SIA | SECURITIES INDUSTRY ASSOCIATION

19 June 2024

Financial Markets Team
Small Business, Commerce and Consumer Policy
Ministry of Business, Innovation & Employment
PO Box 1473,
Wellington 6140

By email: FinancialMarkets@mbie.govt.nz

Tēnā koe Financial Markets Team,

**Securities Industry Association submission: Consultation paper – Fit for purpose financial services conduct regulation**

I am attaching the submission prepared by the Securities Industry Association (SIA) in response to the Consultation paper – *Fit for purpose financial services conduct* regulation (May 2024). We thank the Ministry for Business, Innovation and Employment (**MBIE**) for the opportunity to present our comments on this consultation paper.

**About SIA**
SIA represents the shared interests of sharebroking, wealth management and investment banking firms that are accredited NZX Market Participants.
SIA members employ more than 500 accredited NZX, NZDX, and NZX Derivatives Advisers and more than 400 Financial Advisers nationwide. Our members' combined businesses work with over 300,000 New Zealand retail investors, with total investment assets exceeding $80 billion, including $40 billion held in custodial accounts. Members also work with local and global institutions that invest in New Zealand.

**Key points**
In this submission, SIA makes the following key points:

**1. Industry supports treating customers fairly**

SIA supports the intent of the Financial Markets Conduct (Conduct of Institutions) Amendment Act 2022 (**CoFI**) good conduct obligations for Financial Institutions (**FIs**) to treat customers fairly. We strongly support the focus on reviewing the legislative and regulatory framework to ensure New Zealand has fit-for-purpose financial services regulation and that the regime is proportionate and targeted to where there may be a risk of harm to consumers. Streamlining, simplifying, and reducing duplication in regulation can support achieving a fair and transparent sector that operates with integrity and good outcomes for both the consumer and the sector. The Government recognises the increasing complexity and cost burden of compliance, which, in some circumstances, may also indirectly affect customers.

**2. CoFI creates duplication for FAPs/intermediaries**

SIA members are licensed Financial Advice Providers (**FAPs**) regulated by FMA and NZX Trading and Advising Participants regulated by NZX. Members are not Financial Institutions (**FIs**) by definition of the CoFI Act; therefore, they are not explicitly targeted by the CoFI regime. However, member firms act as intermediaries for some financial products issued or managed by FIs, such as managed investment products and bank regulatory capital. As such, they are captured by applicable intermediary provisions of

this legislation, as are their customers. This has resulted in duplicated regulation in some areas, for example, as discussed in point 6 below.

**3. SIA supports simplifying licensing**

SIA supports a move to a single conduct license for simplicity. However, the proposal to consolidate multiple licences into a single licence will not necessarily provide meaningful efficiencies. We anticipate the underlying requirements and processes for obtaining and maintaining each licence, and the reporting requirements will remain unchanged. The potential costs of new regimes must be considered, including that existing licensees should not bear any transition costs to a single licence.

**4. Change in control approval requirements unnecessary**

SIA does not consider that it is necessary for the Financial Markets Authority (**FMA**) to have additional powers requiring change in control approvals. Given the nature of the FMA's oversight is around conduct and capability, we consider that the regulatory settings are appropriately set at notification under regulation 191 of the FMC Regulations. Any change in control approval requirements should only apply to firms licensed to act as FIs and should only be applied by the Reserve Bank of New Zealand (**RBNZ**).

**5. SIA cautions against increasing on-site inspections powers**

SIA believes the FMA's existing information-gathering powers for monitoring the compliance of regulated firms are already in place and effective, making the proposed expansion unnecessary. We do not consider that the FMA's powers should be increased to include on-site inspections without notice. However, if the FMA's powers are to be extended, we submit that this power should be limited to Financial Institutions that are dual-regulated by both the RBNZ and FMA.

