Submission

From SiFA Incorporated

Issues Paper:

Review of the Financial Advisers Act 2008

&

The Financial Services Providers (Registration and Dispute Resolution) Act 2008

22 July 2015

SiFA is an incorporated Society that acts as a Professional Financial Adviser Body to approximately 60 Authorised Financial Advisers operating independently-owned practices throughout New Zealand.

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

Yes, but not in isolation. Unfortunately, while wealthier consumers are generally able to access advice, the confusion created by complex legislation/regulation, FMA guidance notes and several changes to date have not succeeded in achieving those goals for the majority of consumers. Adjusting the FA Act and associated regulations may help improve this situation - but no changes may well increase the less than optimal current outcomes. Further information to explain this opinion follows.

Goal 1: Consumers have the information they need to find and choose a financial adviser

- Do consumers understand the complexities of the regulatory framework?

Not only do most consumers not understand those complexities, they generally assert they are unhappy to be 'strait-jacketed' in such a manner that indicates they are not the focus of the regulatory framework at all. Instead of becoming easier for consumers to find an adviser capable of meeting their requirements anecdotal comments suggest it has become more difficult. As an analogy, water flows along the path of least resistance - the confusing adviser designations and terminology, AMLCFT complexities, and the product based approach of current regulation represent another catalyst for the increasing focus on residential property, where fewer complexities are perceived to exist.

- Should there be a clearer distinction between advice and sales?

Yes, to make it easier for consumers to choose a solution for their issues. A consumer who wants just information or who wants some advice but not the 'whole 9 yards' will be able to receive it. Meanwhile a consumer who wants advice on strategic direction options for the years ahead will know he or she will need to talk with an AFA. A regulation requiring consumers be provided with clear documentation identifying the advantages and limitations of advice and of sales (including the risks the consumer accepts in purchasing a product without advice) will be important. Cancellation of the RFA and QFE adviser acronyms and retention of AFA for provision of advice will assist in reducing existing confusion amongst consumers. Identification of the type of services an AFA can provide (e.g. advice on investments, personal risk management advice, mortgage advice, financial planning advice , etc) could be identified in the FSP Register, professional body, FMA and Sorted websites.

- How should we regulate commissions and other conflicts of interest?

Everyone involved in providing financial advice or sales functions needs to be paid. Regulating what advisers are required to warn consumers about in terms of biases that can result from being paid by commission (or salary plus bonus schemes, etc) is considered appropriate. While the number of consumers prepared to pay for advice might be increasing, the majority would appear likely to continue accepting the commission option. It is noted that while commission payments can cause biases to develop, there is no information available that confirms biases cannot occur also in a fee environment. In the event that a decision is taken to remove commissions, a not inconsiderable amount of promotion would be required by a government agency (e.g. MBIE) to persuade consumers to pay a fee for advice. And if a ceiling is to be established for commissions, a similar

exercise would be required to convince consumers of the need to pay an additional fee over and above the capped commission for his/her time where such an additional fee was warranted. Disclosure requirements should be common and apply to all financial advisers so that interests and incentives can be identified.

Goal 2: Financial advice is accessible for consumers

- Does the FA Act unduly restrict access to financial advice?

Yes. Wealthier consumers arguably still have access but the majority of consumers have restricted options. AFAs are willingly compliant with regulatory requirements but the confusion created by the numerous changes, and sometimes incomprehensible guidance, has caused some advisers to mitigate potential compliance risks by deselecting certain types of consumer and reducing the type of advice being offered. Increased compliance time and monetary costs have added further pressure, particularly on smaller practices, with some AFAs exiting from the industry or moving to a vertically integrated institution. An informal survey illustrated that the number of AFAs intending to follow suit and exit within the following 18 to 24 months has increased – notably amongst independent AFAs and non-aligned AFAs. The reluctance of non-AFAs (i.e. RFAs) to accept additional compliance risks and practice costs by becoming an AFA is unhelpful in improving consumer accessibility to financial advice. The confusion created by the FA Act and associated compliance requirements has seen non interest amongst university graduates grow in terms of viewing the financial advice sector as a potential career option. The loss of independent AFAs in particular and reduction generally in access to financial advice is considered to be an undesirable outcome.

