SIA | SECURITIES INDUSTRY ASSOCIATION

Submission

From the Securities Industry Association

Issues Paper: Review of the Financial Advisers Act 2008 and the Financial Service Providers (Registration and Dispute Resolution) Act 2008

21 July 2015

The Securities Industry Association is an unincorporated body established to represent the New Zealand Sharebroking Industry and provides a forum for discussing important industry issues and developments, managing industry change, and to represent the broking industry in respect of legislative management, operational and regulatory issues that impact the industry as a whole.

The Securities Industry Association members employ circa 400 Authorised Financial Advisers and deal with a combined 300,000 New Zealand retail investors with total investment assets exceeding $60 billion. They also deal with virtually all global institutions with the ability to invest in New Zealand.

1. Do you agree that financial adviser regulation should seek to achieve the identified goals? If not, why not?

We agree with the listed goals but we do not accept that the regime as implemented is necessarily delivering efficiently or effectively on these goals. More on this latter view throughout the submission in answer to the detailed questions but some higher level comments first.

First, while we agree that accessibility of financial advice is a key goal, it is important to recognise that, in many cases, what is important to consumers is access to *personalised* advice as opposed to general opinion or information.

In our view, the key to improving this access is simplicity – under the current regime, accessibility is hindered because consumers are confused by the range of industry acronyms and terms and do not clearly understand:

- who can provide them with personalised advice;
- limitations on the scope of the advice that can be provided by non-AFAs; and
- the differential standards applying to the different categories of advisers delivering exactly the same service on the same type of products.

In order for accessibility to be improved, we think the regime should be clearly understandable by consumers. For example, and building on the recommendations of the Australian Parliamentary Joint Committee on Corporations and Financial Services in this area,[1] we think there is merit in the idea that personalised advice should be re-termed "financial advice", with other advice or information being termed "product sales information" or a similar term. "Financial advice" would then be provided by a "financial adviser", and "financial advisers" would be subject to common standards.

Secondly, we think that an important part of the review should be considering whether the current QFE regime is resulting in unintended outcomes. We understand that MBIE does not have any information as to how many of the estimated 23,000 QFE advisers are providing personalised advice on category 1 products, but given the much lower number of AFAs (and the fact that many AFAs choose to provide advice on only one provider's products) it is very likely that the vast majority of personalised advice on category 1 products is being provided by advisers who can/are only advising on one provider's products. We query whether this outcome is desirable, and in particular whether this industry structure will meet the needs of New Zealanders in the coming years – for example, with KiwiSaver increasingly becoming New Zealanders' largest non-property investment, where will consumers be able to access advice on switching providers?

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[1] Parliamentary Joint Committee on Corporations and Financial Services *Inquiry into proposals to lift the professional, ethical and education standards in the financial services industry* December 2014.

Thirdly, we note that there is little industry appetite for increased compliance burdens and costs, and that increasing compliance costs could further impact access to advice by consumers. However, it is also important to acknowledge that the current review may be the last time the regulation of financial advice is looked at for many years. We believe that there is a real opportunity in the current review to bank and build on the gains made in the industry since the introduction of the FAA, without raising costs.

Overall, we consider that there is a risk that the review focuses on detail to the detriment of the larger question as to whether the regime is correctly strategically focused. We comment later on the government business growth agenda including building capital markets and the need to ensure that the regime is appropriately structured to deliver to this wider government policy goal while still delivering to the specific financial adviser regulatory regime goals.

The SIA further believes that a goal of the Regulation should be to ensure that the provision of financial advice is provided in a consistent manner across the industry to a standard that befits the service and appropriately protects consumers.

Finally, our expectation is that there will be areas of consultation where the Ministry receives mixed or conflicting views, perhaps even from within members of groups that might generally be regarded as usually being aligned in their goals. In this circumstance, we suggest that the Ministry focus on the benefits and risks to consumers, including potential unintended consequences, in determining an appropriate regulatory outcome. We also suggest that, where possible, any such regulatory decisions be based on research and hard evidence.

2. What goals do you consider should be more or less important in deciding how to regulate financial advisers?

The principal goal should be consumer protection and access to appropriate quality advice delivered by advisers who are qualified and can discharge their duties with good conduct while acting within their areas of competence. Regulation should be commensurate with the level of risk to consumers, the complexity of the services being provided and the commercial impact of compliance. Where this balance is not struck, access can be severely limited.

Having advisers act well (i.e. with good conduct) and acting within their areas of competence is insufficient if consumers can't get information to find or choose an adviser, can't access a financial advice service (for whatever reason), don't have confidence in the financial adviser or advice, and can't access a dispute resolution service (including being unable to receive appropriate restitution, where appropriate) in the event of a dispute.

Hence we submit that we believe that all of these goals are interdependent and equally important if the regulatory regime is to be effective.

Expressed slightly differently, we consider that the regulatory policy objectives can be said to have succeeded if:

1. Consumers can access services and products that they might reasonably expect to be available to them with proportionate consumer protection.
2. Advisers can deliver appropriate advice or services to their clients in a cost effective manner, without constraints or restrictions that make giving advice uneconomic for the service that the client wants or for the transaction the client wants to complete.

We also refer to the broader government policy objectives relating to the business growth agenda including building capital markets. We submit that another appropriate test for the financial adviser and service provider regulatory regimes should be whether the detailed regulatory outcomes are contributing to or detracting from these broader policy objectives.

We highlight the views of Peter Mence, the national president of the property council, as expressed in a recent media article (NZ Herald, Section C, page C1, dated 25 April 2015), which stated, "A 'holistic approach' is needed in relation to barriers affecting New Zealand's economic development rather than fragmented and vested interest viewpoints." The article goes on to identify the contribution that the property industry makes to the economy, the risks arising from separating property 'into its own corner' and viewing it in isolation, and the need to ensure that property can deliver the answers necessary to see business and the economy grow. The article also states that if any constraint is applied, for example, to property development, then the development of businesses which require buildings to operate in will also be constrained.

We submit that the regulation of financial advisers, financial advice and financial service providers is similarly pivotal in supporting the development of the New Zealand economy, the government's business growth agenda and its objective of building capital markets. We therefore suggest that there is a need to test to ensure that the financial adviser and service provider regulatory regimes are not compromising the broader government objectives, and vice versa. That is, ensure that there is an appropriate balance between the two sets of objectives.

We conclude this part of our answer to this question by submitting that we do not believe that an appropriate balance has been achieved to date, with further details of our views to be outlined in our answers to succeeding questions.

We then continue our answer to this question by suggesting that the goals, and the review itself, need to be focused on identifying and only changing matters that are material, particularly in relation to consumers and consumer access to services.

For example, we note the Good Returns web article titled, "Old trail income under review" published on 11 May 2015. This article states that the Ministry has said that Registered financial advisers receiving trail commission on category one products that they are no longer allowed to offer advice on will come under scrutiny in this year's Financial Advisers Act review.

While this issue has little or no relevance to SIA member NZX Firms, we question why it should be a focus of the review at all? Our understanding is that, unless any regulatory change also required that the trail commission is to then be credited to consumers, cancelling such trails would be neutral for consumers, would disadvantage (RFA) advisers and would benefit product providers, as the costs are already factored into the product. What material impact will such a change have towards meeting the goals of the legislation?

We have included this example as a means of highlighting our view that, as stated earlier in answer to this question, the focus of the review should be to identify and only make changes that directly and materially deliver to the primary legislative goals and the wider government policy objectives.

We would further submit that the FAA regime has been in place for a relatively short period of time and significant time and effort has been dedicated by NZX Firm members of the SIA to enhance existing, and develop new, compliance procedures and policies that meet the current legislative requirements. We suggest that any amendments or changes to the current legislative framework for immaterial issues or to achieve or improve standards relating to goals that are not primary should be avoided or abandoned unless there are identified benefits that clearly outweigh the costs of change.

3. Does this definition adequately capture what financial advice is? If not, what changes should be considered?

We submit that the definition does adequately capture what financial advice is for the range of products covered within the current legislation.

In earlier submissions, we suggested that the "products" range might be extended to capture anything which someone provided financial advice upon while also purporting that the "product" being advised upon had some or all of the characteristics of an investment. Such an approach would bring within the "care, diligence and skill" and "not to engage in misleading or deceptive conduct" provisions the financial advice (a recommendation to buy, sell or hold) provided from time to time on things as varied as real property, collectibles and commodities.

4. Is the distinction in the Financial Advisers Act (FA Act) between wholesale and retail clients appropriate and effective? If not, what changes should be considered?

We submit that a distinction between wholesale and retail clients is appropriate.

Effectiveness is reduced where there are inconsistencies between the definitions used in differing pieces of closely related legislation [e.g. Financial Advisers Act 2008, Financial Service Providers (Registration and Dispute Resolution) Act 2008 and the Financial Markets Conduct Act 2013]. The different regimes can be confusing and unhelpful for consumers who do not understand the distinction between offers of securities/products and how they are treated in terms of financial advice protections.

Effectiveness is also reduced where a retail client successfully but inappropriately manages to achieve wholesale designation. In the latter case, this can arise where a client decides that he or she wants access to a product, service or offer and the only way that the retail client can obtain access to such a product, service or offer is to satisfy the criteria to be a "wholesale" client and the client inappropriately seeks to attain and successfully attains wholesale or eligible investor status to obtain access to a product, service or offer that would otherwise be denied to them.