**6. Unintended consequences of duplication require further examination**

We appreciate MBIE inviting further comments relating to this regime, and we discuss its consequences in section 3 of our submission. We propose that the impact of CoFI Regulations on the Financial Markets Conduct Regulations 2014 (**FMC Regulations**) needs to be re-examined. The amendments will introduce a specific prohibition on FIs offering volume or value-based incentives, such as commissions, to their employees, intermediaries and agents in connection with the supply of relevant financial services and associated financial products to retail customers. They will also prevent intermediaries, including FAPs, from offering such incentives to their employees and agents. Existing provisions in the Financial Markets Conduct Act 2013 (**FMC Act**) and FMC Regulations comprehensively deal with this. In those circumstances, there was no need for the CoFI Regulations to have been imposed on intermediaries who are FAPs and any advisers engaged by them. Doing so duplicates and complicates aspects of the existing regulatory regime. This will inevitably increase industry compliance costs without noticeable improvement in consumer outcomes. These compliance costs are likely to increase because, in contrast to the current regime, the drafting of the CoFI is highly technical and not easy to follow. This means that firms are likely to need expert advice and engage extensively with the FMA and other stakeholders to ensure that they comply with the new requirements. We propose that the CoFI regulations be revoked, amended or delayed to ensure this duplication is resolved with a fit-for-purpose solution.

Our attached submission provides further details on these points.

Some SIA member firms may make individual submissions based on issues specific to their business. Those issues and views may not be reflected in this submission. No part of this submission is required to be kept confidential.

Please get in touch should you have any questions about this submission or require further information.

Nāku noa, na

Privacy of natural persons

Bridget MacDonald
**Executive Director**
**SECURITIES INDUSTRY ASSOCIATION**

Privacy of natural persons

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

## Your name and organisation

| | |
|---|---|
| **Name** | Bridget MacDonald |
| **Organisation (if applicable)** | Securities Industry Association |
| **Contact details** | Privacy of natural persons<br>Mobile: 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]~~

SIA SECURITIES INDUSTRY ASSOCIATION

# Responses to discussion document questions

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| | **Introduction** |
| 1 | *Do you agree the proposed criteria are appropriate, given the objectives? Are there other criteria which should be considered?* |
| | SIA supports the intent of the Financial Markets Conduct (Conduct of Institutions) Amendment Act 2022 (**CoFI**) good conduct obligations for Financial Institutions (**FIs**) to treat customers fairly. We strongly support the focus on reviewing the legislative and regulatory framework to ensure New Zealand has fit-for-purpose financial services regulation and that the regime is proportionate and targeted to where there may be a risk of harm to consumers.<br><br>Fit-for-purpose regulation ensures that regulatory frameworks are targeted, right-sized, and proportionate to the issues they intend to address. It also ensures that they are effective and workable for the parties they apply to while delivering the best consumer and sector outcomes.<br><br>SIA members are already dual-regulated as licensed Financial Advice Providers (**FAPs**) and NZX Market Participants by the FMA and NZX, respectively, yet are captured as intermediaries by the CoFI Act. This has resulted in duplicated regulation in some areas.<br><br>Streamlining, simplifying, and reducing duplication in regulation can support achieving a fair and transparent sector that operates with integrity and has good outcomes for both the consumer and the sector.<br><br>We appreciate that the Government recognises the increasing complexity and cost burden of compliance, which, in some circumstances, may indirectly affect customers. |
| | **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?* |
| | - |
| 3 | *Which requirements should be removed or amended, if any? Please explain what changes you would like to be made.* |
| | - |
| 4 | *What would be the impact of removing or amending particular requirements (for example, on compliance costs for businesses)?* |
| | - |

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| 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?* |
| | As intermediaries captured by this regulation, we refer to our comments in *Section 3. Limitations and constraints on analysis* below. |
| 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?* |
| | As intermediaries captured by this regulation, we refer to our comments in *Section 3. Limitations and constraints on analysis* below. |