- How can compliance costs be reduced under the current regime without limiting access to quality financial advice?

Make the consumer the focus of regulation and amend the FA Act accordingly. Educate consumers about financial capability and the advantages plus risks involved when participating in capital markets. Informed consumers may arguably require less regulatory support and hence enable compliance costs to be reduced. Given a government policy objective is building capital markets to provide flow on benefits to the economy and to all New Zealanders, it seems reasonable that most of the costs should be shouldered by the taxpayer. Regulatory changes and reassessment of guidance advice to remove or seriously reduce complexities and inconsistencies impacting AFAs has the potential to lower compliance costs further.

- How can we facilitate access to advice in the future?

The uptake by New Zealanders of technology has been impressive and is likely to continue. Improving financial capability/literacy with the use of social media and existing web access (e.g. sorted.org.nz) and encouraging the development of NZ domiciled 'robo' facilities for use by both consumers and advisers will be helpful. Altering current regulation to clearly focus on the consumer, and then publicising that development, in addition to expanding the number of qualified financial advisers competent in their chosen advice fields (e.g. investments, financial planning, risk management using insurance products, mortgage planning, etc) will assist to achieve this objective.

Requiring all current non-AFAs and current QFE advisers providing advice to become AFAs within 5 years might be an option for consideration. That 5 year term will afford opportunities to address replacement options for those advisers who do not wish to become AFAs.

Goal 3: Public confidence in the professionalism of financial advisers is promoted

- Should we lift the professional, ethical and education standards for financial advisers?

Requiring all advisers, AFAs and non-AFAs alike, to attain a minimum education standard, which includes ethical issues, may improve consumer confidence but we have no evidence available to support that view. However, we submit that identification of the limitations and the advantages that can accrue from using a financial adviser will be a useful driver of public confidence by reducing surprises that can be attributed to the adviser. The perception that the adviser can always select the best performing investment vehicle or insurance with the best benefits needs correction. Separation of advice from sales may be helpful in achieving such a result. Encouragement for advisers to achieve further education above the minimum level rather than demanding it be achieved is considered appropriate and professional adviser bodies are well positioned to assist in this respect. Achieving Level 5 education for all financial advisers might improve public confidence in terms of raising the standard of knowledge above that of most consumers.

- Should the individual adviser or the business hold obligations?

Whoever or whichever provides the advice or sales activity should hold the obligation.

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

Accessibility to appropriate financial advice by consumers who are confident that the AFA is qualified, experienced and capable of meeting their requirements and on their terms (e.g. provision of what is currently known as "limited advice" rather than being forced to tolerate complex, expensive and tedious processes such as a full Statement of Advice). Utilisation of the Treasury's *Principles for Best Practice Regulation* and the Productivity Commission's report on *Regulatory Institutions & Practices* (30 June 2014) plus the placement of the consumer at the centre of regulatory design is likely to achieve the additional benefit of monetary and time cost reductions for both adviser and consumer. Making it easy for consumers to obtain professional advice from an AFA recognised as being competent in his or her field is key to adviser regulation. Adjustments to the Code of Professional Conduct to accommodate all AFAs (i.e. including those currently referred to as RFAs and QFE advisers) will allow it to apply to everyone providing financial advice thus strengthening consumer confidence.

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

It has been suggested that real property, art and other collectibles be considered for inclusion in the definition of financial advice so that the competency, care, diligence and skill requirements plus avoidance of engaging in misleading or deceptive conduct can be applied to all advisers irrespective of the product type(s) they advise upon.

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?

