider B	Provider C	Provider D
Commission range	100%-210%	110%-200%	90%-200%	95%-190%
Other incentives earned last year			Attending conference in Spain in 2018.	
Other incentives I could earn with this policy	Conference in China in 2019	Conference in Italy in 2019	Conference in San Francisco in 2019	Conference in New York in 2019
<p>I estimate that I will earn \$4,000 commission if you adopt my recommendations. Last year, 80% of insurance policies that I recommended and implemented for clients were with Provider C. I usually recommend Provider C because their products are well rated by Research Entity 1, and I get excellent service consistently, which enables me to get good underwriting and claim results for my clients.</p>				

### *Standard disclosure templates*

We support the Ministry's flexible approach to disclosure, to prescribe what is disclosed and when, and not prescribe how. This enables innovative entities to identify and implement disclosure in ways that are most effective for their advice process.

We submit that it is important to ensure that disclosure is *prominent*, not hidden in fine print. Financial advice providers must ensure that disclosure is provided because it is important that their clients know its contents, not because it is required by regulation. This idea of *prominent disclosure* does not come across as a strong theme in the consultation paper.

While we support the flexible approach, we also submit that many financial advice providers will provide better quality disclosure to their clients if they are provided sample templates that comply with the regulations. We submit that useable templates should be included with the regulations. These templates could be structured as a series of questions that clients should ask their financial advisers, and financial advice providers could complete the templates by answering the questions.

Innovative entities can develop their own approaches and documents; less innovative entities can adopt the templates. While this approach may reduce innovation, it will lift the quality of disclosure at the lower end, and we submit that the lift at the lower end will be far greater than the reduction at the higher end.

# Submission template

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## 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](mailto: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](mailto:faareview@mbie.govt.nz).

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

## Your name and organisation

Name	
Organisation	

## 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. However, the principles should explicitly mention the approach taken for consistency of information across FAPs. While the paper is prepared on the assumption that very prescriptive and standardised disclosure requirements can be unhelpful for consumers – recognition should be given to the benefits of being able to compare one adviser offering with another. Disclosure is not simply about reviewing one adviser in isolation.

### 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?*

Agree in principle with disclosure at different points in the process (rather than all disclosure at one point). The challenge is to make the disclosures relevant, timely and readable, and not a burden on advisers.

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 *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?*

Para 32 and para 22 both refer to general information being made publicly available. Yet the suggestion is that the information “should” be prominently displayed on the provider’s website. This implies there is an option to disclose - mandatory language (“must”) and not optional language (“should”) would be better. Disclosure documents are currently mostly only provided “on request” - they should be freely available on websites so consumers can do their research in their own time.

### 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?*

Too much freedom for advisers around disclosure form/timing may mean information is not ultimately provided in a form consumers can understand or compare between advisers. If format and content are not prescribed, there should be very clear principles for advisers to follow around the “spirit and intent” of the disclosure – including if there is any doubt about whether a matter (like a conflict) is relevant, it should be 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?*

### 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?*

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

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)?*

### 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?*

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

Anecdotal evidence suggests that the breadth of products an adviser considers is not well understood by consumers (ie number of providers and number of products considered). New disclosure rules need to come up with a very simple and effective way to alert consumers that they need to read more.

One solution could be for disclosure by advisers to start with a clear statement like “I am an independent financial adviser” or “I am not an independent financial adviser”. The disclosure detail could then explain the conflicts etc that mean they are not independent. (The definition of “independent” then becomes critical).

The key point is that rather than a page of disclosures around providers and conflicts of interest, one clear statement (for example around “independence”) will be meaningful to consumers. It will trigger them to read more of the detail and ask questions.

There may be a better simple up-front statement than “independent” or “not independent” statement that could achieve the result. There should be more thought and discussion in this area.

#### 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?*

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)?*

#### 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?*

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 test for disclosure of incentives should be lower than “perceived to materially influence” the advice. A test of “incentives which might be perceived to influence...” (i.e. drop “materiality”) is a more robust hurdle and makes avoiding disclosure very hard. Consumers have a right to know of any incentive that may influence the advice they receive – the consumer can then decide on the materiality.