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| | **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?* |
| | - |
| 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?* |
| | SIA supports the moving to a single conduct licence for simplicity. However, the proposal to consolidate multiple licences into one does not necessarily provide meaningful efficiencies, as the underlying requirements and processes for obtaining each licence remain the same. For example, Discretionary Investment Management Services (**DIMS**) and Managed Investment Schemes (**MIS**) are very different products in different business areas, so there would not be any economies in licence applications or reporting as they will involve different areas of expertise in the business. Maintaining and renewing licences and the work undertaken to produce regulatory returns are still likely complex processes.<br><br>Existing licensees should not bear any transition costs to a single licence. The potential costs of new regimes need to be considered, including the grandparenting of existing licence holders to any new regime. |

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| 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.* |
| | - |
| 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.* |
| | No. The Financial Markets Authority's (**FMA**) remit is different from that of the Reserve Bank of New Zealand (**RBNZ**); therefore, it is appropriate that their respective statutory powers don't necessarily mirror each other. RBNZ is responsible for the prudential supervision of registered banks and licensed insurers. Banks, in particular, play a pivotal role in our payment and settlement system, as well as providing cash flow (liquidity) to the wider economy as a whole. Registered banks are vitally important to the stability of New Zealand's financial system. Against that background, it makes sense that RBNZ would be required to authorise a change in ownership, which may impact the soundness and efficiency of that financial system.<br><br>Conversely, the FMA's remit is primarily conduct regulation. Conduct regulation focuses on |

the behaviour of financial markets participants. Whilst it is important for the FMA to know and understand whether the licensee is capable of effectively performing the licensed service, it is largely irrelevant what the ownership structure is of the licensee vis a vis the FMA's role in regulating conduct. For example, in the FMA's Financial Advice Provider (**FAP**) licensing guide (published in March 2023), the only question around ownership is whether any of the owners of the FAP have had any convictions or successful disciplinary actions taken against them. This is an appropriate question for a conduct regulator to ask, given that their focus will be on consumer treatment and outcomes.

In this context, SIA does not consider that it is necessary for the FMA to have additional powers requiring change in control approvals. Given the nature of the FMA's oversight is around conduct and capability (rather than wider, more systemic issues like the financial stability of our banking system), we consider that the regulatory settings are appropriately set at notification under regulation 191 of the FMC Regulations. This then allows the FMA time to ask questions regarding what impacts (if any) the restructure might have on the interests of customers, and take steps if it has concerns, but without introducing the uncertainty, delay and additional transaction costs that will inevitably follow if FMA approval is required.

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| 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?* |
| | For the reasons outlined above, SIA considers that the change in control approval requirements should only apply to firms licensed to act as FIs and should only be applied by RBNZ. |
| 24 | *Do you have any other feedback on the change in control requirements option?* |
| | No. |

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

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| 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.* |

No. The FMA's existing effective information-gathering powers for monitoring the compliance of regulated firms are already in place, making the proposed expansion unnecessary.

It is the SIA's view that the consultation document does not set out a clear problem definition, nor does it specify the costs and benefits of the proposed approach. There is no justification for expanding the FMA's powers other than to say that "In very limited circumstances, it **may** be necessary for regulators to conduct on-site inspections without notice" (emphasis added). The examples then given as to when these circumstances might arise are either no longer applicable or are adequately dealt with by other powers already at the FMA's disposal. For example:

- The scenario discussed in paragraph 107 (assessing whether firms have a real "place of business in NZ") is no longer a requirement under the Financial Service Providers Registration (**FSPR**) and Dispute Resolution Act 2008. Since the introduction of

section 7A, financial service providers that provide financial services to retail clients in New Zealand are required to register on the FSPR even if they have no place of business here. Therefore, the issue identified no longer exists, and even if it did, the FMA is already entitled to visit a public place of business in order to make enquiries.

