

# Submission template

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## Consultation paper – Exposure draft regulations on sales incentives under new conduct regime

This is the submission template for the consultation paper *Exposure draft regulations on sales incentives under new conduct regime*.

The Ministry of Business, Innovation and Employment (MBIE) seeks written submissions on the questions set out in the consultation paper **by 5pm on Wednesday 9 November 2022**.

MBIE intends to upload PDF copies of submissions received to MBIE’s website at [www.mbie.govt.nz](http://www.mbie.govt.nz). MBIE will consider you to have consented to uploading your submission in full including your name by making a submission, unless you clearly specify otherwise. Please note that submissions are subject to the Official Information Act 1982.

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 consultation paper. 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 preparing to send your submission:
  - a. Delete these first two pages of these 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 clearly indicate this on the front of your submission or in the accompanying cover letter or e-mail. Any confidential information, together with reasons for withholding the information, should be clearly marked within the text of your submission. MBIE will take such objections into account and will consult with submitters when responding to requests under the Official Information Act 1982.
    - ii. Please provide a separate version of your submission excluding the relevant information for publication on MBIE’s website.
  - d. If you do not wish for your submission to be published:
    - i. please clearly indicate this in the cover letter or e-mail accompanying your submission. However, please note that submissions remain subject to request under the Official Information Act 1982.

5. Send your submission:

- as a Microsoft Word document or searchable PDF to [FinancialConduct@mbie.govt.nz](mailto:FinancialConduct@mbie.govt.nz) (preferred), or
- by mailing your submission to:

Financial Markets Team  
Small Business, Commerce and Consumer 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 [FinancialConduct@mbie.govt.nz](mailto:FinancialConduct@mbie.govt.nz).

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

## Your name and organisation

<b>Name</b>	Privacy of natural persons
<b>Organisation (if applicable)</b>	

## Responses to consultation document questions

Prohibited incentives	
1	<p><i>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?</i></p>
2	<p><i>Do you have any comments on the examples chosen of a prohibited incentive and a non-prohibited incentive?</i></p> <p>Yes.</p> <p><b>Issue</b></p> <p>The example of a prohibited incentive is a poor because it contains insufficient information as to whether it is a linear or non-linear incentive, and only the latter are intended to be prohibited. As drafted, this could mean linear incentives are considered prohibited.</p> <p><b>Rationale</b></p> <p>The example of a prohibited incentive is “<i>The employee of a life insurer is offered a \$1,000 bonus for selling 100 life policies in a 3 month period</i>”. This contains no information as to whether the incentive is linear or not. If, in addition to being offered a \$1,000 bonus for selling 100 life policies in a 3 month period was also offered a \$990 bonus for selling 99 life policies in a 3 month period, it would be a linear incentive and therefore permitted. The example contains no information as to whether this is the case or not.</p> <p><b>Potential solution</b></p> <p>Clarification to avoid this could include one of more of the following examples:</p> <ul style="list-style-type: none"> <li>• <i>The employee of a life insurer is offered a \$1,000 bonus for selling <b>a minimum of 100</b> life policies in a 3 month period.</i></li> <li>• <i>The employee of a life insurer is offered a \$1,000 bonus for selling 100 life policies in a 3 month period. <b>If they sold fewer than 100 life policies, they would receive no bonus.</b></i></li> </ul>
3	<p><i>Do you have any other comments on the way the draft regulations define prohibited</i></p>

incentives?

Yes.

**Issue**

The draft definition of prohibited incentives could be interpreted to prohibit limits/caps on bonuses based on sales. I do not believe this is intended nor sensible, as such limits/caps are common (including as part of balanced scorecards) and they tend to reduce the risk of misselling associated with sales incentives (as stated on page 12 of the Financial Markets Authority’s Bank Incentive Structures review).

**Rationale**

This interpretation is possible as a prohibited incentive is such if it is “*determined or calculated in any way by reference (directly or indirectly) to a target or other threshold that relates to the volume or value of the services or products*”. A limit or cap on a bonus amount could reasonably be interpreted to be “a target or other threshold that relates to the volume or value of the services or products”.

For example, an employee receives \$100 for every home loan they sell, up to a maximum of \$2,500 a quarter (or 25 home loan sales), after which they earn no additional money for each additional home loan sale. The maximum of \$2,500 (or 25 home loan sales) could constitute a target or other threshold that relates to the volume or value of the services or products.

**Potential solution**

Wording along the lines of the following could be added to the drafting to ensure limits/caps based on sales are permitted:

- *...determined or calculated in any way by reference (directly or indirectly) to a target or other threshold that relates to the volume or value of the services or products (except targets or other thresholds that limit or cap the value of the incentive)*

**Recipient of incentive**

4

*Do you have any comments on the definition of ‘relevant person’ in relation to a financial institution or an intermediary?*

**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?*

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?*

## Other Comments