#### 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?*

Options 1 and 2 (prescriptive) are preferable to option 3 (principles based). When it comes to fee disclosure providers do not have a strong history of openly and clearly disclosing fee structures. For example, fund managers did not disclose their fee structures in a complete manner until required to under the FMCA.

17

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

#### 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. Conflicts of interest are unavoidable in business but in financial services they need to be identified, managed and effectively disclosed to consumers. If they are not disclosed in a way consumers can understand, then the advice process is undermined. It should be a low threshold for a conflict being required to be disclosed (i.e. if there's any doubt, it should be disclosed) and consumers can then decide if they need more explanation. Concise and effective disclosure of key issues like conflicts of interest promotes confidence in financial markets.

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?*

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?*

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?*

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)?*

#### Requirements for disclosure provided through different methods

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

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?*

29 *Do consumers require any additional information when receiving financial advice via an online platform?*

#### 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?*

31 *Should this apply to the financial advice given on the replacement of all financial advice products?*

#### 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?*

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?*

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?*

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	Paul Flood	S9(2)(a)
Organisation	Ron Flood & Associates	

## 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 agree with the objectives identified, and don't think there are 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?*

I think that the progression of disclosure from the more general to the more specific, as outlined on Pages 11 and 12 of the Discussion Paper, is roughly correct. The only concern I have with the proposals is that they only require disclosure of *material* commissions or incentives, and *material* conflicts of interest. As I discuss below in response to question 15, I think that there is no place for a materiality criterion or test when disclosing commissions, incentives, or conflicts of interest.

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

Yes, so long as those giving financial advice to a client take reasonable steps to ensure that client's understand the information provided.

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?*

I don't know how this flexibility can be achieved in a way that ensures all necessary disclosures are made. I support a more prescriptive approach, as this will provide certainty to the industry what is required. It is up to the regulators to ensure that the prescribed requirements are not merely a tick-box approach, and that the requirements ensure that consumers are provided with meaningful information at the different stages of the advice



process.

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?*

**I think that a regulatory response is appropriate, rather than a civil avenue.**

#### 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, most certainly.**

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?*

**Yes. In particular, I agree that consumers will benefit from knowing what the individual they are dealing with may provide, rather than what the business as a whole can do.**

11

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

**I am not sure.**

##### 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. I think that consumers will benefit from what, if any, fees they will be charged for the advice provided.**

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)?*

I am unsure, although I think it is important to note that an insurance premium is not a fee in the same way that bank fees and management fees are. A policy fee on an insurance policy, however, is a fee like a bank or management fee.

#### 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.**

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 regulations should not include a materiality test in any form. It is my view that consumers will benefit from full disclosure of any and all financial rewards and other incentives that a financial adviser or nominated representative will receive if the consumer follows their advice. It should be up to consumers to decide whether or not they think a particular reward or incentive is material to the advice provided.**

#### 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, it is crucial. Anything other than a prescriptive approach potentially creates “wobble room” for financial advisers to avoid disclosure. A prescriptive approach would also be the most effective way of ensuring that consumers could very clearly compare fees, commissions, and other incentives between financial advisers.**

17

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

**In the field in which I work (life insurance adviser), I prefer Option 1, on practical grounds. Firstly, it is relatively easy for a financial adviser to provide a table to consumers, outlining the commission percentages paid by the companies they deal with. I think that both initial and renewal commissions need to be disclosed. Where there is a change in the level of renewal commission over the term of a contract, this should also be disclosed.**

**Something like the following table may suffice:**

Commissions	Company A	Company B	Company C	Company D
Initial (First year)	80% of Annual Premium	130% of Annual Premium	100% of Annual Premium	180% of Annual Premium
Renewal (Second and subsequent years)	30% of Annual Premium	3% of Annual Premium in Years 2-4, increasing to 10% of Annual Premium from Year 5	10% of Annual Premium	2.5% of Annual Premium

Secondly, commission percentages typically don't vary from the time an insurance proposal is submitted through until the time it is issued, whereas commissions in dollar terms may vary several times during this period as the result of loadings, adding or removing benefits, the client having a birthday, or rate changes from the insurer. Requiring an adviser to make disclosure each time the dollar value of the commission changed would be unnecessarily burdensome and would add compliance costs with no real benefit to the customer.