Possible solutions involve a review of the different legislative definitions to determine whether the definitions can and should be aligned, together with a review to ensure that the provisions are adequate to remove or reduce the risks that a retail client inappropriately gains wholesale client status.

5. Is the distinction in the Act between a personalised financial service and a class service appropriate and effective? If not, what changes should be considered?

The distinction is appropriate from the point of view of regulating who can provide advice of which kind on which products. As set out in our response to question 1, however, in the advice context we suggest that what consumers think of as “financial advice” is in fact personalised advice under the current regime, meaning that some changes of terminology may be useful in assisting consumer understanding in this regard. We note that changes in terminology do not necessarily require re-writing the underlying structure of the Act, it could simply be a matter of providing for certain “reserved words” that can only be used to denote particular classes of persons or services.

We also note that ineffectiveness can arise in this area in two ways.

First, ineffectiveness arises where the consumer believes that a personalised financial service is being delivered when the service being delivered is a class service and the consumer proceeds when such a course of action would not have been recommended if a personalised financial service had been delivered. In this circumstance, a possible solution would be to require the entity or individual delivering the class service to issue a warning (verbally or in writing) that the advice or service provided is general in nature, that the particular personal circumstances of the consumer have not been considered and that It is the responsibility of the

consumer to ensure that the (advice, product, service) is suitable and that it meets the consumer's needs.

The second area of ineffectiveness arises under the legislative, regulatory and FMA guidance provisions relating to limited personalised advice. It is clear from consumer experience with industry advice and service delivery that industry practitioners have been dis-incentivised to deliver limited personalised advice under the regulatory regime, thereby often limiting consumer access to either class, information only or even simply transaction only support. This is not an appropriate outcome, made worse, as noted under the first area of ineffectiveness, where the consumer erroneously believes that a personalised service is being delivered.

A suggested solution for this second area of ineffectiveness is to provide an appropriate safe harbour for the delivery of limited personalised advice within whatever constraints a consumer imposes, whether the constraints arise from limitations of financial cost, information provided, time available, etc. We also submit that any such safe harbour provision should include a condition that the entity or adviser outline to the consumer (verbally or in writing) the limited nature of the service, the risks arising from the service being limited, and the responsibility thereby left with the consumer to ensure that the (advice, product, service) is suitable and that it meets the consumer's needs.

6. Is it appropriate to have different requirements on advisers depending on the risk and complexity of the products they advise upon?

We support differences in requirements for advisers depending upon the risk and complexity of the products, where consistency of requirements on advisers for different products would otherwise result in advisers meeting requirements greater than those necessary to meet the policy objectives. The requirements on advisers should always be the minimum necessary to deliver to the desired policy objectives, as any requirement that is imposed above the minimum necessary to meet such objectives for different product risks and complexities will almost certainly increase costs or create other barriers to delivery of product, advice or service.

However, we also consider that it is appropriate to consider risk to the consumer. For exactly the same product, the risk to a particular consumer can be substantially different to the point that some relief may be able to be granted from the regulatory requirements where the risk to a particular consumer is negligible. The relief already applicable in relation to wholesale clients is one such example but there are examples where the mere size of the transaction is such that risk is negligible. Relief might be in the form of a safe harbour where certain processes are followed to determine the risk to the consumer. While differing requirements may apply, the framework should not prevent advisors from offering products due to complexity. Determining the requirements on advisers taking into account the risk to the consumer would make it more cost-effective for advice to be provided on “complex”

products (for example, KiwiSaver) where the amount at stake was low (for example, a first joiner), thereby improving consumer access to advice.

We also use this question as an opportunity to raise and consider the issue of regulators imposing restrictions or bans on client access to products. An FMA spokesperson is reported as stating in relation to one product, "It is not our intention to restrict retail investor access to these products as long as we are seeing responsible selling practices from providers and well informed investors." The SIA suggests that, where there are such concerns, the appropriate response is to address the selling practices and investor capability, rather than to consider banning consumers from being able to access certain products. Provided all legal requirements have been met in offering the product, no restriction or ban should ever be considered. The FMA already has appropriate powers to restrict product distribution where offer documents fail the required tests. In the event that any difficulty arises because of a failure in the regulatory structure or legal requirements for offer documents, amend that rather than restrict or ban products.

7. Does the current categorisation system accurately reflect the level of complexity and risk associated with financial products? If not, how could it be improved?

The current categorisation system is useful in identifying that there are differences between financial products, whether arising from complexity, risk or some other factor.

However, it is questionable, as appears to be the case currently, whether it can be argued that some products, investment products for example, are more or less complex or risky than certain insurance or lending products.

What is critical is that, when a financial service is delivered on any product, it is delivered with good conduct and with care, diligence and skill (competence).

We submit that while the complexity and inherent risk of a financial product is important for analysing the category of product and process to follow, to ensure the consumer is ultimately protected, it is also important to look to the potential damage or harm that the customer may suffer in the event of negligent advice or the result of significant market correction e.g. this can be large for insurance products. Noting again as above in answer to question 6, the framework should not prevent advisors from offering products due to complexity.

8. Do you think that the term Registered Financial Adviser (RFA) gives consumers an accurate understanding of what these advisers are permitted to provide advice on and the requirements that apply to them? If not, should an alternative term be considered?

It is our opinion that the public does not have an accurate understanding of this term, nor do we believe it is reasonable for the public to have such knowledge or understanding.

The Colmar Brunton survey completed for the Ministry and anecdotal evidence strongly suggests that consumers do not understand the terms. We go so far as to suggest that the term Registered Financial Adviser, and Authorised Financial Adviser for that matter, are both largely irrelevant to consumers and that consumers should not have to have an accurate understanding of such artificially created legislative terms, or the names of the services that such named advisers are permitted to provide advice upon or the requirements that apply to them.

Further, we suggest that the terms do not accurately describe what advisers are permitted to provide advice upon, as advisers are only ever permitted to provide advice on matters that they are competent to do so, which will often be a subset of the broad list of things that RFAs or AFAs might otherwise be permitted under the legislation to provide advice upon.

Therein lies the problem. The term provides little help to a consumer towards determining whether any particular RFA (or AFA for that matter) is permitted to provide particular advice, as the RFA or AFA may simply not be competent to do so, even while the legislation provides a general permission. It is possible that, with education and appropriate publicity the public may achieve a greater understanding of what such titles mean but, if maintained, we submit that it should be the role of the regulator to promote the distinction and further advance the public's knowledge as to the different types of advisers at the expense of taxpayers.

Our suggested alternative solution is to continue to let the legislation use whatever terms are considered appropriate to support the administration of the regime but to look to develop and allow the use by an adviser of a range of alternative terms familiar to the consumer that better explain what the adviser actually does, is believed to be competent to do, and is appropriately registered to do. Such an approach will also potentially be supportive of changes to the register that may better assist consumers to have access to relevant information to help them find and choose a financial adviser.

Some have suggested that only those providing personalised advice should be able to use the term "financial adviser." On the face of it, this would seem to be an elegant solution but, as with any label, it can risk misinterpretation, if the actual service being provided by the adviser in any particular circumstance is not actually an advice service.

For example, we believe it to be important not to constrain the range of services that an adviser might provide, subject to the competency test. That is, for example, an adviser that is competent to provide a comprehensive personalised financial advice or investment planning service should not be required to always and only ever provide such a service. Such an adviser should still be able to provide lesser or

more limited services, such as limited personalised advice, class advice, an information only service, or even a simple transaction service. The reference above to competency is the key point, as it is in other professions. E.g. chartered accountants would not hold themselves out to provide tax advice if they were an insolvency specialist.

Allowing such flexibility of service delivery by an adviser is appropriate but what is then critically important is that any consumer has ready access to and absolute clarity about the nature and limitations of the service being provided and the associated risks where the service is limited in some way, to avoid any misconception about the nature of the service provided.

9. Are the general conduct requirements applying to all financial advisers, including RFAs, appropriate and adequate? If not, what changes should be considered?

   We consider that the general conduct requirements applying to all financial advisers to be appropriate and adequate (Specifically, Act sections 33-36 - including to exercise care, diligence and skill, and not engage in misleading or deceptive conduct).

10. Do you think that disclosing this information is adequate for consumers? Should RFAs be required to disclose any additional information?

    Noting that SIA member NZX Firms employ very few RFAs, we submit that we consider that, at a general level, the disclosure obligations for RFAs should be the same as for AFAs. The purpose of disclosure is to provide clients with detailed information relating to any conflicts of interests, including fee/remuneration in order for their clients to make an informed decision as to whether to procure the services. Such disclosure information is necessary to meet the objectives of the Act, in particular Goal 1: Consumers have the information they need to find and choose a financial adviser and Goal 3: Public confidence in the professionalism of financial advisers is promoted.

11. Are there any particular issues with the regulation of RFA entities that we should consider?

    The fundamental question that should be considered is whether it is appropriate for an RFA and AFA providing an equivalent service to have to meet differing requirements and standards. It is our view that such an approach is not helpful to consumers in the absence of a proper understanding as to the difference between the two designations and the different standards that the consumer may be receiving for a particular service as a result. As a general rule, we submit that the standards of service that a consumer receives for a particular service should be the same, whether the particular service on a particular product is delivered by an RFA, AFA or a QFEA. The key is to define what the appropriate standards are for each particular service for each product, while referencing our earlier submission comment that the required standards in each case should only ever be at the

minimum necessary to meet the regulatory objectives to avoid creating inappropriate barriers, such as cost, to the availability of services.

12. Are the costs of maintaining an adviser business statement justified by its benefits? If not, what changes should be considered?

