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Financial Markets
Small Business, Commerce and Consumer Policy
Ministry of Business, Innovation & Employment
PO Box 1473
Wellington

By email: financialmarkets@mbie.govt.nz

SUBMISSIONS ON THE 'FIT FOR PURPOSE FINANCIAL SERVICES CONDUCT REGULATION' DISCUSSION DOCUMENT

Introduction

1 These submissions on MBIE's May 2024 *Fit for purpose financial services conduct regulation* discussion document are made by the Insurance Brokers Association of New Zealand Incorporated (*IBANZ*).

About IBANZ

2 IBANZ has over 100 member firms operating in the general (non-life) insurance market. IBANZ members employ approximately 5,000 staff of which approximately 2,500 staff are currently financial advisers.

3 IBANZ members place general insurance cover equating to approximately 50% of all general insurance premiums ($4.7 billion) for approximately 1 million New Zealand customers and for approximately half of the general insurers operating in New Zealand. The total New Zealand gross written general insurance premiums in the 12 months to 30 September 2023 were more than $9.5 billion.[1]

4 IBANZ members commonly consider a number of different insurance contracts underwritten by a range of insurers and place cover on a daily basis.

Conclusion

5 IBANZ trusts that its detailed submissions below on the discussion document are helpful. Please let IBANZ know if you would like IBANZ to expand on any of the submissions made.

Yours sincerely

Privacy of natural persons

Melanie Gorham
CEO, IBANZ Inc

[1] Insurance Council of New Zealand Market Data. Does not include additional cover placed through non ICNZ members.

Submission on discussion document: *Fit for purpose financial services conduct regulation*

Your name and organisation

Name	Melanie Gorham, CEO, IBANZ Inc
Organisation (if applicable)	Insurance Brokers Association of New Zealand Incorporated (*IBANZ*).
Contact details	Privacy of natural persons

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Responses to discussion document questions

	Introduction
1	*Do you agree the proposed criteria are appropriate, given the objectives? Are there other criteria which should be considered?*
	While IBANZ agrees with the criteria of the consultation document, IBANZ submits that an additional consideration should be given to the timing of the proposed reforms (particularly in regards to the 'Options for CoFI Act reform'). In IBANZ's view it seems inconsistent with the stated criteria of "avoid[ing] unnecessary compliance costs" to require financial institutions (and in some cases intermediaries, such as financial advice providers) to incur significant one-off costs and the compliance burden of complying with parts of the CoFI Act that would be reformed by 2026. At the very least, IBANZ would urge that the timing of the proposed reforms be considered a criterion for Part 1 of the consultation document (*Options for CoFI Act reform*), with Part 2 (*Options for regulatory framework and powers*) coming into force in 2026 as currently intended. 'Good conduct' should also be 'fair conduct' in the third criterion to align with the CoFI Act 'fair conduct' objective. 'Good conduct' and 'fair conduct' have subtly different connotations, with 'fair' having arguably a more balanced meaning.
	1*:* Options for CoFI Act reform **A. Options for amending minimum requirements for fair conduct programmes** *Option A1: Remove/amend some minimum requirements for fair conduct programmes*
2	*Do you support removing or amending some of the minimum requirements for fair conduct programmes? What are the advantages and disadvantages of this option?*
	IBANZ supports making changes to the minimum requirements for fair conduct programmes. As set out below, some minimum requirements duplicate other existing arrangements and their removal would reduce the regulatory compliance burden and costs incurred by financial service providers. For example, because some of the CoFI regime still affects intermediaries, care is required to ensure that the CoFI regime does not impose duplicative obligations on financial service provides who already have similar obligations as financial advice providers (FAPs) or financial advisers under the FMCA. However, and again, IBANZ submits that to fully obtain the benefits of the proposed reforms, and to avoid the unnecessary compliance burden and costs, the reforms to the CoFI Act should ideally be in place by 31 March 2025, and not in 2026 as currently intended. IBANZ also recommends removing all references to 'retail clients' in the CoFI Act, and to use 'consumers' consistently throughout the CoFI Act instead, to avoid unnecessary clarity and boundary issues. For example, if fire & general insurers are both insurers and financial advisers, it becomes very confusing whether the consumer definition in respect of intermediaries is referring to policyholders of consumer insurance contracts **or** retail clients. The same must be true for the insurers themselves, who are often performing two functions concurrently.