I think that Scenario 2 on pages 30-31 of the Discussion Paper nicely captures the form, content, and timing of disclosure, except on one point. That scenario includes the following text as an example of disclosure: "That Sebastian may be required to pay Emilia for any lost commission should he cancel the policy in the first three years. During this time, Gringotts will clawback the commission payments made to Emilia."

For the record, I think that financial advisers should not be able to clawback lost commissions from clients where those clients cancel products or policies. Doing so is a manifest failure to give priority to the interests of the person whom they are advising, a duty to which all financial advisers will presumably soon be subject to, given the Financial Services Legislation Amendment Bill.

#### 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, with the proviso that any and all potential conflicts are deemed to be relevant. In other words, there is no more place for a relevance test in the regulations than there is for a materiality test. As the disclosures are being made for the benefit of the consumer, it should be left to the consumer to decide which potential conflicts are relevant.**

19

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

**None that occur to me.**

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.**

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)?*

**The prescribed summary document should be emailed to the consumer, with the requirement that the consumer acknowledge they have read and understood the information.**

#### Requirements for disclosure provided through different methods

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

**No.**

**Firstly, there is too much information that is required to be disclosed, such that it is unlikely that verbal disclosure would capture all of that information.**

**Secondly, written disclosure affords the consumer the opportunity to review the disclosure carefully, something that verbal disclosure probably can't.**

**Thirdly (and perhaps most importantly), written disclosure provides a clear evidentiary trail should it later be alleged that adequate disclosure was not made.**

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

**If verbal disclosure is allowed, then at a minimum it should be required to be recorded, and provided to the client as an audio file.**

#### 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?*

**No thoughts on this.**

29 *Do consumers require any additional information when receiving financial advice via an online platform?*

**No thoughts on this.**

#### Disclosure when replacing a financial product

30 *Should those advising consumers to replace financial products be required to provide a*

	<i>prescribed notification? If so, what should a prescribed notification contain?</i>
	<b>No thoughts on this.</b>
31	<i>Should this apply to the financial advice given on the replacement of all financial advice products?</i>
	<b>No thoughts on this.</b>
	<b>Information to existing financial advice clients</b>
32	<i>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?</i>
	<b>No.</b>
33	<i>Should there be a limit on the length of time that this relief would apply?</i>
	<b>Not applicable.</b>
	<b>Transitional requirements</b>
34	<i>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?</i>
	<b>No.</b>
35	<i>Should the regulations include specific transitional provisions for AFAs authorised to provide personalised DIMS under the FA Act?</i>
	<b>No thought on this.</b>
	<b>Disclosure to wholesale clients</b>
36	<i>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?</i>
	<b>No thoughts on this.</b>
37	<i>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?</i>
	<b>No thoughts on this.</b>

## Other comments

**No other comments.**

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

## Your name and organisation

<b>Name</b>	Kelly-Ann Harvey
<b>Organisation</b>	Perpetual Guardian (trading name of The New Zealand Guardian Trust Company Limited and Perpetual Trust 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?*

Yes. They are all good objectives and are consistent with feedback to date on the legislative change.

### 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?*

Very good as it will enable comparison between sources of advice at the point in time when the consumer is deciding which adviser/s to meet with.

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

The provision of information at the relevant times in their client journey will reduce the information overload and enable them to empower themselves in the process. The timing of the more specific (to client and to adviser) information will give opportunity to provide explanations.

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 as this goes to the principle of increasing trust in the industry through implied transparency. However referring to a website should not be sufficient when dealing with consumers who are less likely to be able to access it (eg elderly, ESL, etc), so the ability to meet this disclosure requirement through an alternative means is necessary (eg slides on a presentation, handout/brochure/flier in these cases may be appropriate).

