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

Your name and organisation

Name	Toni Dodds, General Manager - Standards & Quality Assurance
Organisation (if applicable)	Lifetime Group Holdings Limited
Contact details	Privacy of natural persons

[Double click on check boxes, then select 'checked' if you wish to select any of the following.]

☐ The Privacy Act 2020 applies to submissions. Please check the box if you do not wish your name or other personal information to be included in any information about submissions that MBIE may publish.

☐ MBIE intends to upload submissions received to MBIE's website at ***www.mbie.govt.nz***. If you do not want your submission to be placed on our website, please check the box and type an explanation below.

I do not want my submission placed on MBIE's website because… [Insert text]

Please check if your submission contains confidential information:

☐ I would like my submission (or identified parts of my submission) to be kept confidential, and **have stated below** my reasons and grounds under the Official Information Act that I believe apply, for consideration by MBIE.

I would like my submission (or identified parts of my submission) to be kept confidential because… [Insert text]

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?*
	Lifetime Group Holdings Limited (Lifetime) is a Financial Advice Provider (FAP) and DIMS licensee. Lifetime supports the high-level objectives of the proposed reforms. Financial Institutions (FIs) rely on FAPs such as Lifetime to advise consumers and distribute products to meet needs. We therefore see the proposed reforms as an opportunity to ensure conduct expectations are viewed as a whole, across all regulated market services, and we believe this is key to building consumer confidence and improving outcomes. Lifetime is not an FI. We have answered the consultation questions below to the extent that we believe is appropriate for our role and interest as a FAP and DIMS licensee.
	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?*
	Lifetime supports removing or amending minimum requirements for FCPs. A) We believe that FIs should have risk management protocols in place and a fair conduct programme aligned to the fair conduct principle. Having to meet an overly prescribed list of minimum requirements in a fair conduct programme, however, allows no flexibility for a business to address key areas with a balanced *"right sized"* approach and as suggested in the consultation document some of the requirements may create unnecessary or undesirable overlap with other regulatory regimes. B) We note that none of the examples of possible changes in paragraph 30 of the consultation document refer to paragraph (b) of s.446J(1), which relates to distribution methods. We submit that there should be a rebuttable safe harbour to the effect that an FI can rely on the FSLAA regime for compliance with its FCP obligations with respect to distribution methods, i.e. a licensed FAP and its advisers are deemed to be operating in a manner consistent with the FCP unless the financial institution has actual knowledge otherwise. A safe harbour would provide comfort to FIs that they do not need to impose duplicative policies, processes, systems and controls in relation to the advice activities of the FAP.

Financial advisers must comply with a comprehensive set of duties, including to give priority to a client's interests (s.431K of the FMC Act), to exercise care, diligence, and skill (s. 431L of the FMC Act), to meet the standards of competence, knowledge , and skill provided for in the Code of Professional Conduct for Financial Advice Services (Code) (s. 431I of the FMC Act) and to comply with the standards of ethical behaviour, conduct and client care required by the Code (s.431M of the FMC Act). Those Code standards include to treat clients fairly (CS1) and to ensure that financial advice is suitable (CS3). The duties on advisers are reinforced by the obligation on FAPs to take all reasonable steps to ensure compliance by their financial advisers with the duties (s. 431Q of the FMC Act).

The duties imposed by the FSLAA regime are working well, and effectively balance the dual objectives of availability and quality of financial advice. The Code standard to treat clients fairly, in particular, is fully aligned with the CoFI fair conduct principle.

Despite the FMA's *Guidance on Intermediated Distribution*, the different risk appetites and approaches of FIs to their CoFI obligations with respect to distribution methods means that there is already emerging evidence of de facto dual regulation of FAPs and financial advisers – first under the FSLAA regime and secondly by FIs in pursuit of their own compliance with the CoFI regime.

Lifetime has seen little uptake on the principles suggested in the FMA guidance and our experience is that FIs continue to impose broad obligations across intermediaries with little acknowledgement of the complementary nature of the two regimes.

Some examples of this are:

- FIs seeking copies of advisers' qualifications.
- Provisions in commercial agreements for access to advice documents to determine suitability of "Product" at an advice level.
- A requirement for advisers to annually complete and pass training accreditations relating to general advice competencies (i.e. over and above product training).

Dual regulation risks:

- FAPs becoming reluctant to subject themselves to multiple compliance regimes, and therefore limiting the number of FIs that they deal with, to the detriment of consumer access and choice,
- FIs structuring customer relationships to exclude advice, notwithstanding the importance of both initial and subsequent advice to consumers' overall financial outcomes,
- Confusion amongst FIs, FAPs and consumers about what regulatory rules govern the giving of financial advice in different circumstances; and
- Duplicative compliance costs.

