AIA House,
74 Taharoto Road,
Takapuna,
Auckland 0622
-
Private Bag 92499,
Victoria Street West,
Auckland 1142

Phone (Int.) +64 9 487 9963
Freephone 0800 500 108
-
enquireNZ@aia.com
aia.co.nz

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Financial Markets team
Building, Resources and Markets
Ministry of Business, Innovation and Employment
PO Box 1473
Wellington 6140

By email: FinancialConduct@mbie.govt.nz

CONSULTATION PAPER – EXPOSURE DRAFT REGULATIONS ON SALES INCENTIVES UNDER THE NEW CONDUCT REGIME

This submission is made on behalf of AIA New Zealand Limited and its related entities (together **AIA NZ**). It relates to the Ministry of Business, Innovation and Employment's (**MBIE**'s) September 2022 consultation paper (**Consultation Paper**) and draft regulations for sales incentives (**Draft Regulations**) under the new conduct regime.

About AIA NZ

AIA NZ is a member of the AIA Group, which comprises the largest independent publicly listed pan-Asian life insurance group. AIA Group has a presence in 18 markets in Asia-Pacific and is listed on the Main Board of The Stock Exchange of Hong Kong. It is a market leader in the Asia-Pacific region (excluding Japan) based on life insurance premiums and holds leading positions across the majority of its markets.

Established in New Zealand in 1981, AIA NZ is New Zealand's largest life insurer and has been in business in New Zealand for over 40 years. AIA NZ's vision is to champion New Zealand to be the healthiest and best protected nation in the world.

AIA NZ offers a range of life and health insurance products that meet the needs of over 800,000 New Zealanders. AIA NZ is committed to an operating philosophy of *Doing the Right Thing, in the Right Way, with the Right People*.

AIA NZ is a prominent member of the Financial Services Council (**FSC**).

Key submission points

AIA NZ continues to broadly support the conduct regime that has been formalised under the Financial Markets (Conduct of Institutions) Amendment Act 2022 (**CoFI Act**). We acknowledge the previous policy decisions on the prohibition on volume and value targets in sales incentives (**Prohibition**) in order to manage actual and perceived conflicts of interest. However, we are concerned that the Draft Regulations' breadth and scope

disproportionately limit the capacity for market participants to offer remuneration linked to the financial performance of their businesses.

Our submission is set out in the attached feedback form. In summary, our key points are:

1. We are concerned that the current drafting of the Prohibition may be interpreted more broadly than intended by Cabinet and could result in unintended consequences. Some financial institutions (**FIs**) provide supplementary professional development and/or support to advisers – for example, dedicated adviser service support. FIs usually set thresholds that need to be met before an adviser is offered this supplementary support to manage operating costs. Such supplementary support is not a "sales incentive" in the context of aiming to reduce potential conflicts of interest. However, without clear drafting, these arrangements could inadvertently be caught by the Prohibition, which may prevent FIs offering such support at all. We encourage MBIE to closely consider how such unintended consequences can be avoided when drafting the regulations.
2. The Draft Regulations should provide an express exclusion for senior managers and executives. We do not agree that relying on a narrow interpretation of the definition of "incentives" in the CoFI Act is appropriate. We consider that such an interpretation is at odds with the views previously expressed by MBIE. It creates future legal risk of reinterpretation by the courts (particularly noting that consumer protection legislation, such as the CoFI Act, tends to be interpreted widely by the courts) and may also result in a lack of consistency across the industry in how the Prohibition is applied.
3. The Draft Regulations should not apply to non-sales staff bonuses or incentive schemes. We understand that these kinds of incentives are not intended to be captured by the Draft Regulations However, with broad interpretations of "involved" and "incentive", there could be uncertainty as to what incentives are prohibited. A narrower, more specific definition for "incentives" in the Draft Regulations, better linked to the concept of "sales incentives" that the Prohibition is intended to address, would help to resolve this uncertainty.

AIA NZ also contributed to and fully supports the submission from the FSC.

We would be pleased to discuss any questions you have on this submission, and we would welcome the opportunity to collaborate or consult further with MBIE as it considers the next steps.

Yours sincerely

Jackie Waddams
General Counsel
AIA New Zealand Limited

Submission on Exposure draft regulations on sales incentives under new conduct regime

Your name and organisation

Name	Kristina Kilner (Head of Regulatory Affairs)
Organisation (if applicable)	AIA New Zealand

Responses to consultation document questions

Prohibited incentives	
1	*Do you consider that the draft regulations give effect to Cabinet's decision to prohibit sales incentives based on volume or value targets? If not, why not?*
	We consider that the Draft Regulations do give effect to the Prohibition. However, we are concerned that the current drafting may be interpreted more broadly than intended, as discussed below.
2	*Do you have any comments on the examples chosen of a prohibited incentive and a non-prohibited incentive?*
	We support the inclusion of examples in the Draft Regulations. We believe that the examples provided are clear and useful. We note that paragraph 18 of the Consultation Paper refers to balanced scorecards not being prohibited provided they do not contain metrics based on volume or value sales targets. In our view an example directly addressing this point should be included in the regulations. This is because there is the potential for different interpretations as to whether a particular metric (such as market share, revenue, or net profit) is indirectly linked to volume or value (and therefore subject to the Prohibition). We also suggest that MBIE includes an example which covers supplementary professional development or administration resources which are offered to adviser groups, to clarify how the Prohibition applies to these arrangements. As we note in our response to question 3 below, our view is that arrangements of this type should not be prohibited as they are not "sales incentives".

3	*Do you have any other comments on the way the draft regulations define prohibited incentives?*

We are concerned that the current drafting of the Prohibition may be interpreted more broadly than intended by Cabinet, which could result in a number of unintended consequences.