- In paragraph 108, the Ministry for Business, Innovation and Employment (**MBIE**) notes that an on-site inspection power would enable the FMA to ascertain a firm's financial health quickly in circumstances where the FMA has concerns about the financial health of a firm that is raising money from consumers. The FMA already has a number of powers available to it that would assist in circumstances where it is concerned about the conduct of, or disclosure from, entities raising funds from consumers/investors. These powers include, without limitation:

    - an interim stop order under section 465 of the FMC Act (where the FMA can require the firm to stop raising funds until it has provided certain information to it);
    - a direction order under section 468 of the FMC Act;
    - for licensed entities, the full spectrum of powers available to the FMA under section 414 of the FMC Act; and
    - issuing a section 25 notice with a shorter time frame for compliance. Failure to comply with a section 25 notice is an offence attracting criminal liability under section 61 of the Financial Markets Authority Act, with a maximum fine upon conviction of $300,000.

- On the rare occasion that the FMA is concerned about the risk that information could be destroyed or records altered if given time to do so (refer to paragraph 104), the appropriate response is for the FMA to obtain a search warrant. As noted by Heath J in Perpetual Trust v Financial Markets Authority [2012] NZHC 2307[1]:

    *"the threshold for obtaining a warrant is not high. The Authority need only have reasonable grounds to suspect that a person has engaged or is engaging in such conduct and reasonable grounds to believe the search will find relevant evidential material"* [paragraph 32].

- The FMA also has the power to declare a corporation (that is also a financial markets participant) to be at risk, or recommend that it be placed under statutory management, pursuant to the Corporations (Investigations Management) Act 1989 (**CIMA**). CIMA affords the FMA several options to preserve the interests of a corporation's members and creditors, including the ability to make directions.

The above powers may be used by the FMA when it is seeking information from a non-compliant market participant. In our experience, however, the majority of market participants are willing compliers who not only responsibly respond to section 25 notices but also voluntarily provide information upon request to the FMA. It is unfair to suggest (without clear evidence) that market participants may provide the FMA with a skewed picture of compliance and use this as justification to extend the FMA's powers to include

[1] https://jade.io/article/994000

without notice on-site inspections across the industry as a whole.

In the case of licensed market participants in particular, the FMA has already considered the extent to which the entity is eligible to provide the licensed service (which includes an assessment of whether the directors and senior managers are fit and proper persons). It is incongruous to licence an entity based on these eligibility requirements and then suggest that they cannot be trusted to reliably comply with information requests from the regulator or, more broadly, the standard conditions of their licence.

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| 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?* |

For the reasons above, we do not consider that the FMA's powers should be increased to include on-site inspections without notice. However, if the FMA's powers are to be extended, we submit that this power should be limited to Financial Institutions that are dual-regulated by both the RBNZ and FMA.

This approach would be consistent with the problem definition initially identified in the discussion document, which notes at paragraph 89 that MBIE is considering the extent to which RBNZ and the FMA ought to have consistent tools to support an effective twin peaks model by creating alignment between the powers of the prudential and conduct regulators. Further, at paragraphs 109 and 117, where it suggests that the lack of alignment with equivalent RBNZ powers may undermine coordinated and efficient supervision and monitoring by the twin peak regulators (e.g. joint on-site visits).

It is unclear why MBIE chose to move from focussing on coordinating the powers of the twin peak regulators to increasing the FMA's powers more generally. It is SIA's view, as noted above, MBIE has not provided a compelling case as to why the without notice inspection power ought to be extended more generally to all financial markets participants—this shift in focus warrants further discussion and consideration.

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| 27 | *What safeguards should be in place for on-site inspections without notice?* |

SIA does not consider that the FMA should have the power to conduct on-site inspections without notice. However, if this power is introduced, it should be closely controlled, restricted to very limited circumstances where there is a clear and appreciable risk of harm to investors (rather than monitoring visits) and include, at the very least, the safeguards mentioned in paragraph 114 of the discussion document.

