

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

Your name and organisation

Name	Jack Lynskey
Organisation (if applicable)	Wealthpoint Limited

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> <hr/> <p>The drafting of incentives includes the words, ‘or other thresholds’ and is too wide so as to make the wording unclear as to its intent.</p>
2	<p><i>Do you have any comments on the examples chosen of a prohibited incentive and a non-prohibited incentive?</i></p> <hr/>
3	<p><i>Do you have any other comments on the way the draft regulations define prohibited incentives?</i></p> <hr/> <p>The definition of prohibited incentives is so wide so as to be unclear what unintended consequences may occur.</p>
Recipient of incentive	
4	<p><i>Do you have any comments on the definition of ‘relevant person’ in relation to a financial institution or an intermediary?</i></p> <hr/>
Exclusion of senior managers and executives from the incentive prohibition	
5	<p><i>Do you have any comments on the application of the draft regulations to senior managers and executives?</i></p> <hr/>

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

1) The draft regulations appear to ignore the new FSSLA regulations recently put in place that require financial advisers to put their client's interests first.

2) The draft regulations would create inconsistencies in the law. The draft regulations would capture financial advisers that provide advice on insurance and lending but not financial advisers providing advice on investments. Intermediaries could therefore pay financial advisers bonuses based on the volume of clients they provide investment and KiwiSaver advice to but would be prohibited from doing so in relation to insurance and lending.

3) The draft definition of incentives is too wide. The consultation states that *'Incentives on a linear basis (a per product or per service basis) do not fall within the prohibition as they are not determined or calculated in any way by reference to a target or threshold'*. That perversely allows an employer to pay an adviser on a per product sale and so rewards the adviser for the sale, yet it would be against the law to provide an award or certificate ('incentive') to the adviser for achieving the amount of sales they achieved.

4) The consultation states that *'Incentives on a linear basis (a per product or per service basis) do not fall within the prohibition as they are not determined or calculated in any way by reference to a target or threshold'* but this does not appear to be reflected clearly in the drafting of 446M(3)(g).

5) Many life insurance companies contractually require financial advisers to maintain certain 'persistency' levels (Persistency is the amount of an "in force" portfolio of policies that remains in force from one year to the next – put simplistically a goal of 85% persistency would mean that less than 15% of policies had not remained in force in the course of a year). Such persistency requirements will presumably need to discontinue under the present drafting of the regulations.

6) The draft regulations would limit how advisers could be remunerated and further reduce the attractiveness for financial advisers to enter the industry at a time when New Zealanders are under insured and under-advised.

9 November 2022