The definition of 'consumer' in the context of insurers should also be reconsidered, as it is unclear in some insurance contexts whether insurance has predominantly a personal, domestic or household purpose (eg directors and officers and other PI insurance (which are commercial policies but protect personal assets), body corporate insurance (which again is commercial insurance but underlying it are varying proportions of households and rental accommodation), travel insurance (which can be commercial or personal, and if commercial often can protect personal assets) and motor vehicle insurance(where use can vary over time). See IBANZ submissions on the Contracts of Insurance Bill in this regard, and how transporting the 'consumer' definition from the CCCFA (where the purpose of credit is readily ascertainable) into the insurance context (where the purpose would not necessarily be transparent) and in respect of which classifying policy types would be more efficient and suitable.

Comments on specific changes that IBANZ proposes are below.

3	*Which requirements should be removed or amended, if any? Please explain what changes you would like to be made.*

IBANZ submits that paragraph 446J(1)(e) should be removed, because it imposes compliance with the financial institution's policies and procedures on 'agents'.

Section 10 of the Insurance Law Reform Act 1977 deems independent financial advice providers who act for an insurer during the negotiation of any contract of insurance to be 'agents' of the insurer. Insurance brokers can also be agents of insurers under contract, including in only very narrow and specified contexts. This means that financial advice providers (despite providing independent financial advice and having their own obligations under subpart 5A of FMCA Part 6) must "follow the procedures or processes that are necessary or desirable to support the financial institution's [the insurer's] compliance with the fair conduct principle".

This is duplicative of the agent's obligations as a financial adviser under subpart 5A of FMCA Part 6, and increases the compliance burden on financial advice providers, who must currently comply with their own statutory requirements under subpart 5A, and, under the current CoFI Act, would also have to comply with the fair conduct programme of an insurer. Conflicts could arise if the insurer's fair conduct program requires the agent to prioritise the insurer's compliance ahead of the financial advisers' statutory duty to prioritise the retail client.

Further duplication can be seen as financial advice providers must also comply with the Code of Professional Conduct for Financial Advice Services, which requires financial advice providers to 'treat clients fairly'. Difficulties arise also if the insurance broker considers the insurer's procedures to inhibit the broker treating the retail client fairly (as required by Code Standard 1).

Removal of paragraph 446J(1)(e) is consistent with one of the key purposes of the consultation, being to avoid unnecessary compliance costs for market participants, including by avoiding duplication.

4	*What would be the impact of removing or amending particular requirements (for example, on compliance costs for businesses)?*

Removing paragraph 446J(1)(e) would also give greater certainty for financial advice providers as to how they must act in order to treat their clients fairly (i.e., complying with the subpart 5A requirements only). As each fair conduct programme is tailored to a specific financial institution, a financial advice provider acting as an intermediary across a

variety of financial institutions may find itself having to comply with multiple different (and potentially inconsistent) fair conduct programmes.

5	*Do you have any other comments on the minimum requirements for fair conduct programmes?*

IBANZ submits that if further additions to the minimum requirements are to be made, the appropriate time to do so would be after the CoFI regime comes into force and after the statutory review contemplated in section 446W has taken place, by which time there would have been ample opportunity to see where improvements could be made.