    We submit that the cost of maintaining an ABS is no longer justified nor are ABS necessary given the requirement to complete annual AFA returns. Further, much of the information in an ABS is generally available in an individual AFA's primary and secondary disclosure statement and via the adviser's employing entity's terms of business or other marketing or internal material, hence we submit that the regulator has access to adequate alternatives to the ABS information to fulfil the regulatory requirement that the ABS document was originally designed for.

    We also submit that the key benefits associated with adviser business statements were achieved as part of the implementation of the provisions of the Act and that the requirement to thereafter maintain an ABS is unnecessarily administratively burdensome for the remaining benefit. We therefore submit that the requirement to have and maintain an Adviser Business Statement should be removed.

13. Is the distinction between an investment planning service and financial advice well understood by advisers and their clients? Are any changes needed to the way that an investment planning service is regulated?

    We consider that advisers clearly understand the difference but we are less certain whether clients understand. For clients, the level of understanding is likely to be highly dependent upon the work that the adviser undertakes to assist the client to understand the nature and extent of the service being delivered. We have not identified any changes required to the way an investment planning service is regulated.

    However, we do note that the definition of an investment planning service is limited to natural persons (individuals) but does not include other investment vehicles or entities such as trusts or companies, and we question whether this limited application is simply an oversight.

14. To what extent do advisers need to exercise some degree of discretion in relation to their clients' investments as part of their normal role?

    There is no specific "need" for an adviser to ever exercise some degree of discretion in relation to a client's investments as part of an adviser's normal role, but there are particular circumstances where it is helpful to the client for the adviser to be able to exercise discretion.

Examples where such discretion may be helpful, subject to suitable written agreements being in place, include:

1. The contingency DIMS exemptions already available, extended to include coverage to enable protection of value that would otherwise be lost to the consumer in circumstances, for example, involving a capital markets renounceable rights issues where the consumer can't be contacted in time to obtain a decision whether to take up or sell the renounceable rights.
2. Where there is a basis upon which the adviser may issue transaction instructions to maintain an investment portfolio within agreed parameters where such parameters and the ability to act with discretion have been agreed and documented in writing, within the provisions outlined by the FMA in the FMA information document titled "Understanding the Regulation of DIMS" issued on May 2015 and with the service titled as "automatic service to rebalance retail clients' portfolios" in that FMA information document.

15. Should any changes be considered to reduce the costs on advisers who exercise some discretion, but are not offering a funds management type service?

We have not identified any changes that would assist but, to the extent that there are such services provided, any such changes that might be proposed should be available to entities and advisers equally, to avoid the risks associated with regulatory arbitrage that might otherwise occur.

16. Are the current disclosure requirements for Authorised Financial Advisers (AFAs) adequate and useful for consumers?

Adequate? In general, yes, but improved disclosure regarding any limitation on product and advice scope should be considered for inclusion.

Useful? - only if the consumer takes the time to read and understand the content. That latter matter is only in a limited sense in the control of the adviser providing the disclosure.

17. Should any changes be considered to improve the relevance of these documents to consumers and to reduce the costs of producing them?

Note the suggestion in response to the previous question that improved disclosure regarding any limitation on product and advice scope should be considered for inclusion. Further, we use this question to suggest that a QFEA providing a service on a Category 1 product should be required to complete an equivalent disclosure, such that the consumer experience is the same, whether the service is being delivered by an AFA or a QFEA on a Category 1 product.

The review should be used as an opportunity to consider whether and how the prescribed nature of these disclosures might be changed to improve disclosure relevance and reduce the costs of producing disclosure, while still meeting the disclosure objectives.

For example, it has been suggested that disclosures should be able to be provided in any form, provided the relevant information is contained in the document. There is a significant amount of effort and time involved in updating all AFAs disclosures where one change applies to a single adviser.

It has also been suggested that the delivery requirements could be relaxed. For example a disclosure could be centrally located for clients to access directly without the need for disclosures to be sent directly to clients. The FSP Register could be made better use of, and disclosures could be updated each year when doing annual returns (or upon material change).

18. Do you think that the process for the development and approval of the Code of Professional Conduct works well?

We support the process for the development and approval of the Code of Professional Conduct, believing that the involvement of industry and consumer representation helps ensure an appropriate balanced development of industry standards.

However, we also submit that it is important that the FMA then correctly reflect the provisions of the Code, noting that, for example, and despite repeated enquiry by the SIA, the guidance note on the FMA website titled, "Guidance Note: Code Standard 6 (d) - Analysis Before Recommendation" fails to reflect the changes to the Code that occurred more than 12 months ago, with the correct Code Standard reference now having changed to Code Standard 6 (c) and the content of the Code Standard also having changed, thereby requiring change to the FMA guidance.

19. Should any changes to the role or composition of the Code Committee be considered?

We support the current role and composition of the Code Committee with two exceptions as follows:

We suggest consideration be given to providing secretariat and legal support to the Code Committee independent of the FMA.

We also suggest that the Code Committee become subject to the provisions of the Official Information Act, provided the usual protections are in place to ensure that commercially sensitive or confidential material relating to AFAs or financial service providers would not become subject to public disclosure.

20. Is the Financial Advisers Disciplinary Committee an effective mechanism to discipline misconduct against AFAs?

    Yes, albeit we suggest that consideration be given to providing secretariat and legal support to the Financial Advisers Disciplinary Committee independent of the FMA, analogous to the independence of the secretariat and legal support provided to the NZX NZ Markets Disciplinary Tribunal.

21. Should the jurisdiction of this Committee be expanded?

    Not necessarily, provided it is clearly apparent that other individuals and entities providing the same services as AFAs are subject to similar regulatory penalties, most probably via the powers available to the FMA. To the extent that any gaps exist, if they do, consideration might then be given to closing such gaps by extending the jurisdiction of the Committee.

    It is our view that the role and jurisdiction of the Committee is of less importance to this review, however, in the interest of promoting consumer confidence and professionalism and adviser integrity, it would seem appropriate for the FADC to be able to consider complaints against RFAs and QFE advisers. The alternative is to provide additional powers to the FMA to close any gaps.

22. Does the limited public transparency around the obligations of Qualifying Financial Entities (QFEs) undermine public confidence and understanding of this part of the regulatory regime?

    Potentially, yes, as there does not seem to be strong recognition that QFEs are required to meet the same Code standards as AFAs, except to the extent that an "If not, why not" analysis has been completed to identify appropriate areas for relief.

    The evidence of confidence being undermined or lack of understanding is perhaps most obvious in critical comments, both public and private, made by advisers operating outside of QFE structures of the supposedly lesser obligations that QFEs and QFE advisers have to meet.

    Further, there is anecdotal evidence that consumers utilising the services of QFEs do not understand that the nature of the service delivered by a QFE may not extend to a personalised advice service. It appears in many cases that the class, information only or even a transaction only support service provided by a QFE is being perceived by the consumer as a personalised advice service.

    It is also not particularly transparent to consumers that, in relation to category 1 products, QFE advisers can only provide advice on their own products. In our view the limited scope of service in this regard should be very clear, and QFE advisers should be required to make sure that clients understand that scope.

23. Should any changes be considered to promote transparency of QFE obligations?

    Transparency of QFE obligations might be enhanced if a document was publicly available outlining any relief granted to a QFE under the "If not, why not" analysis. Such a document might then be helpful in effectively reiterating that in all other respects, the QFE has to meet the same Code Standards as an AFA.

    Further, we refer you to earlier submission comments suggesting that, when the service is limited, to require the entity or individual delivering the service to issue a warning (verbally or in writing) that the advice or service provided is limited, also the nature of the service limitation, and/or that the particular personal circumstances of the consumer have not been considered and that It is the responsibility of the consumer to ensure that the (advice, product, service) is suitable and that it meets the consumer's needs.

24. Are the current disclosure requirements for QFE advisers adequate and useful for consumers?

    We reiterate our earlier submission comment regarding the need to ensure that the same standards apply to advisers delivering the same type of service on the same type of product to ensure a consistent delivery to consumers and to avoid creating consumer confusion or an incorrect perception among consumers about what is being delivered by whom.

25. Should any changes be considered to improve the relevance of these documents to consumers or to reduce the costs of producing them?

    No submission comment

26. How well understood are the broker requirements in the FA Act? How could understanding be improved?

    We consider that the broker requirements are well understood by brokers, and that this is what matters. Understanding outside of brokers seems to be less of an issue, except to the extent that it is perceived to be a requirement to assist in building consumer confidence, albeit such confidence will be enhanced as a matter of course over time to the extent that the broker regime and requirements are effective in ensuring that client money and property is handled efficiently and effectively without losses arising directly from the brokers own actions, as opposed to investment or other losses arising outside of the control of the broker.

    One possible enhancement would be to include a requirement that a broker provides its clients (on request) details of how client money and property is held and

protected, including details of relevant internal processes and controls and a copy of the annual audit report, where available.

Another possible enhancement could be change the name “broker” to something else, to remove the possible confusion that arises as against insurance, mortgage, share or stock brokers. Changing the name to “Custodian” or a similar term implying holding or handling client money may assist.

27. Are these requirements necessary and/or adequate to protect client assets? If not, why not?

    We believe that the requirements are necessary and adequate.

28. Should consideration be given to introducing disclosure requirements for brokers? If so, what would need to be disclosed and why?