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| 28 | *Do you have any other feedback on the on-site inspection option?* |

SIA does not believe extended powers are necessary, nor should they be introduced broadly.

It is essential that there are clear reasons and purposes for this approach to be introduced, and we would not want to see regulatory creep of this approach being undertaken outside the scope of the financial institutions to whom this Act applies. For example, it would not be permissible to conduct on-site inspections with financial institution intermediaries. We

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| | expect that the FMA would contact a firm directly to discuss an issue or request information or that issuing section 25 notices would be an appropriate mechanism where there are serious concerns or issues. |
| *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.* |
| | No, not in the ordinary course. This effectively amounts to out-sourcing regulatory powers of supervision and investigation to professional advisory firms at the cost of market participants in circumstances where the FMA should, and does, have the in-house expertise to assess compliance with regulatory obligations. This has the potential to create a whole new industry of private consultants, at the cost of financial markets participants. However, there may be circumstances where it could be appropriate for the FMA to commission an expert to produce a report once a breach has been established. For example, the FMA may wish to commission an expert to provide assurance that specific concerns have been addressed as part of an action plan imposed under s414(2)(b) of the FMC Act.<br><br>As NZX Market Participants, SIA members are already subject to regulation by both FMA and NZX. However, they are also classified as intermediaries under the CoFI Act. If the power to commission expert reports is introduced, its application should be limited to Financial Institutions that are dual-regulated by RBNZ and FMA, ensuring a clear and specific scope of its use. |
| 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?* |
| | To the extent that the rationale is to align the powers of both RBNZ and FMA vis a vis financial institutions, then this power should only apply to Financial Institutions. If the power applies beyond this, we consider that it should only apply once a breach of a legal obligation has been established. |
| 31 | *What safeguards should there be for an expert report power?* |
| | See above. |
| 32 | *Is it appropriate that the firm concerned bear the cost of the expert report? Why / why not?* |
| | No, not in the ordinary course. However, as noted in our response to question 29, it may be appropriate for the FMA to commission a report to provide assurance that a participant has complied with the terms of an action plan. In these circumstances, it might be appropriate for the firm to bear the cost of the expert report. |
| 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?*

The Securities Industry Association appreciates that MBIE is providing an opportunity to raise further concerns about the Conduct of Financial Institutions regime outside this consultation.

*Review should consider Financial Markets Conduct (Conduct of Institutions) Amendment Regulations 2023*

While they are not specifically raised in the consultation, we encourage the Government to reconsider the reforms contained in the Financial Markets Conduct (Conduct of Institutions) Amendment Regulations 2023 (**CoFI Regulations**) in light of its desire to simplify and streamline current regulations and remove duplication.

*Background and policy rationale of CoFI Regulations*

The CoFI Regulations will amend the Financial Markets Conduct Regulations 2014 (**FMC Regulations**), with effect from 31 March 2025. The amendments will, in summary, introduce a specific prohibition on financial institutions offering volume or value-based incentives, such as commissions, to their employees, intermediaries, and agents in connection with the supply of relevant financial services and associated financial products to retail customers. They will also prevent intermediaries from offering such incentives to their employees and agents.

We understand that the policy concern behind the CoFI Regulations is that such incentives may give rise to conflicts of interest and result in the sale of unsuitable financial products to consumers. That is, an adviser or salesperson may put their interest in receiving a higher commission (or other reward) if they reach a certain sales target in relation to a service or product ahead of an individual customer's needs.

*CoFI Regulations not necessary in respect of intermediaries who are Financial Advice Providers (and their advisers)*

While we accept that this is a legitimate policy concern, the CoFI Regulations are not necessary to address that concern in relation to intermediaries who are licensed Financial Advice Providers (**FAPs**) and any financial advisers engaged by them. This is because the existing provisions in the Financial Markets Conduct Act 2013 (**FMC Act**) and FMC Regulations already deal with the matter in detail.