Option A2: Potential additions to minimum requirements for fair conduct programmes

6	*What are the advantages and disadvantages of adding an express minimum requirement for fair conduct programmes relating to fees and charges?*

IBANZ is strongly opposed to adding an express requirement for fair conduct programmes to cover fees structures and charging arrangements "regarding intermediaries" (as set out in paragraph 37 of the consultation document). Subjecting intermediary fee structures to fair conduct programmes:

- would result in the duplication of fee disclosures between a financial institution and an intermediary (where that intermediary holds a financial advice provider licence). Financial advice providers are already under an obligation to disclose their fee arrangements in detail under subpart 5A of the FMCA part 6 and the Financial Markets Conduct (Regulated Financial Advice Disclosure) Amendment Regulations 2020. The existing requirements under the Regulations are extensive and must have been overlooked when the Minister referred to seeking transparency of fee structures "for intermediaries", particularly if the statements were made in the context of removing duplication; and
- receiving two sets of disclosures regarding fees for the same underlying financial product may confuse consumers, especially since there does not appear to be any proposal to require financial institutions to disclose their fee structures in a standardised way (including between financial institutions, and also between the CoFI and FSLAA regimes).

Ultimately, requiring intermediary fee structures be incorporated in fair conduct programmes would result in potential customer confusion, increased costs, additional compliance burdens, but without any material benefit to consumers because the additions would duplicate what is already being required under subpart 5A of the FMCA part 6 and the Financial Markets Conduct (Regulated Financial Advice Disclosure) Amendment Regulations 2020.

Introduction of intermediary fee disclosure would be inconsistent with the Minister's stated overall expectations and one of the principal purposes of the consultation, being to avoid unnecessary compliance costs for market participants, including by avoiding duplication.

7	*What are the advantages and disadvantages of adding an express minimum requirement for fair conduct programmes relating to complaints processes?*

While the discussion is unlikely to have meant to extend to intermediaries, it is worth noting that it would be unnecessary for any new complaints requirements to extend to intermediaries who are financial advice providers, because Standard Condition 2 for FAP licences requires internal complaints processes, and of course, external complaints

	processes are required under the Financial Service Providers (Registration and Dispute Resolution) Act.
8	*Do you consider that financial institutions already need to cover fees and charging arrangements and/or complaints processes in their fair conduct programmes under the current requirements?*
	For completeness, and to avoid doubt, in respect of paragraph 39(a) of the consultation document, IBANZ's view is that section 446J(1)(i) does not require a financial institution to do anything more than to ensure that the incentives comply with the incentive regulations (which prohibit volume or value targets) when designing and maintaining incentives. Section 446J(1)(i) as it is currently drafted would not and should not, in IBANZ's view, require financial institutions to establish and implement transparent fee structure and charging arrangements into fair conduct programmes. For the reasons stated above, IBANZ opposes adding an express requirement for fair conduct programmes to cover fees structures and charging arrangements "regarding intermediaries" as this would be duplicative of existing obligations under subpart 5A of FMCA Part 6.
Option A3: Remove all minimum requirements for fair conduct programmes	
9	*Do you support removing all of the minimum requirements for fair conduct programmes from the legislation? What are the advantages and disadvantages of this option?*
	IBANZ would oppose removing all of the minimum requirements for fair conduct programmes from the FMC Act. There are advantages of having a targeted list of minimum requirements as it assists financial institutions in setting the boundaries of what is required but also, equally importantly, what is not required to be contained in a fair conduct programme. By way of example, the removal of the requirements for financial institutions to monitor, manage and supervise intermediaries as part of their fair conduct programmes during the legislative process, while keeping other aspects of the minimum requirements, was a clear signal that these considerations are not required to be addressed in a fair conduct programme. Removing the minimum requirements generally may result in confusion in the future as to whether these considerations are needed to be inserted into fair conduct programmes.
Option A4: Retain minimum requirements for fair conduct programmes without change	
10	*Do you support retaining the existing list of minimum requirements for fair conduct programmes without any changes? What are the advantages and disadvantages of this option?*
	No, IBANZ's preference is to make changes to the minimum requirements (including to remove paragraphs 446J(1)(e) and 446J(1)(i)). It would also be helpful to confirm in the CoFI Act that financial institutions can rely on FAP confirmations when evaluating distribution methods under paragraph 446J(b).
Proposal: proceed with Option A1 (remove/amend some minimum requirements)	
11	*Do you support the proposal to remove and amend some of the minimum requirements for fair conduct programmes and not to proceed with the other options? Why/why not?*