    Our understanding is that brokers disclosure requirements are already provided for under Sections 77D-77G of the Financial Advisers Act but regulations prescribing the required disclosure have not been promulgated. We are mindful of the increased requirements applying to brokers and custodians that have recently been introduced. We submit that no further prescribed disclosures are required as we believe adequate disclosures are already being made. For example, the FMA has provided clear guidance that any ‘margin’ made on client money must be expressly clearly and unambiguously disclosed in the relevant agreement between broker and client in order to obtain informed consent.

29. What would be the costs and benefits of applying the broker requirements in the FA Act to insurance intermediaries?

    We submit that the underlying principles relating to the protection of client money and property are no less important or valid when held by insurance intermediaries. Subject to an assessment of the relevant money and property handling provisions contained in the Insurance Intermediaries Act 1994, we submit that equivalent protections should apply.

30. Are the requirements on custodians effective in reducing the risk of client losses due to misappropriation or mismanagement?

    Yes.

31. Should any changes to these requirements be considered?

    We consider that the current requirements are proportionate in reducing the risk of client losses from a range of possible causes and we do not recommend any further changes, while noting the comments in the answer to question 32 relating to the FMA exemption being sought by the SIA in relation to Section 77P(1)(A) of the FAA.

32. Is the scope of the FA Act exemptions appropriate? What changes should be considered and why?

    At a high level, we consider that anyone providing financial advice or a financial adviser service should be subject to the same standards of registration, accreditation, disclosure and standards in respect of delivering a particular type of service for a particular type of product. For example, consideration should be given as to whether it is appropriate that accountants and lawyers can provide financial advice without being subject to the same standards as others providing financial advice under the FAA. Exemptions should be given sparingly to avoid the potential for consumer misunderstanding or confusion about the nature, quality and protection surrounding any advice or service delivery.

    The SIA has submitted an application for an FMA exemption for NZX Firms from the provisions of Section 77P(1)(A) of the Financial Advisers Act to ensure that NZX Firms can continue to offer transaction and other services in both New Zealand and other international jurisdiction capital markets.

    We suggest that this exemption would be better included within a legislative change, rather than being an exemption that has to be periodically reviewed and renewed by the FMA, as the issues raised are systemic to the operation of such markets and the role that entities such as NZX Firms fulfil in such markets.

    We also question whether Section 77U is appropriately targeted, in capturing entities as brokers that are not handling client money or property, having fully contracted out all such money and property handling to another entity that is captured as a broker under the Act. This seems to impose unnecessary dual obligations.

33. Does the FA Act provide the Financial Markets Authority (FMA) with appropriate enforcement powers? If not, what changes should be considered?

    We consider the FMA enforcement powers to be appropriate and we do not suggest any changes for consideration.

34. How accessible and useful is the guidance issued by the FMA? Are there any improvements you would like to see?

    Recognising that the legislation is (appropriately, in our view) principles based, we acknowledge that guidance can be useful to bring clarity to some of the principles, but it is also appropriate to be careful about asking for or providing guidance.

    Has the right balance been struck on accessibility and usefulness of guidance issued by the FMA? We think that there is room for considerable improvement on both counts.

Accessibility has improved with the redesign of the FMA website this year but it is still difficult to ensure that one has accessed or identified all of the latest relevant guidance on a particular topic, and guidance sometimes extends over numerous documents - some form of linkages or references to all other relevant documents within each document, provided the linkages or references are also maintained, might assist. Further, changes to guidance posted to the FMA website are not always well flagged or identified.

Usefulness is a different measure and our biggest criticisms on this count are the interpretation differences between the FMA and industry that are apparent on some matters. We acknowledge that it is the view of the FMA that finally matters, unless or until overruled in court, but this can have perverse or unintended outcomes for service delivery. We have already highlighted earlier in the submission under Question 5 the impact of FMA guidance on limited personalised advice, resulting in reduction or withdrawal of such services to consumers. We reiterate the need for a regulatory outcome that permits and incentivises delivery of products and services within whatever constraints a consumer imposes, provided clarity is delivered about the limited nature of the service, the risks arising from the service being limited, and the responsibility thereby left with the consumer to ensure that the (advice, product, service) is suitable and that it meets the consumer's needs.

We also highlight again the need for the FMA to ensure that guidance is current, noting our comments under question 18 that the FMA Guidance Note on Code Standard 6 (d) - now Code Standard 6 (c) is outdated and needs to be amended to reflect the latest Code standard. It is important that FMA Guidance is clear, accurate and up to date and consistently followed by relevant Financial Services Providers.

Finally, we suggest that consideration be given to the introduction of additional safe harbours to better incentivise the delivery of certain services.

35. What changes should be considered to make the current regulatory regime simpler and easier for consumers to understand? For example, removing or clarifying the distinction between AFAs and RFAs.

From a consumer viewpoint, simplification is essential, as it is clear from the Colmar Brunton survey completed for the Ministry and from other anecdotal evidence that consumers do not understand or are confused by many aspects of the regime, whether it be the type of adviser that they are dealing with (AFA, RFA or QFEA) or the nature of the service being delivered (comprehensive or limited personalised service, class service, information only, transaction only, etc.) on either a Category 1 or Category 2 product.

As noted in our response to questions 1 and 5, there may be merit in the idea that personalised advice should be renamed “financial advice” and that only a “financial

adviser" can provide "financial advice" on a category 1 or "complex" product. "Financial advisers" would be made up of AFAs, and QFE advisers who provide personalised advice on category 1 or "complex" products.

Under this approach consumers would be very clear that, if they wanted personalised advice on a category 1 product, they would need to talk to a "financial adviser". As suggested above, any financial adviser who was offering limited scope advice (for example, only on one provider's products) would need to make sure that that restriction was understood.

We also reiterate the points made in answer to question 8, namely that "the terms Registered Financial Adviser and Authorised Financial Adviser are both largely irrelevant to consumers and that consumers should not have to have an accurate understanding of such artificially created legislative terms, or the services that such named advisers are permitted to provide advice upon or the requirements that apply to them.

Further, we suggest that the terms do not accurately describe what advisers are permitted to provide advice upon, as advisers are only ever permitted to provide advice on matters that they are competent to do so, which will often be a subset of the broad list of things that RFAs or AFAs might otherwise be permitted under the legislation to provide advice upon.

Therein lies the problem. The term provides little help to a consumer towards determining whether any particular RFA (or AFA for that matter) is permitted to provide particular advice, as the RFA or AFA may simply not be competent to do so, even while the legislation provides a general permission.

Hence, our solution is to continue to let the legislation use whatever terms are considered appropriate to support the administration of the regime but to look to develop and allow the use by an adviser of a range of alternative terms familiar to the consumer that better explain what the adviser actually does, is believed to be competent to do, and is appropriately registered to do. Such an approach will also potentially be supportive of changes to the register that may better assist consumers to have access to relevant information to help them find and choose a financial adviser."

We are hopeful that changes can be achieved to improve the consumer understanding and experience without a dramatic change in the regulatory regime at this point, given that the industry has only recently invested in a significant amount of time and effort to ensuring compliance with the current regime. We reiterate the view already expressed in the submission that responsibility for public awareness, education and understanding ultimately lies with the regulator and the Ministry.

36. To what extent do consumers understand that some financial advisers' primary roles may be selling financial products, rather than solely acting as an unbiased adviser to their clients?

We do not profess to know the extent of consumer understanding on this point albeit anecdotal evidence suggests that there is some consumer confusion.

However, the question also appears to be inappropriately worded or limited in that it does not ask about consumer understanding of the differences between an adviser selling or providing advice on a very limited product range, perhaps even on just one product, versus an adviser that is able to offer a sales or advice service on a much broader product range across a range of providers.

This brings us back to our earlier submission comment, now adjusted to apply to products, such that, when the product range is limited, to require the entity or individual delivering the service on the product to issue a warning (verbally or in writing) about the limitations applying to the product range and the responsibility thereby remaining with the consumer to determine whether to seek information on alternative products elsewhere.

We think that such a regulatory requirement is better than the UK approach of introducing yet more regulatory administrative terms such as "restricted" or "independent" advisers, which consumers will again struggle to understand.

37. Should there be a clearer distinction between sales, information provision, and advice? How should such a distinction be drawn? What should or should not be included in the definition of financial advice?

We submit that there is sufficient legislative and regulatory clarity about these distinctions, irrespective of whether or not consumers understand the distinction. In the event that there is concern about consumer failure to understand the distinction, we submit that such concern can best be addressed by requiring clarity be provided (either verbally or in writing) to the consumer at the time of service delivery about the nature of the service being delivered, the limitations and risks associated with the type of service delivery and the responsibility remaining with the consumer to assess and determine need and suitability.

We also repeat here an extract from the answer provided to question 8 above.

"Some have suggested that only those providing advice should be able to use the term "adviser." On the face of it, this would seem to be an elegant solution but, as with any label, it can risk misinterpretation, if the actual service being provided by the adviser is not actually an advice service.

For example, we believe it to be important not to constrain the range of services that an adviser might provide, subject to the competency test. That is, for example,

an adviser that is competent to provide a comprehensive personalised financial advice or investment planning service should not be required to always and only ever provide such a service. Such an adviser should still be able to provide lesser or more limited services, such as limited personalised advice, class advice, information only advice, or even a simple transaction service. What is important is that any consumer has ready access to and clarity about the nature and limitations of the service being provided and the associated risks where the service is limited in some way, to avoid any misconception about the nature of the service provided."