Yes, however inconsistencies exist as a result of varying definitions of "wholesale" under different legislation/regulations impacting AFAs. It will help when all definitions are the same across all legislation. It is submitted that assessing a person's ability on the basis of the dollar value of wealth and/or income may be inadequate (e.g. consider the winner of a large sum from Lotto) in assessing capability to appreciate risks. An attempt to regulate such an investor away from becoming a danger to themselves because of inexperience may create a difficult situation. While logic might argue for a recommendation that the person accept advice as a retail client, it is considered that leaving them with no option other than doing so risks their adoption of offshore facilities that may have far more dangerous outcomes than being accepted as a NZ wholesale investor. Once appropriately and adequately informed, everyone should be allowed to reach their own conclusion.

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?

Consumers rightly regard themselves as persons rather than being representative of a class. A distinction between personalised advice and class advice might have been considered helpful in 2010 to enable the provision of generalised online brochures and online planning services. However, perhaps class advice should be replaced with the term sales information – or simply, information. Consumers are unlikely to understand the difference between class and personalised advice. The FMA guidance in respect of limited advice and Kiwisaver has created such confusion amongst AFAs that some now refuse to provide advice for either. An effective solution is required so that consumers can be provided with limited advice without the risk that the AFA might subsequently be found during an FMA monitoring visit to have provided advice inappropriately.

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

If all financial advisers (AFAs and those now known as RFAs and QFE advisers) become subject to the Code of Professional Conduct and the same minimum level of education requirements related to the products and services to be provided, then there seems no reason for the separation into Category 1 and Category 2 products as a determinant of product complexity. Products currently listed in each category can be complex or simple depending on the consumer's particular situation and requirements. Abolition of such categories seems entirely appropriate.

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?

It is not the product that determines complexity but how it is to be used. For example, a mortgage application and a risk insurance program can be more complex and demanding than opening and/or advising on a Kiwsaver account. It depends on each client's specific situation and needs. Acceptance of the minimum education level plus ongoing CPD development for all advisers according to the 'streams' on which they prefer to advise will enable the financial service to be delivered with good conduct, care, diligence and skill. Accordingly, removal of the current categorisation is recommended.

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?

No. It remains the cause of confusion amongst consumers. Requiring all financial advisers to meet the minimum requirements for authorisation as an AFA but with a focus on the competencies needed for each individual's 'streams' of service is considered to be a more appropriate solution. Allowing each AFA to add to this acronym identification of the particular streams in which they are competent will help consumers to identify which advisers should be able to help them with their particular concerns.

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

The general conduct requirements applying to all financial advisers are considered appropriate. While some advisers using the term RFA may not appreciate that they do in fact apply to them, adoption of minimum education levels and of the Code of Professional Conduct will likely remove that erroneous assumption.

Elsewhere in this submission it has been recommended that there should be only one type of adviser (AFA) and that a single Code should apply to all advisers. Providing the Code Committee with the authority to create product and advice safe harbours will enable an adviser to discharge effectively his or her client suitability responsibilities.

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

Acceptance of the single adviser name solution (AFA) with additional descriptors that describe each adviser's areas of competence, minimum education requirements for all, and adherence to a single Code will mean all advisers will provide the same disclosure information. In particular, QFE advisers and those previously referred to as RFAs will then disclose in an SDS their remuneration, fees to be charged, plus details of potential conflicts of interest including salary and commissions, employer/producer limitations and KPIs, plus other incentives such as bonuses, discounted fees, and fringe benefits. Making the public aware that all financial advisers conform to minimum education standards and the Code of Professional Conduct will improve public confidence in the professionalism of financial advisers and assist consumers locate a suitable adviser.

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

We see no reason for RFAs to be regulated any differently to AFAs once a single name has been adopted

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

No. While useful perhaps in the original authorisation process, the only beneficiary of maintaining

an updated ABS is the FMA. Neither adviser nor consumer benefits from the administratively time consuming process required for its maintenance. The consumer never sees the ABS and we recommend that the requirement to maintain a current ABS 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?

It is unlikely many consumers understand the difference between the two distinctions or even why they need to know them. These distinctions are examples of unhelpful complexities that confuse clients seeking advice about issues relevant to their needs. Like us, it is probable that some advisers are unsure why an investment planning service can be provided only to individuals and not also to entities such as companies and trusts.