	Yes, IBANZ supports the removal of paragraphs 446J(1)(e) and 446J(1)(i) as set out above.
	B. Options for amending fair conduct principle *Option B1: Keep the fair conduct principle open-ended* *Option B2: Make the fair conduct principle definition exhaustive* *Proposal: retain status quo (Option B1)*
12	*Do you support the proposal to maintain the status quo in the definition of the fair conduct principle? What are the advantages and disadvantages of this option?*
	IBANZ is supportive of Option B2 – i.e., making the fair conduct principle (as it is currently defined at section 446C) an exhaustive list of what treating consumers fairly means. IBANZ's concern with section 446C being a non-exhaustive list is that the requirement to treat consumers 'fairly' is unclear and contestable. Different persons will have different views on the matter; customers can be expected to have very different views on what is 'fair' than providers. IBANZ is concerned that a broad, non-exhaustive, definition would allow the FMA to impose what it believes to be fair on a financial institution or intermediary (after the fact). As IBANZ submitted to the FMA on its *Fair Outcomes* consultation: Parliament, and not the FMA, is the appropriate body to provide define the fair conduct principle. And now is the opportunity for Parliament to do so.
13	*Are there any additional clarifications that could be made to the definition of the fair conduct principle, or matters that you consider should be included or removed? Why or why not?*
14	*Do you have any other suggestions or comments in relation to the fair conduct principle?*
	IBANZ submits that it would be useful to clarify that section 446D(2) does not require financial institutions to monitor, manage and supervise intermediaries provision of relevant services under its fair conduct programme. As set out above, this requirement was removed during the legislative process and reflects the intention of Parliament to limit how the CoFI regime applies to intermediaries.
15	*Do you have any comments in relation to other areas of the CoFI Act that have not been covered in this section?*
	2. Options for regulatory framework and powers **C. Consolidating financial market conduct licences** *Option C1: Amend the FMC Act to require the FMA to issue a single licence covering different classes of market service*

16	*Do you support the FMA being required by legislation to issue a single conduct licence covering one or more market services? What are the advantages and disadvantages of this approach?*
	IBANZ would, in principle, be supportive of consolidating the various categories of market services licences into a single licence, which would then cover multiple market services. IBANZ would also be supportive of using this opportunity to standardise the wording of common standard licensing conditions (such as the different notification requirements for critical systems issues under CoFI and FAP licences). However, IBANZ would not support a single licensing regime if FAPs' existing licences are not automatically converted into the single licence model without the need for a further application. It seems unnecessary to require reapplication when the financial advice provider licensing regime is so recently introduced.
17	*Could consolidating existing licences into a single conduct licence give rise to any unintended consequences or costs for existing licensed firms? If so, please explain with examples where relevant.*
	While IBANZ, in principle, is supportive of consolidating market services licences into a single licence, the transition for existing licence holders should be as seamless as possible. For example, for holders of an existing market services licence (such as a financial advice provider licence), no application should be required nor fees charged to transition to a single licence. Further, IBANZ notes that consolidating the various categories of licences into a single licence would not, in itself, necessarily reduce the compliance burden placed on financial institutions (as the underlying obligations would not necessarily change). IBANZ would, therefore, recommend that duplicative obligations (such as duplicated questions across different market service licences) be reviewed at the same time.
18	*Are there any other matters that should be considered around market services conduct licensing?*
D. Enabling reliance on another regulator's assessment	
Option D1: Amend legislation to enable the FMA and RBNZ to rely on an assessment by the other regulator where appropriate	
19	*Should the FMC Act be amended to enable the FMA to rely on the RBNZ's assessment for appropriate matters? Please provide examples of any specific areas where you think this could be useful.*
20	*Should there be equivalent provisions enabling the RBNZ to rely on the FMA's assessment for appropriate matters? Please provide examples of any specific areas where you think this could be useful.*

21	*Are there any other improvements that could be made to the way the FMA and the RBNZ work together to reduce compliance costs and regulatory burden?*

