

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

## Your name and organisation

Name	Aneleise Gawn
Organisation (if applicable)	Consumer NZ

## Responses to consultation document questions

Prohibited incentives	
1	<p><b><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></b></p> <p>Yes, the draft regulations reflect Cabinet’s decision (DEV-19-MIN-0237) to regulate sales incentives based on volume and value targets.</p>
2	<p><b><i>Do you have any comments on the examples chosen of a prohibited incentive and a non-prohibited incentive?</i></b></p> <p>We consider the example chosen for ‘prohibited incentive’ does not adequately highlight the risks and potential harm to consumers that can result from such an incentive. We recommend the example explains how the incentive could harm consumers. The Financial Conduct Authority’s (UK) guidance on staff incentives, remuneration and performance management in consumer credit contains examples that better reflect how a consumer is impacted.<sup>1</sup></p> <p>We also recommend that further examples are included. In our view, one example is not sufficient, and the regulations should set out a number of examples of ‘prohibited incentives’ and the different ways they could harm consumers.</p>
3	<p><b><i>Do you have any other comments on the way the draft regulations define prohibited incentives?</i></b></p> <p>We do not consider the definition of ‘prohibited incentives’ is broad enough. As stated in previous submissions, we consider institutions are likely to continue to incentivise sales through means other than volume and value-based targets, such as linear incentives (i.e. incentives that are the same for each product or service sold). Risks of conflicted remuneration can arise through incentives that are not based on volumes and targets and can lead to poor consumer outcomes. We think that any future regulatory amendments to address risks created by other means and incentive structures will come too late, and that</p>

<sup>1</sup> Financial Conduct Authority, “Finalised Guidance FG18/2 Staff incentives, remuneration and performance management in consumer credit”, March 2018.

consumers should not have to wait to be protected from other incentive structures not currently captured by the proposed definition.

#### Recipient of incentive

4

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

We consider the definition of 'relevant person' should be broadened. We are concerned the current definition will not capture all people who facilitate the provision of a relevant service or an associated product to a customer. We think the definition should be broad enough to capture anyone involved, from the salesperson on the car yard or other frontline worker, the broker who provided advice to the customer in between, and the CEO and senior managers that have an influence on the culture of the day-to-day business of the company.

#### 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 consider that incentives should be prohibited for senior managers and executives as well as other staff. People in senior and leadership positions are often responsible for setting and influencing the internal culture of the business. Also, in our view, excluding senior managers and executives from the prohibition is inconsistent with the Financial Markets Authority and Reserve Bank of New Zealand's joint findings "Bank Conduct and Culture" report.

The 2018 joint report noted that "[s]enior management and boards need to take ownership for improving conduct and culture", and that "[t]he management of conduct risk also needs to be prioritised across the organisation, to minimise negative outcomes for customers". While we recognise the draft regulations do not expressly exempt senior managers and executives from the prohibition, the current framework for assessing the applicability of the prohibition to senior managers and executives does not protect consumers well enough. We have expanded on this point in question 6 below.

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 are concerned that the current wording of the regulations will allow institutions and intermediaries to favour a narrow interpretation of 'relevant person' to avoid being captured by the prohibition, and that this will consequently lead to poor consumer outcomes and reduce the efficacy of the prohibition on incentives.

#### Other Comments

Thank you for the opportunity to provide comment.