### 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?*

They need to clearly define the points and not leave everything to interpretation. FMA

Guidance Notes can be a useful too where Regulations are not prescriptive.

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?*

Given the more immediate timing and ability to change behaviour we consider FMA stop orders and other powers to be far more appropriate and effective than civil liability (which necessitates a lengthy court process).

#### 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. This gives consumers comfort that the adviser/provider is willing to be held accountable and therefore will go to increased trust. It is in line with other professions as well as the Scheme's own guidelines.

#### 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. This transparency is desirable for consumers and can provide good opportunities for an adviser/company to explain their approach and philosophy up-front. Clear guidelines around how to communicate this will also improve the ability to make comparisons.

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

Regulations can provide comfort and/or improvement, but not necessarily ensure. The proposals should go a long way to delivering this. Guidance Notes would also help steer the industry to best practise.

##### 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. It is line with current rules elsewhere in the FMCA/Regulations (eg Class DIMS)

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)?*

Every reasonably known likely material charge should be included, eg Fee and expense ratio of underlying funds, mortgage/superannuation scheme break costs, etc.

#### 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

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 concept of “perceived to materially influence” is good, but given that this is not an area we are familiar with we can’t meaningfully comment further.

#### 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. It is easier to comply and harder for consumers to be confused.

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

As above at Q 15.

#### 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. It is line with current rules elsewhere in the FMCA/Regulations (eg Class DIMS)

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)?*

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?*

Absolutely.

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?*

Within reason (ie material and relevant to financial advice) we believe that this should be included, so that consumers are clear that all involved in the governance of the provider are appropriate to be relied on. This will help avoid situations where providers are run by former AFA/FA's who are not suitable (though the licensing process may also assist here). However this should be balanced with some time limits, so the opportunity to learn and change is not discouraged.

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

Yes, but potentially with some time limits, so the opportunity to learn and change is not discouraged.

#### 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, as any vagueness will make comparisons between different providers difficult.

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)?*

If it was concise and clear it can be read out or pre-recorded. Alternatively there could be a requirement to email/post immediately following the conversation (the latter also providing a reliable record that it was delivered).

##### Requirements for disclosure provided through different methods

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

Yes

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

Yes, there could be a requirement to email/post immediately following the conversation (the latter also providing a reliable record that it was delivered).

##### 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?*

As in the examples, a clear warning that the recommendation is generated by a computer for robo-advice. As above at Q27 for phone advice.

29

*Do consumers require any additional information when receiving financial advice via an online platform?*

See above.

#### 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. Where there material charges (eg commission clawbacks; break/early withdrawal costs) these should be brought to the consumer's attention and where possible quantified.

31

*Should this apply to the financial advice given on the replacement of all financial advice products?*

Yes. This is a reasonable consumer expectation eg if a superannuation scheme has a 10% early withdrawal charge this will markedly effect the portfolio value.

#### 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?*

Full if there is a substantial change.

33

*Should there be a limit on the length of time that this relief would apply?*

Annual confirmation (eg at review time) should be required.

#### 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?*

The transitional period should be alongside those of the Code and Bill so that all changeover work can be done at the same time.

35

*Should the regulations include specific transitional provisions for AFAs authorised to provide personalised DIMS under the FA Act?*

N/a

#### 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?*

As part of increasing consumer's trust in the industry, participants should strive to educate their clients and potential clients. A good example of a prescribed situation of this currently is the "Warning" section of the Eligible Investor Certificate under the FMCA (s41, Schedule 1).

However, the Offence section of the same certificate is unnecessarily confronting for consumers (even wholesale ones).

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?*

Once again, as part of increasing consumer's trust in the industry, participants should strive to educate their clients and potential clients. However where a threshold is an indisputable fact (eg wholesale portfolio size being large) we would consider a compulsory certification to be overly bureaucratic.