Under those provisions, anyone giving financial advice is under a statutory duty to, among other things, give priority to their client's interests by taking all reasonable steps to ensure that their advice is not materially influenced by their own interests or those of any other person connected with the giving of that advice (including any FAP they may be acting for).[2] They must provide clients with prescribed information upfront concerning any conflicts of interest, commissions, or other incentives so that customers can make informed decisions.[3]

[2] FMC Act, section 431K

[3] FMC Regulations, Schedule 21A, Part 2.

And they must comply with Code of Professional Conduct for Financial Advice Services (**Code**). The Code sets out several standards around ethical behaviour and client care, and competence, skill and knowledge.[4] The standards include specific rules around giving suitable advice and avoiding or appropriately managing conflicts of interest.

FAPs may be subject to penalties and/or required to pay compensation where they, or any financial advisers acting for them, breach these obligations. FAPs also face the prospect of losing their licences and deregistration orders. Individual financial advisers can be subject to disciplinary action from the Financial Advisers Disciplinary Committee and the FMA for breaches of duties. They can be fined and potentially deregistered or suspended.[5]

Accordingly, there is already a comprehensive regulatory regime in place for FAPs and their advisers in relation to suitability of advice and conflicts of interest, with potentially very serious consequences for any breaches of their duties. These duties are set out in clear and concise terms and are firmly embedded and well-understood by the industry.

In those circumstances, there was no need for the CoFI Regulations to have been imposed on intermediaries who are FAPs and any advisers engaged by them. Doing so simply duplicates aspects of, and otherwise complicates, the existing regulatory regime. This will inevitably increase compliance costs for the industry without any obvious improvement in consumer outcomes. These compliance costs are likely to be increased by the fact that, in contrast to the current regime, the drafting of the CoFI is highly technical and challenging to follow. This means that firms are likely to need to obtain expert advice and engage extensively with the FMA and other stakeholders to ensure that they are complying with the new requirements.

To the extent that there is concern that the current requirements are not being complied with in practice, then that is an issue with how they are being enforced rather than a gap in the rules that needs to be filled with yet another set of overlapping rules.

*CoFI Regulations overreach and should be revoked, amended or delayed*

For the reasons set out above, the CoFI Regulations create considerable duplication of existing requirements in relation to FAPs and their advisers. Revoking them, or at least amending them to exclude FAPs and their advisers explicitly, would be an obvious and relatively straightforward way for the Government to advance its streamlining and simplifying goals. In contrast to any potential amendments to the regime introduced by the CoFI Act, which will take significant time to develop and implement, Cabinet could do this now.

If the Government is not minded to revoke (or amend) the CoFI Regulations at this stage, then we submit that it would still be prudent to delay their commencement until after any amendments to the regime introduced by the CoFI Act have passed next year. This will give the Government time to consider whether the approach in the current CoFI Regulations remains appropriate in light of the new policy settings in the primary legislation.

[4] FMC Act, section 431M. The Code is available at codeofprofessionalconduct-march2021.pdf (financialadvicecode.govt.nz)

[5] A useful summary of the relevant liability provisions can be found at Liability in the new financial advice regime (mbie.govt.nz).

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**Summary**

SIA supports the intent of the CoFI regime. We appreciate the Government's intention to simplify and streamline the regulatory framework so that it is fit for purpose rather than overly and unnecessarily complicated. We strongly believe further small changes could be made to recognise and reduce duplication, yet still ensure the CoFI regime meets its intention and that customers' interests are still held at the heart of the financial advice and services delivered and that customers are treated fairly. SIA reminds that fairness, integrity and good conduct also lie at the heart of the high conduct standards required by FAPs and NZX Market Participants. We believe this also needs to be recognised in the context that duplication of regulation creates an unnecessary burden for no real benefit.

SIA thanks MBIE for the opportunity to submit on this consultation and welcomes the opportunity to discuss our submission or provide further information if required. In the first instance, please contact:

Bridget MacDonald, Executive Director,
Securities Industry Association
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