Then we go further and take issue with the FMA statement contained in the 6 November 2013 release titled, "KiwiSaver - providing advice to clients who are considering transferring their Australian superannuation savings to KiwiSaver." The FMA stated, "We also expect advisers to offer the option of financial advice to customers." It is also clear from public statements made by the FMA that the FMA "expects" advisers to provide a comprehensive personalised financial adviser service on UK pension transfers.

Then, in a speech to the 2014 IFA conference, the FMA spokesperson said, "Put another way - the entire financial services industry - needs to stop thinking about what the customer will pay for and start thinking about what they actually need and what will actually benefit them."

We do not consider that the role of the FMA should extend to determining if and when advisers should offer or provide particular services. This is and always should be a business decision for the adviser within the natural constraints often imposed by clients, including not least what the client is willing to pay, and within the relevant regulatory constraints, including the regulatory requirement for the adviser to be competent and to act with care, diligence and skill.

38. Do you think that current AFA disclosure requirements are effective in overcoming problems associated with commissions and other conflicts of interest?

Disclosure is an effective tool to help a company manage perceived or actual conflicts of interests; however, disclosure does not overcome the issue in its entirety. The requirement for disclosures supports the process of identification of conflicts and acts as a prompt to investigate the extent of the conflict and determine whether the conflict can be managed through disclosures. There are a range of other procedures that can be used and that NZX Firms do use to assist in managing conflicts.

The regulatory focus on requiring good conduct is clearly one of the best means of overcoming problems, whether actual or perceived, with commissions and conflicts.

At least one NZX Firm has advised that it has a policy that requires that where a conflict cannot be managed through disclosure the conflict must be avoided.

Whether a conflict should be avoided is ultimately a judgment call on the adviser/financial service provider, which is why it is critical that all advisers are measured by the same standards of conduct.

Disclosures of commissions meet the objective of an informed public and allow the public to take a decision as to whether to take the advice on the understanding of the nature of the remuneration to be received by the adviser. To limit commissions may have the negative effect of limiting access to financial services which would be contrary to the principles of the Act and the goals of this reform.

39. How do you think that AFA information disclosure requirements could be improved to better assist consumer decision making?

The accessibility and form of the disclosure requirement could be improved to better assist consumer decision making. A consumer doesn't necessary understand that they must look to the secondary disclosure form for information relating to fees. The information could be simplified (for example by requiring just one disclosure document instead of primary and secondary) and stored centrally (e.g. on the FSP register or accessible on a website).

We also submit that verbal notification of certain information should be considered to be appropriate and adequate.

40. Do you support commission and conflict of interest disclosure requirements being applied to all financial advisers? If so, what requirements are appropriate for different adviser types?

Our view is that all advisers providing some form of service for the same product to a client should be subject to the same regulatory commission and conflict of interest disclosure requirements, irrespective of their designation as an RFA, AFA or QFEA.

41. Do you think that commissions should be restricted or banned in relation to financial advice, and if so, in what way? What would be the costs and benefits of such an approach?

Commissions are one form of conflict. Our answer to this question also addresses conflicts more generally, noting our general view that commissions should not be restricted or banned in relation to financial advice.

It is again appropriate to reiterate certain points on Code Standard 1 contained in the SIA submission dated 21 July 2010 completed at the time of consultation on the original Code. Relevant excerpts from that submission are shown below, while noting that some of the specific clause references will almost certainly be obsolete, hence the focus should be on the principles, not the detail, in reading this earlier submission extract.

"On one hand, the Code says that an Authorised Financial Adviser must place the interests of the client first, and must act with integrity and, on the other, the Code recognises that in reality there are conflicts of interest and there must rightly be transparency in dealing with such conflicts. This is demonstrated by paragraph (c) of Code Standard 6, which provides that when an AFA is providing services to a client, they must "transparently manage any conflicts of interest that may arise in providing the services." Further, Code Standard 7, paragraph (i) reinforces this approach of transparently dealing with conflicts by outlining the disclosure required where conflicts arise.

The Code Committee's submission response paper suggests that an AFA should not act for a client when client interests cannot be put first. We highlight that the suggestion that an AFA withdraw from acting for the client in this circumstance may conflict with the concept provided for under Code Standard 6 that service can continue, provided conflicts can be transparently managed. Further, we comment that putting the client interest first and acting with integrity might mean that the best outcome for the client is that service continue rather than being withdrawn, despite the conflicted circumstance arising that leads to consideration of possible withdrawal of service, if the alternative is that withdrawal of service as contemplated may result in the client incurring significant additional costs in having to seek service elsewhere. Withdrawal of service may involve a cost in time or money arising from the need to find an appropriate adviser, establish a relationship or account, fully brief the new adviser and then and only then, seek delivery of the relevant service. The final decision as to whether to proceed with a financial adviser service with the adviser that faces a situation where it is impractical to put client interests first might best be left with the client, being the person that bears all of the costs, risks and the potential benefits of the decision.

Further to the submission extract above, we comment that withdrawal from providing services may, in some circumstances, mean that the client is unable to obtain the service at all, as the adviser and his or her employer might be the only available means of accessing a particular service or product.

These conflicts are matters that NZX Firms and their advisers are experienced at dealing with and policies and procedures are well developed to protect consumer interests to meet the concerns expressed about conflicts. Further, any failure of conduct by an individual adviser employee or the NZX Firm itself is likely to be actionable under the disciplinary provisions of the relevant NZX conduct rule sets.

We continue by including an extract from the SIA submission completed as part of the subsequent consultation on the Code conducted in 2013, with this extract focused on capital market issues. The extract follows:

"We think that this is also the appropriate time to highlight the specific exemption from the conflicted remuneration ban granted under the Australian regime for

capital markets issues. An extract from a commentary on the Australian Future of Financial Advice reforms on this particular aspect, as provided by Clayton Utz, lawyers, in Australia, follows:

'Early legislative thinking suggested that only by ensuring that an adviser's source of income was from its client could the client be sure that the adviser is working for the client rather than a product provider. However when applied to capital markets, this would have had the unintended consequence of requiring a class of investor (retail investors) to pay to participate, and another class of investor (wholesale investors) to not. It was expected that retail participation would fall away if this were set in legislative stone.

Retail brokers were initially very concerned about the impact the FOFA reforms would have on capital raisings in Australia and in particular retail investor participation. Federal Treasury was presented with submissions which evidenced the statistics supporting retail investor participation particularly for entities that were less well known and how this was critical to their growth and enhanced market capitalisation.

This issue has now been settled and both the FOFA provisions and RG 246 exclude "stamping fees" from being construed as a benefit that is conflicted remuneration. Therefore a monetary benefit is not conflicted remuneration if the benefit is given to an Australian Financial Services licensee by or on behalf of an entity in relation to the person dealing in a financial product issued by the entity, on behalf of a client or if the benefit is given to a person by or on behalf of an entity for dealing in a financial product issued by the entity, on behalf of a client and the person gives the benefit, directly or indirectly, to a representative of the provider. The "stamping fee" exception applies only in relation to financial products that are:

• shares, debentures or bonds that are, or are proposed to be, issued by a government;
• shares in, or debentures of, a body that are, or are proposed to be, listed on a prescribed financial market;
• interests in a managed investment scheme that is, or is proposed to be, listed on a prescribed financial market;
• a right to acquire, by way of issue, the shares, debentures or interests referred to in the two bullet points above.'

We (the SIA) agree with the granting of this exemption in Australia and view it as a pragmatic understanding of what would otherwise be an unacceptable and unintended policy outcome if the conflicted remuneration ban in Australia had been extended to the all capital market issues."

Moving on from that extract from the earlier SIA submission, at a general level, we reiterate that we do not support a restriction or ban on commissions in respect of

financial advice or service delivered on any financial products. In many cases, such commission is simply a pre-payment for the advice or other service delivered to the consumer that the consumer is otherwise either unable (due to limited resources) or unwilling to pay for.

Further, we suggest that the payment of commission is not in itself a problem. Rather, it is the behaviour or the conduct of the entity or individual receiving the commission that matters and that the focus of regulation, as it currently is, should remain clearly focused on conduct, not on commission, or other conflicts.

Provided the conduct is appropriate, the basis of the payment of remuneration becomes irrelevant.

We suggest, in the absence of any other countervailing solution, restriction or banning of commissions will simply lead to consumers being less able to access advice. Unless or until the likely unintended consequences of a reduction in consumer access to advice that arises from restricting or banning commissions has been resolved, we submit that restricting or banning commissions should not be considered.

Then, to quote further from that earlier SIA submission:

"The international experience suggests that there are few easy answers to solving the dilemma of providing quality advice and consumer protection at an acceptable cost while also maintaining consumer access to financial advice and services. We simply note the recent suggestion of one Australian commentator that there may be a partial solution via taxation, with advisers offered some form of rebate for providing pro bono advice. We appreciate that this would, of course, be a matter for government to consider and would require considerable additional work to develop an appropriate structure. We mention it in this submission solely to advance the thought that there must be solutions out there, some requiring lateral thought, to deal with what appears to be a growing international and domestic issue, while noting that we are supportive of and do not question the laudable objective of trying to ensure access for consumers of all stripes to quality advice and services."

42. Has the right balance been struck between ensuring advisers meet minimum quality standards and ensuring there is competition from a wide range of providers (and potential providers)?

While expressing our view that minimum quality standards are of a higher priority than competition, we simply note the reduction in adviser numbers following the introduction of the regulatory changes. It may be too early to answer whether there are sufficient numbers of advisers in an appropriate range of competing entities. However, we reiterate our earlier point that the standards being applied to limited personalised advice are such as to reduce or remove the provision of the service and

this could be cited as one example where the range of providers has significantly reduced to the potential disadvantage of consumers.