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 absolute need for advisers to exercise discretion in relation to their clients' investments. It is more a choice of business model and client preferences. Regulation needs to acknowledge that there is a wide range of investor preferences in terms of what advice or service they want and the solutions that they might prefer. Regulation should allow for a range of adviser business models to meet these needs without unduly skewing availability through compliance or cost (direct or indirect), or through defining the solution set.

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?

Yes and with any changes applying equally to entities and advisers alike. The contingency DIMS provisions might be helpful in specific situations. The continuous and detailed discussions on minutia about DIMS has, based on the low number of advisors applying for licences or AFA authorisation, effectively made DIMS an unattractive adviser business proposition, even where clients want the service.

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

The PDS (Primary Disclosure Statement) and initial SDS (Secondary Disclosure Statement) might be considered adequate but are not very useful or practical. The PDS, which is provided in statute-determined format, is of little use to a consumer wanting to know who to select from a list of competing advisers. It provides for variation only in (1) the name and address of the AFA; (2) the three types of services provided; (3) the method by which the AFA is remunerated; and (4) the name of the AFA's DRS (Dispute Resolution Service).

A portion of the SDS is also required to be produced in template form. However, paragraph 90 in the Issues Paper incorrectly states ' there is no set format for secondary disclosures'. Section 6 of the Financial Advisers (Disclosure) Regulations 2010, along with Schedule 2, include some very prescriptive requirements for subsequent secondary disclosure. A Statement of Advice (SOA) is

provided in the form of an additional SDS and will contain details of the advice or service the client has agreed to have provided plus the fees that will apply.

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

It will be useful to require disclosure of any of the following: limitation on product or scope of advice; potential or perceived conflicts; associated products or services; salary received from a product provider; key performance Indicators being rewarded for product placement (e.g. bonus payments and provision of free or reduced price fringe benefits); 'Buyer-of-last-Resort (BOLR) contracts'.

The template formats and method of delivering disclosure are cumbersome and consumer unfriendly – to the extent that they seem to conflict with Code Standard 6 requirements for ”clear, concise and effective” communication. Comments from prospective clients illustrate their failure to understand the need for two disclosure statements (PDS & SDS) when the information could be provided in one alone. The amount of detail and unfamiliar terminology makes for tedious reading, which rarely occurs. The suggestion that the PDS provides consumers with competitive comparisons with other AFAs is not shared by recipients.

The requirement that every AFA must disclose in all advertising that “a disclosure statement is available on request and free of charge” presents an AFA with a potential risk by causing misleading information to be presented. The PDS must be provided to every retail client but is not required to be provided to a wholesale client. As the latter is unable to make use of the DRS facility noted in the PDS, the document becomes misleading. However, whether or not a prospective client meets the wholesale test cannot be ascertained until a fact find has been completed. It is very unlikely that such a prospect would reveal at the time of requesting the obligatory PDS the amount of their net asset value and income.

It is submitted that the PDS and initial SDS be combined into one document; and that consideration be given to dropping the requirement for an AFA to include in all advertising that a statement that a disclosure statement is available on request. Alternatively, that consideration is given to altering the FSPR to allow inclusion of the details contained in the PDS and with a warning that wholesale clients are excluded from access to the DRS – a summary of the criteria for wholesale status could be included there. Advertising could therefore simply refer potential consumers to the FSPR for access to the required information.

Ongoing disclosure after the initial disclosures early in the client sign-on stage are provided for in the principles-based Code of Professional Conduct along the lines that an AFA must also disclose costs, fees, remuneration, conflicts of interest as may be applicable every time advice is provided. This continual disclosure could become more realistic if required only when there has been a change in the content subsequent to the most recent set of disclosures.

There is no allowance of digital delivery of disclosure documents (e.g. as html on a website, via email links etc) and capacity for acknowledgement of receipt by electronic means. Given the rapid acceptance of digital facilities, it is recommended that these delivery requirements be reconsidered. A review of disclosure content and the requirement to provide all clients with replacements every

time there is a change (which is both time consuming, costly and irritating for clients who are asked to return a signed copy for AFA file retention) is recommended.