Some licensed Financial Advice Providers (**FAPs**) impose financial thresholds or considerations (either formally or informally) on advisers who wish to join their FAP, and similar thresholds may also be used by FIs when entering into arrangements with distributors. For example, an adviser may be required to write a certain amount of business in order to be, or continue to be, engaged by a FAP. Thresholds reflect the fixed operational and licensing costs associated with running a FAP (for example, preparing and maintaining policies and procedures, supervision and assurance work, training, ongoing reporting and administration of a FAP licence) and supporting the FAP's advisers to meet their obligations and deliver fair outcomes. We consider it fair and commercially appropriate that an appropriate proportion of this cost is recouped from advisers in the form of writing business, to ensure that FAPs are in a position to carry out comprehensive supervision and continue investing in their advisers and FAP businesses.

It is possible that meeting a minimum threshold to join a FAP could be interpreted as a prohibited incentive (in terms of the broad definition in section 446M of the CoFI Act). We believe that prohibiting such activities is not within the intent of the incentives policy decisions (it is not a "sales incentive" but a commercial decision) and would penalise an activity that is intended to increase compliance standards and supervision across the industry (larger FAPs are more likely to have well established and well-resourced compliance and supervision processes, governed by deeply embedded risk and governance frameworks).

Likewise, if a wide interpretation of incentives is taken it is possible that supplementary professional development (for example, courses or conferences), upskilling or dedicated administrative or compliance support offered by a FI could also be considered a prohibited incentive. While this kind of incentive should be considered and carefully managed in a FI’s fair conduct programme to ensure it does not create conflicts of interest, the Prohibition should not apply in such cases. The overall intent of the CoFI Act would not be supported by restricting the provision of supplementary adviser professional development or support.

Finally, we note that a wide interpretation of incentives may also prohibit FIs from setting targets for minimum financial adviser engagements with customers (for example, advice appointments or preparation of Statements of Advice). This is because financial advice itself (and not the outcome of that advice) is a "relevant service" under section 446F of the CoFI Act. This is

	contrary to wider policy goals of increasing the availability of advice and ensuring ongoing servicing of customers and may limit the ability for market participants to manage performance. Accordingly, we encourage MBIE to consider carefully how such unintended consequences can be avoided in the drafting of the regulations. We suggest that MBIE should consider whether a narrower definition of "incentives" is required for the Draft Regulations instead of relying on the broad definition in the CoFI Act. A narrower definition of "incentives" that more clearly links to sales incentives would, in our view, be the appropriate solution and would be consistent with Cabinet decisions.
Recipient of incentive	
4	*Do you have any comments on the definition of 'relevant person' in relation to a financial institution or an intermediary?*
	In our view the definition of "relevant person" is appropriate, subject to our comments below relating to the need to expressly exclude senior managers and executives.
Exclusion of senior managers and executives from the incentive prohibition	
5	*Do you have any comments on the application of the draft regulations to senior managers and executives?*
	We do not agree with MBIE's decision to not expressly exclude senior managers and executives from the Prohibition. While we agree that it is possible to interpret the definition of "incentive" under section 446M(1) of the CoFI Act as excluding senior managers and executives, there is a clear risk that such an interpretation is at odds with the previously stated intention of the definition, which referred to "*remuneration and incentives in the broadest sense e.g. commissions, soft commissions, bonuses, leader boards, performance management etc*".[1] We consider that there is significant risk and uncertainty with MBIE's proposed approach as it relies on a narrow interpretation of whether a senior manager is indirectly involved in the provision of products or services. Such an interpretation would be subject to review by the courts, and it is possible that a Court may decide that a wider interpretation is warranted (consumer protection legislation, such as the CoFI Act, tends to be interpreted widely), substantially changing the application of the Prohibition. We are particularly concerned that this may occur given that the definition of incentives is used in contexts under the CoFI Act other than the

[1] See Cabinet paper: *Conduct of Financial Institutions: Introduction of a New Conduct Regime*, 11 September 2019 at page [35].

	Prohibition (for example, incentives are required to be considered as part of a FI's fair conduct programme under section 446J(i) of the CoFI Act). MBIE's approach is likely to result in FIs taking a wide range of approaches to determining whether a person is indirectly involved in the provision of a product or service, leading to inconsistency in the application of the regime which may hinder achievement of the policy objectives. More consistency would be achieved by having the specific exclusion set out clearly in the Draft Regulations. This would also be more consistent with Cabinet decisions. Accordingly, we consider it is more appropriate for the regulations to expressly set out the degree of involvement in the provision of products or services required for a person to be captured by the Prohibition. This clarification should be included in the definition of a "relevant person" in the Draft Regulations.
6	*Do you have any other additional general comments on the exposure draft regulations?* *For example, do you see any unintended consequences arising from the draft regulations in relation to any other matters? Are there any areas where the application of the draft regulations is unclear and could benefit from additional examples or guidance?*
	We submit that the Draft Regulations could also create further unintended consequences for FIs' other remuneration arrangements which are not related to sales. For example, many FIs have a non-sales staff bonus or incentive structure which links individual performance to the organisation's overall financial performance. If a wide interpretation is applied to "incentive", along with a wide interpretation of who is considered to be "involved" in the provision of products and services, then it is possible that a FI's non-sales staff incentive programme (which will invariably include a financial performance gateway or metric) could be considered a prohibited incentive. We understand that this kind of incentive is not intended to be captured by the Draft Regulations and suggest that including specific definitions for "sales incentives" and "senior managers and executives" in the draft regulations would help address unintended consequences by providing clarity and consistency of the Prohibition's application.
Other Comments	
	We have no other comments.