43. What changes could be made to increase the levels of competition between advisers?

    No submission comment.

44. Do you think that the Code of Professional Conduct for AFAs strikes the right balance between requiring them to understand their clients and ensuring that consumers can get advice on discrete issues?

    We think that the Code strikes the right balance but that the guidance issued by the FMA in endeavouring to interpret the Code on this issue tips the balance the wrong way, as previously expressed in this submission. In the event that the FMA decides not to change the guidance, the opportunity exists for the Code Committee to seek to make changes to the Code that creates a different outcome that makes the FMA guidance obsolete and thereby required to be reviewed and amended. This highlights that some issues with the regime may be able to be dealt with via non-legislative fixes.

45. To what extent do you think that the categorisation of types of advice and advisers is distorting the types of advice and information that is provided?

    See our earlier comments about limited personalised advice in particular, while noting that this is not a defined legislative term. As such, the solution to the issue raised may also be non-legislative.

    Outside of that issue, we don't necessarily see the categorisation of the types of advice and advisers as significantly distorting the types of advice or information that is provided. Categorisation may result in restrictions on the advice or information provided, but that does not necessarily imply distortion, particularly if there is agreement that the restrictions are necessary and appropriate.

    We suggest that the more important issue is how to ensure that consumers receive service delivery under a consistent set of standards in relation to each type of advice service for each type of product, irrespective of the categorisation of the type of adviser.

46. Are there specific compliance requirements from the FA Act regulation that have affected the cost and availability of independent financial advice?

    Yes - including the obvious ones, such as the additional financial costs, both direct and indirect, that have to be passed on to the consumer, thereby meaning that less consumers can afford to access financial advice, including independent financial advice. To the extent that such increased costs may not be able to be recovered, the

viability of maintaining an independent financial advice business will likely have been compromised.

In more detail, there have been a number of projects that have incurred a significant compliance burden as a result of FAA regulation (and more recently the FMCA reforms); these costs include, annual license fees of an AFA and registering on the FSPR, supporting new CPD requirements, updating compliance procedures and manuals and resources in the compliance team to support the additional compliance burden, obtaining legal advice, IT development and enhancements, changes in operational procedures. Specific compliance requirements include: new broker and custodian obligations, AFA registration process, CPD, annual returns, as well as compliance with the AML/CFT regime.

The SIA agrees with the need for these compliance requirements and supports the development of a robust regulatory regime for the provision of financial adviser services, however, the SIA would seek to illustrate that such costs have resulted indirectly in an increase in fees to clients, and ultimately can make the ability of consumers to access a financial adviser more difficult both because of these increased fees and a reduced number of financial advisers offering their services to consumers. Further, this may result in independent advisors moving to large institutions, e.g. banks, which can provide the necessary compliance infrastructure (but potentially means they may only advise on bank products). Furthermore, the SIA would caution against any immaterial changes to the FAA resulting from this reform that will result in changes to the existing compliance programs of financial advisers thereby increasing compliance costs further and potentially further limiting access to financial service providers.

The SIA has completed a survey of NZX Firms on direct regulatory costs covering both the FAA/FSPA and NZX regulatory regime. The collated results from the survey can be provided to the Ministry on request.

47. How can regulatory requirements be made less onerous without reducing the quality and availability of financial advice?

To the extent that the regulation is recognised as providing a general public good, more of the direct regulatory costs might be met by the tax payer, thereby reducing the cost required to be recovered direct from consumers using the services and reducing financial barriers to being in business.

We suggest that one of the issues is the determination as to what actually constitutes quality. We again focus on limited personalised advice and the FMA guidance, which we believe has imposed an inappropriately high quality standard to the point that consumers can no longer get forms of limited personalised advice that they wish to access within the constraints that the consumers themselves wish to impose. Simply put, the FMA guidance requires advisers to decline to provide advice

or service at all if the consumer imposes certain constraints. It is reasonable to ask whether no advice is always better than provision of some form of limited advice delivered with appropriate clarity about the limitations and risks.

Further, we suggest that the minimum entry requirements to become an AFA create a barrier to entities being able to bring new people in. We suggest that consideration be given to developing a transitional or stepped approach to becoming an AFA to encourage more to progress to become an AFA by allowing an individual to provide financial advice services prior to obtaining full AFA designation, subject to all such financial advice given by the trainee AFA being appropriately supervised by an AFA. A review of the NZX Participant Rules may assist, as these Rules outline a process of study and supervision to be followed while providing advice and progressing initially to Associate NZX Adviser and then NZX Adviser.

In making this suggestion, we are cautious towards proposals that may result generally in a reduction in the minimum entry requirements to become an AFA. Removing the obligation to develop and maintain an Adviser Business Statement would alleviate some compliance costs as we consider it is no longer necessary given FMA visits to advisers and providers and also the duplication of information as part of the AFA return. We also propose changes to the AML/CFT regime below for consideration.

48. What impact has the Anti-Money Laundering and Countering Finance of Terrorism Act had on compliance costs for advisers? How could these costs be minimised?

The SIA has consistently supported the inclusion of advisers within the AML/CFT regulations on the basis that advisers are the ones that have the direct client contact and are therefore likely to be in the best position to obtain relevant information and assess AML/CFT risks. We continue to stand by this view.

However, the Act has had a significant impact on advisers compliance costs, not least because advisers often have to also meet quite different requirements from each of the financial service providers that the adviser may be interacting with on behalf of consumers, such as when placing, purchasing or selling financial products. This arises because each of the relevant financial service providers also generally remain fully liable under the AML/CFT Act and each will therefore independently assess what they require to manage the relevant compliance risks.

We are pleased that the Ministerial exemption for Managing Intermediaries has finally been promulgated this month and we are hopeful that this will go some way to assist in reducing this impact.

The SIA has also consistently submitted that the failure to allow Authorised Financial Advisers to be "trusted referees" in the Identity Verification Code of Practice is another example whereby compliance costs are unnecessarily increased for all

parties involved and we again submit a request that this be reviewed and addressed. We repeat from earlier submissions that the AFA authorisation process includes criminal record checks and all AFAs are required to comply with the Code of Professional Conduct, which includes minimum standards of ethical behaviour such as acting with integrity and not bringing the financial advisory industry into disrepute. There is also a public register that can be checked (FSPR) to confirm that someone is an AFA. We note that trusted referees generally appear to be "members" of governing organisations. While the FSPR does not in itself count as a governing authority, the fact that an AFA is specifically authorised by the FMA is sufficient, we believe, to result in the FMA being considered as an appropriate governing or regulatory organisation to place AFAs on the same footing as other trusted referees. Further, advisers acting on behalf of an investor for a Reporting Entity currently verify the investor documents for that Reporting Entity. We consider that these are adequate requirements to justify inclusion of AFAs as "trusted referees."

While acknowledging that the annual AML report requirement targets entities while the AFA annual report targets individuals, we suggest that a review be completed to determine whether it is practical to reduce what appears to be potential duplication of reporting requirements under the two reporting regimes.

We recognise that this review is not primarily focused on the current AML-CFT regime; however, we believe that cost of AML-CFT compliance is a real concern and propose some suggestions below for minimising costs of the AML regime for financial advisers:

1. Expanding the list of "trusted referees".
2. Extend the period for which an entity needs to get an independent audit. For reporting entities this obligation results in a significant cost.

49. What impact do you expect that KiwiSaver decumulation will have on the market for financial advice in New Zealand? Are any specific changes to regulation needed to specifically promote the availability of KiwiSaver advice?

KiwiSaver decumulation will only impact the financial advice market to the extent that it results in individuals having money and investments available in KiwiSaver that such individuals would not have otherwise saved in the event that KiwiSaver did not exist. That is, as already acknowledged in research, including Treasury research, much of the money in KiwiSaver is simply redirected from other savings that would otherwise occur. Hence the advice requirement in the decumulation phase will remain largely unchanged for many individuals from what it would otherwise have been.

In our view, the changes required to better promote the availability of KiwiSaver advice largely bring us back to our comments about the disincentives that exist for

advisers to provide limited personalised advice and the need to change the guidance requirements and introduce a safe harbour to incentivise the provision of advice.

50. What impact do you expect that the introduction of the Financial Markets Conduct Act (FMC Act) will have on the market for financial advice in New Zealand? Should any changes to the regulation of advice be considered in response to these changes?

    One obvious impact has been the significant reduction in the availability of Discretionary Investment Management Services (DIMS) to consumers, as it is clear from public reports about the number of AFAs seeking personalised DIMS authorisation and the number of DIMS licence applications that a significant reduction in the number of DIMS providers is occurring. Noting that the changes to DIMS regulation are largely a reaction to the criminal activities of a few, it might be questioned whether the policy objectives might have been more simply addressed by introducing adequate regulation around the custody of assets held for the purposes of DIMS immediately after enactment of the Financial Advisers Act.

    In the interim, we think that there will be an increasing likelihood that consumers seeking DIMS may look outside of New Zealand, with a consequential increase in other risks that are partially covered in the next question.

    The Fair Dealing provisions of the Act may also have some implications but these are little different from the generally equivalent conduct obligations that exist for financial advisers under the FA Act.

    The impact is likely to highlight a number of issues that arise due to the slight differences between the Acts. We support a review to improve the alignment of these Acts, including the definition of Wholesale Investors. It can also be expected that the enforcement role of the FMA will increase and the likely fines imposed by the regulator will be greater.