## Other comments

Whilst the proposed timing changes for required disclosures is welcomed, thought should be given to how the regulations can go further to reduce paper (and associated printing pollutants) by those companies who wish to embrace this. General information on websites is a good start, but allowing the next stages of disclosure to be included in emails instead of paper hand-outs is both good environmental practice and will ultimately likely be preferable for consumers. The growth in online storage options shows filing and then searching for an email is much easier than looking for some pieces of paper that were given some time ago.

# Submission template

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## 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](mailto: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](mailto:faareview@mbie.govt.nz).

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

## Your name and organisation

Name	Keith Walter
Planet	Planet Financial Services 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?*

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?*

We believe that breaking the disclosure down into digestible bights is a good idea as, in that way, the consumer is not barraged with one long and complex statement which, more than likely, would only be skipped through and not understood fully.

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

Yes. See comments under 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?*

Yes. Should be 1<sup>st</sup> item on the 2<sup>nd</sup> step of disclosure. AND be in their advertising material/website/Facebook etc.

### 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?*

A good way to ensure certainty is to list the things that **must** be disclosed at each stage as per the summaries in sections 22 – 24 with discretion as to the wording used provided it is clear and easily understood.

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?*

We agree that information on the licence (i.e. what area the financial adviser is licenced to give advice on) should be included in the publicly available section of disclosure.

We do not see the need to include a section on conduct and client care as all advisers are subject to the same duties. Improving the confidence of the public would probably be better covered by some form of advertising campaign making the public aware of the changes the legislation will bring.

We believe that the details suggested for the complaint process should be limited to advising the name of the disputes resolution scheme they belong to and that they have access to redress. Any more, in our opinion, could be seen as suggesting they are likely to need this service and, therefore, act as a deterrent to seeking advice.

8

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

The danger with allowing the FAP to write their own text would be that they could become overly “creative” to the extent that the messages they are intended to deliver become lost.

However, if some examples were provided, so long as the actual disclosure did not diverge too radically from this and was still clear and written in plain English (or other language as appropriate) this would provide the FAP some flexibility to write it in their own style.

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 – but at the point that the advice is acted upon as I is not relevant until then.

## 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?*

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?*

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)?*

#### 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?*

We believe the intent of including commission information is to demonstrate to the client that the adviser will receive commission on any business accepted by the product provider and that the adviser's decision is not unduly influenced by the level of commission they will receive.

Therefore, we agree that the fact that the financial adviser is not paid salary, bonuses etc from the companies they place business with but receive commissions instead should be included in initial disclosure, preferably in the publicly available content.

We **do not** see any need for more detailed information given to the client at the point that the nature and scope of the financial advice is known as, at that point of time as this would need to include all possible suppliers and products and therefore become an overly complex document and, therefore, be more likely to be skipped over by the client.

We agree that, at some point in the process, the adviser needs to demonstrate that the level of commission they will receive if their recommendations are implemented, has not unduly influenced their recommendation.

PLEASE REFER TO POINT 17 BELOW.

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?*

?

#### 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, though guides may be useful in creating *some* level of uniformity.

17

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

We believe option 1 is the correct option for the following reasons.

The actual amount of commission paid is the result of commercial agreements between the adviser and the suppliers and does not impact on the advice given. If we were to require percentages and/or dollars received, then it follows logically that nominated representatives **must** declare their salaries, bonuses, perks etc as well as the levels of business they must write to remain employed.

However, what is relevant to their recommendations is not the level of these nor the dollar



amounts but whether a particular level of commission might be seen to have a bearing on where they place the business.

Therefore, we recommend they be required to disclose **relative levels of commission** they receive from the companies they are able to place business with.

Further, the Code of Conduct should require them to demonstrate in their advice why they are recommending a particular solution for which they will receive an above-average commission

For example, they may be able to place life insurance business 3 suppliers, say A B and C and commission from A is the lowest, they could disclose relative commissions as follows;

“Of the companies I can place business with, B pays the least commission.

A pays 20% more than B and C pays 5% more than B.”

We also believe that the potential to receive what are referred to as “soft dollar” incentives needs to be disclosed.