E. Ensuring the FMA has effective tools

Option E1. Introduce change in control approval requirements

22	*Should change in control approval requirements be introduced into the FMC Act? Please explain your answer, including why the current approach does or does not work.*
	IBANZ opposes the introduction of a change in control approval requirement in the FMC Act. Change in control approval requirements would add a further compliance burden and uncertainty for financial service providers when negotiating and entering into transactions, and would not appear to add anything additional to the current requirement as the consultation document notes at paragraph 97 "the FMA already expects licensed firms to engage with it prior to a change in control". There are, for example, already requirements that licensees and authorised bodies report changes of control in FMC Regulation 191(1)(g).
23	*Should change in control approval requirements apply only to firms licensed to act as financial institutions, or to all firms licensed under Part 6 of the FMC Act? Why?*
	While IBANZ's principal submission is that change in control approvals are not necessary, if they must be introduced, then the change in control requirements should apply to only those firms licensed to act as financial institutions. The consultation paper at paragraph 93 states that the FMA's interest in change in control is "from a conduct perspective". Therefore, it is fair and reasonable (and consistent with the purposes of this consultation to reduce regulatory burden) to limit the change in control requirements to those holding a financial institution conduct licence (and not, for example, apply to financial advice providers).
24	*Do you have any other feedback on the change in control requirements option?*

Option E2: Introduce on-site inspection powers for the FMA

25	*Should the FMA have the ability to conduct on-site inspections without notice? Please explain your answer, including why the current approach does or does not work.*
	IBANZ does not support the granting of an additional without notice on-site inspection powers to the FMA. While the consultation paper cites matters such as lack of consent by an occupier of a property to an inspection as a reason in support for such a power, IBANZ questions why this additional power is necessary when section 29(3) of the FMA Act permits the FMA to conduct on-site inspections without the consent of the occupier and without notice, subject to the FMA first obtaining a warrant. Section 29(3) of the FMA Act, in IBANZ's view, rightly, sets a high bar on the FMA when it wishes to carry out on-site inspections without the consent of the occupier or without notice. The granting of such a broad power would defeat the purpose of section 29(3) and go against one of the purposes of this consultation, which is to reduce unnecessary

	compliance costs on market participants. The FMA also has broad statutory information gathering powers, including under section 25 of the FMA Act.
26	*Should an on-site inspection power apply only certain firms or in certain circumstances, e.g. to firms licensed under Part 6 of the FMC Act, or to all firms regulated as financial markets participants? Why?*
	While IBANZ opposes granting the FMA without notice on-site inspection powers, if these powers are to be given, IBANZ does not see any reason why it should be limited to just licensed firms. Instead, if such a power is introduced the focus must be on the safeguards and controls in place to ensure that this power is not abused.
27	*What safeguards should be in place for on-site inspections without notice?*
	Again, while IBANZ's principal submission is that without notice on-site inspection powers are not necessary for the FMA, IBANZ submits that if such powers are granted the limits placed on the AML/CFT supervisors' inspection powers under the AML/CFT Act (which includes the FMA) is a good starting point for the safeguards that should be included. These include the limitations found at section 133 of the AML/CFT Act, such as: • no inspection may take place at a dwellinghouse or marae; • no person is required to answer any question asked by the FMA during an inspection if the answer would or could incriminate the person, and that person must first be informed of this right before being required to answer any question; and • no privileged communications may be disclosed as part of any inspection. IBANZ also submits that without notice on-site inspection powers be limited to when the FMA is investigating an offence under the FMC Act (i.e., the FMA should not be permitted to use its without notice on-site inspection powers in the investigation of civil wrongdoing).
28	*Do you have any other feedback on the on-site inspection option?*
Option E3: Introduce an expert report power for the FMA	
29	*Should the FMA have the ability to commission expert reports? Please explain your answer, including why the current approach does or does not work.*
	IBANZ does not support the introduction of an expert report power for the FMA. This power would add significant additional and unnecessary compliance burden on financial service providers, and that goes directly against one of the purposes of this consultation. IBANZ submits that the FMA already has the appropriate information gathering tools under section 25 of the FMA Act and also from the data that it receives via regulatory returns.
30	*Should an expert report power apply only to firms licensed under Part 6 of the FMC Act, or to all firms regulated as financial markets participants? Why?*
31	*What safeguards should there be for an expert report power?*