    Outside of these listed impacts, the Financial Markets Conduct Act largely replaces one set of offer documents (as required under the Securities Act) with a new set of offer documents, including Internet access to some documents via the Disclose website. As such, the impact on financial advice is about making sure that consumers are aware of the requirement to receive certain documents and the opportunity to view certain documents to obtain the information necessary to make an informed decision as to whether to proceed with an investment.

51. Do you think that international financial advice is likely to increase? Is the FA Act set up appropriately to facilitate and regulate this?

    Yes, international financial advice into and out of New Zealand will continue to increase. No, the FA Act is not set up to appropriately facilitate and regulate this, particularly for incoming financial advice and it is difficult to imagine how best to

achieve this unless or until there is significantly greater co-operation across jurisdictions to bring miscreants to justice.

This particular aspect can perhaps be better addressed via consumer capability whereby consumer understanding of the benefits and protections of obtaining advice and services from an individual or entity that is not only subject to New Zealand law, but can also be held to account under New Zealand law.

To the extent that the FA Act creates significant barriers to the availability of a service via an entity or individual appropriately and effectively regulated in delivering services in New Zealand, there is an increasing likelihood that consumers will take risks to access such services internationally, even where there is and can be little or no protection.

52. How beneficial are the current arrangements for transTasman mutual recognition of qualifications? Should further arrangements be considered?

Not an issue of significance to the SIA member NZX Firms, hence no submission comments.

53. In what ways do you expect new technologies will change the market for financial advice?

Algorithm-based online advice platforms are one obvious new technology that is already having an impact on the delivery of financial advice overseas. It is only a matter of time before they proliferate in New Zealand.

This "robo-advice" may help reduce costs for financial advisers and enable the effective delivery of personalised advice to people with smaller sums to invest. We believe though that any form of automated advice does have limitations, especially when dealing with an area as complex as investment and personal financial planning.

We may see a hybrid model where 'robo' and 'face to face' advice are combined by financial advisers who will use a robo platform to provide an efficient, and 'safe' from a regulatory perspective, means of working through the advice process but then still provide full personalised advice.

In terms of other technologies, it is impossible to predict either what may emerge or how it will impact on the delivery of financial advice. What is clear is that the trend that consumers want to be able to do more 'online' is not going to reverse. Consumers also want services to be delivered quickly and easily. Unfortunately, the current regulatory process for providing personalised advice makes it more difficult to meet consumer demand for timeliness.

Consumers may look to overseas advice providers if New Zealand is slow to adopt these new technologies, especially if this is due to local regulatory constraints, as technology is improving the ability to offer advice services from remote locations, whether within New Zealand, or across international jurisdictions. The regulator will need to be alert to any regulatory arbitrage that may arise between local advisers and web-based overseas advisers. Consumers will have a much lower level of protection if they use overseas-based advisers as there are clear difficulties in being able to effectively regulate and prosecute offences. If the local regulatory barriers are set at a level that restricts consumer access to local services, we should not be surprised to see consumers seeking services internationally, with or without an understanding of the risks of doing so.

54. How can government keep pace with technological developments to ensure that quality standards for advice are maintained, without inhibiting innovation?

The only answer that we can suggest is that legislation and regulation remain principles based, as significant prescription will almost certainly provide loopholes or inhibit service or innovation.

It is perhaps important to recognise that technology and innovation often move faster than regulation. Rather than have the legislation try and predict future developments, perhaps it is more prudent to ensure it is flexible and that the Ministry be prepared to react to major industry changes with adjustments to the regulation as needed.

55. Are the minimum ethical standards for AFAs appropriate and have they succeeded in fostering the ethical behaviour of AFAs?

We consider that the minimum ethical standards for AFAs are appropriate. In terms of whether the standards have succeeded, we simply note the small number of cases taken to the AFA Disciplinary Committee. If the disciplinary committee statistics correctly represent identification of unethical behaviour, it suggests that a very high proportion of AFAs were previously meeting the standards and have continued to do so, or that they now are.

We reiterate our view that the same standards should be applied to all advisers (AFA, RFA and QFEA) in delivering the same types of service on the same types of products.

56. Should the same or similar ethical standards apply to all types of financial advisers?

To the extent that an AFA and another adviser that is not an Authorised Financial Adviser (being an RFA, QFEA or something else) is providing the same advice or service, we submit that the standards should be the same. We submit that it is reasonable for a consumer to have an expectation that the standards will be the

same and any other outcome will only leave consumers uncertain or confused about what is or should be happening.

57. What is an appropriate minimum qualification level for AFAs?

At the top level, we submit that the minimum qualification required needs to recognise the range of different specialisations that exist, whether, for example, involving securities, derivatives, insurance (life and general), credit, etc. The SIA has always had a view that the current minimum qualification Level 5 certificate is light on competency for AFAs providing advice on Category 1 investment securities, particularly in relation to securities analysis, topics that we believe are covered better in the NZX Diploma content. However, for the record, we also acknowledge that the NZX Diploma does not adequately cover the advice process, a competency that is appropriately covered in the required level 5 certificate.

The SIA has participated in the development of the related Level 6 certificate qualification, we understand still progressing through the approval process, and we believe that this Level 6 certificate qualification contains a level and range of material, including some material on securities analysis, that will be better suited for an AFA focused on providing investment securities advice services.

Therefore, for those AFAs that want to provide investment advisory services, we raise the question whether the level 6 certificate, when it becomes available, is the appropriate minimum qualification for those AFAs wanting to be authorised to provide advice services in relation to investment securities.

We also refer you to our submission comments under question 47 regarding the introduction of a transitional or stepped pathway into the industry, with appropriate safeguards such as supervision, to reduce the barriers to entry. We understand, for example, that accountants and lawyers have additional professional requirements to undertake after completion of an academic qualification and after entry to the work force.

In the event that new educational minimums are introduced, there should be a process for existing AFAs to be tested for competency under the new standards, similar to the process used at the time of the introduction of the regime.

58. Do you think that RFAs (for example insurance or mortgage brokers) should be required to meet a minimum qualification relevant to the area of advice they specialise in? If so, what would be an appropriate minimum qualification?

As stated earlier, we believe that the standards and minimum requirements should be the same for all advisers (AFA, QFEA or RFA) in relation to delivery of services for the same products. Excepting the expressed support for the level 6 certificate for advisers seeking to provide services in relation to investment securities, we do not

express a view as to an appropriate minimum qualification for the delivery of advice services for other product types.

59. How much consideration should be given to aligning adviser qualifications with those applying in other countries, particularly Australia?

    Not a matter of significance to SIA member NZX Firms, hence no submission comments.

60. How effective have professional bodies been at fostering professionalism among advisers?

    Variable outcomes, depending upon the objectives of the professional body. For example, professional bodies are likely to struggle to increase the ethical standards of the industry or foster professionalism unless they also have regulatory power to enforce minimum standards.

    Note that the SIA does not have specific objectives regarding professionalism, as such matters are covered under the NZX Participant Rules, a statutorily approved regulatory structure.

61. Do you think that professional bodies should play a formal role in the regulation of financial advisers and if so, how?

    Yes, there is a clear role, formal or otherwise, for professional bodies to play in the regulation of financial advisers. We consider the obvious role to be the one being fulfilled via this consultation, namely to contribute to the formulation of the legislation and regulation.

    For the record, the SIA would not support a legislative provision requiring advisers or entities to belong to a particular professional body or bodies.

62. Should any changes be considered to the relative obligations of individual advisers and the businesses they represent? If so, what changes should be considered?

    The contrast between Australia, focused on entities, and New Zealand, requiring many individuals as well as entities to be registered, licensed and/or authorised is quite stark, albeit we notice the recent moves in Australia requiring all individual advisers to be listed on a register.

    We believe that the balance in New Zealand is better than that in Australia in delivering to regulatory outcomes, subject to considering the following:

    Consideration should be given to whether and how compliance obligations might be simplified or reduced for those advisers, particularly AFAs, employed in corporates such as NZX Firms, by making it simpler for the corporate entity to fulfil certain

compliance functions for individual AFAs, but without reducing the conduct obligations applicable at an individual AFA level.

Consideration should also be given as to whether QFEs should have an obligation to maintain and make publicly available a register of personnel able to provide advice services to consumers and the nature of the services that each such adviser is authorised by the QFE to provide.

63. Is the QFE system achieving its goals in terms of consumer protection and reducing compliance costs for large entities? If not, what changes should be considered?

We consider that the QFE structure is achieving its goals, but it may not be perceived as doing so. We therefore repeat some of the points made in answer to Questions 22 & 23.

"There does not seem to be strong recognition that QFEs are required to meet the same Code standards as AFAs, except to the extent that an "If not, why not" analysis has been completed to identify appropriate areas for relief.

The evidence of confidence being undermined or lack of understanding is perhaps most obvious in critical comments, both public and private, made by advisers operating outside of QFE structures of the supposedly lesser obligations that QFEs and QFE advisers have to meet.

Transparency of QFE obligations might be enhanced if a document was publicly available outlining any relief granted to a QFE under the "If not, why not" analysis. Such a document might then be helpful in effectively reiterating that in all other respects, the QFE has to meet the same Code Standards as an AFA."

We also suggest that the perception of failure of the QFE regime that some people hold may arise simply because some QFEs may restrict advice, for example, precluding many staff from offering personalised advice, but consumers may still believe that personalised advice has been provided. See our earlier comments in answer to a number of questions about the need to provide clarity at the time of service delivery about the nature, limitations and risks associated with different services.