#### 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?*

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?*

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?*

We favour the concept of a summary document if it brings together the information a client needs to narrow their search for a financial advice provider. However, we are not in favour of prescribed templates as they can be too limiting.

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)?*

We see no problems with a summary document being provided via an online platform as this can be easily delivered with the client acknowledging it has been read before proceeding.

We are of the opinion that there is **no place** for advice to be given **just** verbally as there is no **evidence** of the 'advice' given. Advice (and disclosure) could be given verbally initially **but** must always be provided in writing and receipt acknowledged in writing **in a timely manner but well before the "free look" period expires**. Without this requirement, any dispute will fall into the "he said, she said" scenario.

### Requirements for disclosure provided through different methods

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

Only if this was followed up in writing, which could be delivered electronically. This should be acknowledged – i.e. signed – by the client **before** any implementation, including the decision not to acquire a financial product.

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

See point 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?*

29 *Do consumers require any additional information when receiving financial advice via an online platform?*

### 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?*

Is this the place of Disclosure or Code of Conduct?

Wherever it is covered, in our opinion there must be some form of notification. In “life insurance” a good adviser will cover this in their recommendation by setting out **all the potential disadvantages of replacement**, as well as ensuring that pre-existing conditions are covered by making the ‘new’ company aware that this is replacement business.

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, provided the nature and scope of the engagement has not changed **and** full disclosure had previously been given **and** the information in the earlier disclosure has not materially changed.

33

*Should there be a limit on the length of time that this relief would apply?*

With the conditions in point 33, NO

#### 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?*

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

<b>Name</b>	Peter Standish
<b>Organisation</b>	Plus4 Insurance Solutions

## 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, fundamentally agree and would emphasise the need for qualifications and experience disclosed should only have relevance to the scope of service being provided. Keep disclosure succinct with a pattern and format that is consistent through all advice channels.

### 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?*

Not sure that this is necessary, as the scope of service is normally established early in the initial interview at which point appropriate disclosure should occur.

3

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

Yes.

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 with clear reference to sources of such 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?*

Care needs to be exercised when introducing flexibility around form and timing of disclosures as this presents a risk of confusion. The regulations need to be clear and unambiguous.

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?*

Yes – 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?*

Yes, both on websites (of the adviser) and in disclosure documents.

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

It would assist if the regulations templated disclosure text. This assists with consistency.

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?*

Agree as clients need to understand the limitations that may apply in a “tied” agency environment.

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

Should be covered under (10) above.

### 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, this forms a critical part of the terms of engagement.

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)?*

Need to be disclosed but probably at the implementation stage of the advice process.

### 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, but only if there is potentially an advice conflict, real or perceived.

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?*

Tested on the basis of conflict or a recommendation bias.

#### 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, but only on the basis of advice conflict.

17

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

Commission structures vary in complexity and structure among product providers. This would make Option One just too difficult for clients. Disclosure in this respect, even under Option 2, would need to be indicative.

#### 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?*

Some product providers have advisers contracted to “quota” requirements (e.g. 80% business delivery to the provider). This 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)?*

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, although bankrupting or insolvency should make an individual or firm ineligible to practice.

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 – see (21) above.

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 – see (8) above.

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)?*

Should still be a requirement, with the template emailed in advance.

##### **Requirements for disclosure provided through different methods**

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

No – problematic in ensuring full and comprehensive disclosure and maintaining a record of disclosure.

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

Not an option – see (26) 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?*

Yes – clients need to understand the concept of robo-advice and algorithm driven outcomes

29 *Do consumers require any additional information when receiving financial advice via an online platform?*

Only under (28) above.

##### **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 – fully inform clients of the implications around possible resetting of stand-down periods, exclusions and other disadvantages to be balanced against benefit driven reasons around replacement.

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 although this would depend on length of time between advice given. If any material differences between last advice process disclosure and “new” advice process disclosure then the differences should be disclosed.

33 *Should there be a limit on the length of time that this relief would apply?*

Yes

#### 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?*

No.

## Other comments