	These outcomes are contrary to FSLAA's objectives of ensuring the availability (including affordability) and quality of advice. They are also contrary to the objectives of the current consultation, including ensuring proportionality, avoiding unnecessary compliance costs, and promoting fair treatment for consumers. For that reason, we submit that the rebuttal position is an appropriate measure to include.
3	*Which requirements should be removed or amended, if any? Please explain what changes you would like to be made.*
	Please see our answer to Q2.
4	*What would be the impact of removing or amending particular requirements (for example, on compliance costs for businesses)?*
	Please see our answer to Q2.
5	*Do you have any other comments on the minimum requirements for fair conduct programmes?*
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?*
7	*What are the advantages and disadvantages of adding an express minimum requirement for fair conduct programmes relating to complaints processes?*
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?*
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?*
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?*

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?*
	Lifetime supports Option A1, including the changes that we have proposed in our answer to Q2. We see the proposed reforms an opportunity to make changes that will ultimately deliver better outcomes for consumers.
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?*
	In our view, option B1 (status quo) is better aligned than option B2 to the duties of FAPs and advisers under the FSLAA regime and the standards in the Code, including the standard to treat clients fairly in CS1. The open-ended principle is consistent with CS1 of the Code. Having a more narrowly defined fair conduct principle risks confusion amongst FIs, FAPs, advisers and consumers about the standards of fairness in the two closely related contexts.
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?*
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?*
	Lifetime holds 2 market service licenses being a Financial Advice Providers Licence and a Discretionary Investment Management Service Licence We support the removal of duplication and reduction in unnecessary compliance costs a single Conduct licence would bring.
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.*
	Lifetime is concerned to ensure that there would be no contagion across different services under the single licence that might prevent ongoing business for one service in the event of a problem with another service, if that problem has no material bearing on the first service. A single licence would enable standard conditions to be streamlined across the existing services, for example the current differing reporting requirements for Business Continuity / Technology System incidents (FAP, within 10 working days / DIMS within 72 hours). That would be beneficial for licensees having to manage and monitor compliance with licence conditions.
18	*Are there any other matters that should be considered around market services conduct licensing?*
	It will be critical that an effective transition regime is established to minimise any burden imposed on existing licence holders in the event of licence consolidation. We would suggest transitional relief be applied to allow for practical administration, including attention paid to fees and levies to not impose additional compliance costs.

	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.*
	In principle we agree that allowing both the FMA and the RBNZ to leverage off work each other has completed would result in less burden on market participants, and they should be able to rely on each other's assessment on appropriate matters. The existing Council of Financial Regulators forum will be a valuable forum for discussion and prioritisation of such matters.
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.*
	We support the view of our industry body, Financial Advice NZ that the prudential and conduct focused remits of RBNZ and FMA are fundamentally different and increasing the FMA remit to approve changes of control carries complications as outlined in paragraph 100 of the consultation document.
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?*
	Lifetime believes that any change in control approval requirements should apply only to FIs that are prudentially regulated by RBNZ. Under the current market licensing regime, market service providers are required to have fit and proper protocols in place and advise the FMA of any change of control having taken required measures which include Companies Office director requirements. We believe that those measures are adequate and proportionate for non-FI licensees.

	We support the view of our industry body, Financial Advice NZ in that there is potential for complications identified in paragraph 100 of the consultation document, including increased direct transactions costs, business costs and opportunity costs in executing commercial transactions. Those implications outweigh the perceived benefits in the case of licensees that are not FIs.
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.*
	We have no experience that enables us to make informed comment on the adequacy of the current approach, or whether any problems with the current approach would be fairly and proportionately resolved by the proposals. We therefore support the position of our industry body, Financial Advice NZ on this matter.
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?*
27	*What safeguards should be in place for on-site inspections without notice?*
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.*
	Lifetime agrees that utilising experts to address and resolve any material concerns could be a proactive and constructive approach, depending on the circumstances. We would be concerned if unreasonable costs were imposed on the licensee (particularly with a smaller business).
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?*
	Any costs imposed on the licensee should be reasonable and proportionate to the scale and impact of the issue concerned. There should be a quick, independent and effective mechanism for licensees to challenge unreasonable costs.
33	*Do you have any other comments on the expert report power option?*
	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?*
	4*:* Implementation
35	*Do you have any comments on implementation of these reforms?*

Other comments