More generally, and as noted in our response to question 1, we query whether the QFE regime has the effect of favouring large vertically integrated product/advice providers at the expense of advice providers who choose to provide advice on the products of a range of providers. This effect is certainly suggested by the large number of QFE advisors and declining number of AFAs, and as noted in our response to question 1 has implications for the ongoing availability to consumers of advice as to choice of product provider.

We note that the Ministry does not have any information about how much of the personalised advice being dispensed on category 1 products in the market today comes from QFE advisors, and we urge the Ministry to collect further information in this regard so that a fully informed policy approach can be developed.

64. Do you agree that the Register should seek to achieve the identified goals? If not, why not?

Agreed.

65. What goals do you consider should be more or less important in reviewing the operation of the Register?

In order to be useful, it must at the least be accessible and accurate, so usefulness takes priority, albeit dependent upon the other two goals.

We would add one further goal to enhance usefulness, and we would call it "relevance." To be relevant to the public, we consider that the register needs considerable work to enable the public to be able to use it to identify those advisers able and willing to provide the services that any member of the public is seeking.

This means that terms such as AFA and RFA become irrelevant. More relevant search terms might be such things as, for example, mortgage adviser, life insurance adviser, investment adviser, financial planner, or perhaps the product or service terms themselves such as, for example, mortgage, insurance, investment, financial planning, discretionary investment management, etc.

Further, we submit that there should be a rigorous cost benefit analysis to determine whether the cost of the Register meeting its goals is commensurate with the benefit that the Register offers to its users.

66. Do you agree that the dispute resolution regime should seek to achieve the identified goals? If not, why not?

Agreed

67. What goals do you consider should be more or less important in reviewing the dispute resolution regime?

First awareness, then accessibility, as without awareness and accessibility, confidence can't begin to develop. Note that we consider confidence can only be achieved when consumers feel that dispute resolution is delivering efficient and effective results, including prompt payment of any restitution. If restitution is awarded but not received, confidence can never be achieved.

68. Does the FMA need any other tools to encourage compliance with financial service provider (FSP) registration? If so, what tools would be appropriate?

    No submission comment.

69. What changes, if any, to the minimum registration requirements should be considered?

    Referencing question 75, we suggest that consideration be given to appropriate minimum registration requirements to mitigate the risks that a registered entity is unable to meet restitution or compensation payments that might arise in the event of an adverse ruling.

70. Does the requirement to belong to a dispute resolution scheme apply to the right types of financial service providers?

    We think so.

71. Is the current framework for the approval of dispute resolution schemes appropriate? What changes, if any, should be considered?

    No submission comment.

72. Is the current framework for monitoring dispute resolution schemes adequate? What changes, if any, should be considered?

    No submission comment.

73. Is the existence of multiple schemes and the incentive to retain and attract members sufficient to ensure that the schemes remain efficient and membership fees are controlled?

    We believe so.

74. Should the $200,000 jurisdictional limit on the size of claims that dispute resolution schemes can hear be raised in respect of other types of financial services, and if so, what would be an appropriate limit?

    We simply note the recent consultation on the limit applicable to certain insurance disputes referred to the insurance ombudsman relevant to home owners asking whether a $350,000 limit should apply. Whatever limit is applicable, we see no strong reason for it to necessarily be different for different types of financial services, be the limit $200,000, $350,000 or something else.

    We suggest that a reasonable basis to consider in setting the limit is the level of resources that are likely to be available to a consumer to apply to take alternative action, such a limit thereby helping to avoid the situation arising whereby limited

resources preclude actions that would otherwise result in delivery of what would be a reasonable and just outcome. At this point, we consider that a limit of $200,000 is sufficient and do not believe there is any rationale for increasing this limit.

We also suggest that it is appropriate that the option be open for the parties to a dispute to agree to set aside whatever limit is set in regulation, thereby allowing for a dispute of any size to be mediated via a dispute resolution scheme where such agreement is reached between the parties.

75. Should additional requirements to ensure that financial service providers are able to pay compensation to consumers be considered in New Zealand?

We believe that the biggest threat to consumer confidence in dispute resolution outcomes, or in the general regulatory regime when compensation becomes payable, is a failure for restitution to be made.

If that point is accepted, the question then becomes what is the most effective and efficient way to mitigate the risk that restitution can't or won't be made.

We state first that we believe the responsibility and capability to make restitution or pay compensation should lie with the individual or entity that is subject to some ruling to do so. We do not support structures involving industry levies or other industry based funds to provide restitution when an individual or entity is unable to meet its own obligations to pay restitution or compensation arising from a ruling.

We acknowledge that our stance increases the risk of loss of public confidence where restitution or compensation can't be met by an individual or entity, but we remain unconvinced that this risk warrants it being underwritten by the wider industry.

We suggest instead, as with NZX Firms, that some level of capital adequacy or other equivalent means, such as professional indemnity insurance, should be in place at an individual and/or entity level to mitigate such risks.

76. What features or information would make the Register more useful for consumers?

We consider that public awareness of the Register is low and to make the Register more useable and relevant, the Regulator should promote the Register's existence.

We then repeat our answer to question 65.

"We would add one further goal to enhance usefulness, and we would call it "relevance." To be relevant to the public, we consider that the register needs considerable work to enable the public to be able to use it to identify those advisers able and willing to provide the services that any member of the public is seeking.

This means that terms such as AFA and RFA become irrelevant. More relevant search terms might be such things as, for example, mortgage adviser, life insurance adviser, investment adviser, financial planner, or perhaps the product or service terms themselves such as, for example, mortgage, insurance, investment, financial planning, discretionary investment management, etc."

In an ideal world, consumers entering search words that they understand into Internet search engines, such as Google, would result in relevant register entries achieving a high return rate at the top of the search return list.

Whatever information is displayed on the register, appropriate safeguards should be in place to ensure that the benefits of providing information on a public register do not override an adviser's privacy rights.

77. Would it be appropriate for the Register to include information on a financial adviser's qualifications or their disciplinary record?

We do not support inclusion of qualifications and, for the record, nor do we support the Australian move to require inclusion of memberships of professional bodies. We consider these to be matters better left with the adviser to discuss with consumers as part of the engagement process.

In contrast, we support inclusion of the disciplinary record in relation to adverse discipline outcomes arising directly from the regulatory regime, but not those arising from, for example, a professional body. We make this distinction, as we consider a failure to meet the legislated regulatory requirement as evidenced by such a disciplinary outcome is valid information that a consumer should be able to access via the register.

If it is felt that there are advantages in increasing the amount of information on the register to include qualifications, membership of professional bodies, etc., one possible way of achieving this without "cluttering" the register would be to require an adviser's current primary disclosure document to be accessible via the register entry in a searchable form.

We reiterate that an Adviser's right to privacy should be considered in determining requirements.

78. Do you consider misuse of the Register by offshore financial service providers is a significant risk to New Zealand's reputation as a well regulated jurisdiction and/or to New Zealand businesses?

Yes, we do consider it a risk, and welcome the current legislative changes designed to make it easier to exclude or remove certain entities from the register.

79. Are there any changes to the scope of the registration requirements or the powers of regulators that should be considered in response to this issue?

    No submission comment.

80. What are the effects of (positive and negative) competition between dispute resolution schemes on effective dispute resolution?

    No submission comment.

81. Are there ways to mitigate the issues identified without losing the benefits of a multiple scheme structure?

    No submission comment.

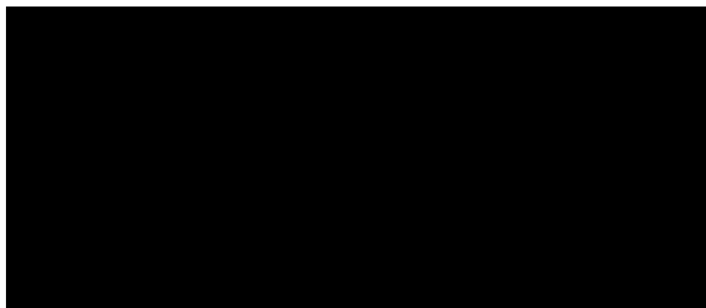
82. Are the current regulatory settings adequate in raising awareness of available dispute resolution options? How could awareness be improved?

    We understand that there is evidence that current awareness of the availability of dispute resolution services is low, suggesting that current regulatory settings are not adequate but we don't have any immediate suggestions to offer as to how this might be improved.

83. Please provide your name and/or the name of the group of people, business, or organisation you are providing this submission on behalf of:

    Rob Dowler, Securities Industry Association

84. Please provide your contact details:



85. Are you providing this submission:

    On behalf of an organisation (Yes)

    Please describe the nature and size of the organisation:

The Securities Industry Association is an unincorporated body established to represent the New Zealand Sharebroking Industry and provides a forum for discussing important industry issues and developments, managing industry change, and to represent the broking industry in respect of legislative management, operational and regulatory issues that impact the industry as a whole.

The Securities Industry Association members employ circa 400 Authorised Financial Advisers and deal with a combined 300,000 New Zealand retail investors with total investment assets exceeding $60 billion. They also deal with virtually all global institutions with the ability to invest in New Zealand.

86. If submitting on behalf of an organisation:
    How many people are in the organisation, or work in the organisation, that you are providing this submission on behalf of?

    > 500

87. I would like my submission (or specified parts of my submission) to be kept confidential, and explain my reasons for this, for consideration by MBIE:

    No. No part of this SIA submission is required to be kept confidential.