32	*Is it appropriate that the firm concerned bear the cost of the expert report? Why / why not?*
	IBANZ's principal submission is that the FMA should not be granted an expert report power. However, if the power must be introduced, IBANZ submits that the FMA should bear the cost of the report. If the FMA requires additional information above and beyond what it is already entitled to receive under section 25 of the FMA Act and the various regulatory returns, IBANZ submits that it is only fair and reasonable that the FMA bear the cost of obtaining the report.
33	*Do you have any other comments on the expert report power option?*
	IBANZ is concerned with the suggestion at paragraph 125(e) of the consultation document, which states that "the firm may be required to obtain an audit or review of the report, which must be carried out by an auditor or other person approved by the FMA". This suggests that the expert report power may be used by the FMA to require an audit of an audit. This is unnecessary, duplicative and would increase the compliance burden and costs on financial service providers (which, again, go against the purposes of this consultation).
	3*:* Limitations and constraints on analysis
34	*Are there any other areas and options for change that we should consider that have not been addressed in this discussion document?*
35	*Do you have any comments on implementation of these reforms?*
	IBANZ submits that if, contrary to IBANZ's submissions: • "agent" is to remain in paragraph 446J(1)(e) and that paragraph is retained; and/or • Option A2 is adopted, and an express requirement is introduced for fair conduct programmes to cover fees structures and charging arrangements "regarding intermediaries", then, in such cases, a distinction should be drawn between: • FAP intermediaries and the financial advisers they engage; and • any other non-FAP intermediaries that are ***not*** already regulated by the Code of Professional Conduct for Financial Advice Services and the sub-part 5A FMCA Part 6 requirements (such as travel agents and car sales people who do not give financial advice but operate under the "information-only" exception)[7]. If the CoFI Act requires that "agents" continue to be subject to paragraph 446J(1)(e) or fair conduct programmes cover fees structures and charging arrangements "regarding intermediaries", then those requirements should apply solely to non-FAP (and non-FAP financial adviser) intermediaries.

The justification for such a distinction is clear, consistent with past Select Committee decisions, consistent with current Government policy, supported by the Minister's stated objective of removing CoFI's duplication with other regimes and within the objectives of the Discussion Document (paragraph 1 a and b).

The objective of treating customers fairly, which underlies the CoFI reforms, duplicates the purposes of the Code of Professional Conduct for Financial Advice Services (particularly Code Standard 1 – "treat clients fairly") and the objectives of sub-part 5A FMCA Part 6.

Requiring that FAPs and their financial advisers, when they are financial institutions' agents (see IBANZ earlier explanation as to how this occurs under question 3), comply with the financial institutions' procedures and processes to support the financial institution's fair conduct principle compliance, would impose a further layer of requirements on FAPs and their financial advisers to achieve the same purpose as already articulated in the Code of Professional Conduct for Financial Advice Services (particularly Code Standard 1 – "treat clients fairly") and sub-part 5A FMCA Part 6.

Accordingly, to avoid the unnecessary costs of duplicating requirements, paragraph 446J(1)(e) and any introduced requirements for transparent fee structures should apply solely to non-FAP intermediaries and financial adviser intermediaries who are not engaged by a FAP.

This submission could be implemented by substituting "agents" in paragraph 446J(1)(e) with a defined class of agents who are either non-FAP intermediaries or financial adviser intermediaries who are not engaged by a FAP.

Failure to exclude FAPs, and the financial advisers they engage, from paragraph 446J(1)(e) and any introduced requirement that fair conduct programmes cover fees structures and charging arrangements "regarding intermediaries" would increase compliance costs unnecessarily, which could negatively impact the availability of independent financial advice for consumers.

See also IBANZ response to question 6 that new fee disclosures for FAP and their advisers that are intermediaries duplicates FAPs' detailed fee disclosure requirements under subpart 5A of the FMCA part 6 and the Financial Markets Conduct (Regulated Financial Advice Disclosure) Amendment Regulations 2020.

Other comments