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

We agree that involvement of professional adviser bodies plus consumer and industry representatives helps ensure a workable and balanced development of industry standards. Interpretation of the Code standards may be considered to be variable.

We submit that the Code should apply to all advisers, irrespective whether a QFE adviser or AFA (and including those who are referred to currently as RFAs). It is noted that commercial reality means AFAs employed by a product issuer may have a less fulsome view of Code Standard 1 requirements.

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

We consider that the Code Committee is currently overly controlled by FMA and suggest that consideration is given to secretariat and legal support to the Committee being provided independent of FMA. We would like to see steps taken to give the Committee a greater say over its funding, number of meetings, ability to call on experts, ability to commission research etc. We submit that professional adviser bodies should be consulted or involved more directly in the appointment of Code Committee members. Practitioner experience on the Code Committee is considered a positive benefit given past evidence in the work of the FMA and MBIE indicating there are gaps in their knowledge of the industry/profession.

We do not think that the FMA should have any ability to make changes to the Code of its own motion. The Draft amended Code should be proffered to MBIE who then pass it on to the Minister. FMA should have the ability to submit on Code changes just like everyone else.

In addition, we suggest that the Code Committee become subject to the provisions of the Official Information Act, providing the usual protections are in place to prevent commercially sensitive or confidential material relating to AFAs or financial service providers becoming subject to public disclosure. It is considered inconsistent that the Code Committee comes under FMA while the FAA regulations come under the MBIE. The Code is in effect a Regulation and there is potential for conflict between The Code and other regulations under the current arrangement. Please refer also to Question 34.

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

Yes. However we do not think it is correct that FMA provides the Secretariat to the FADC. The FMA is effectively the prosecutor in matters that appear before the FADC, so to have them servicing the Committee seems to us to be a gross conflict of interest.

The arrangements for the independence of the secretariat and legal support provided to the NZX NZ Markets Disciplinary Tribunal seem to be a suitable model.

21. Should the jurisdiction of this Committee be expanded?

We submit that the effectiveness of the FADC will increase if its scope is broadened to cover all advisers including those currently referred to as RFAs and QFE advisers.

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?

Absolutely "Yes"! There is little transparency around QFE obligations and the limitations of advice a QFE adviser can provide. Significant numbers of our Members have voiced frequent frustration that QFE advisers appear able to escape more lightly in terms of regulatory control than small AFA adviser entities. The prolonged, and for a long time apparently unaddressed, twisting/miss-selling of Kiwisaver by banks [it is surely no accident that the banks now control the majority of Kiwisaver accounts and funds] may have reinforced the perception that QFEs and QFE advisors have lesser obligations than AFAs. Anecdotal evidence that consumers of QFE advisers do not understand the nature of the service being delivered and that it cannot extend to the provision of an investment planning service has reinforced those beliefs. We consider that QFEs and QFE advisers should be required to meet the same Code Standards as AFAs. It is considered a real risk exists of damage to the reputation and desired professionalism of financial advisers if this situation is not addressed quickly.

If our previous suggestion that 'sales' be separated from 'advice' is accepted, a QFE and its advisers might provide the 'sales' activity on an information only basis for the products it issues. QFEs and their advisers would be licenced under the FMC Act thus leaving AFAs providing advice based on suitability regulated under the FA Act and accountable to FMA. It is recommended that if such an arrangement is developed that a QFE and its advisers must provide each consumer with a written warning advising that no consideration of their personal circumstances will be taken into account; that it is the responsibility of the consumer to ensure that the product is suitable and meets the consumer's needs; and that such advice can be obtained from an AFA.

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

Transparency of QFE obligations will be enhanced if a document is 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 aspects, the QFE has to meet the same Code Standards as an AFA.

This question is best answered by referring to our recommendation that all disclosure requirements be reviewed. Certainly QFE perceived conflicts, oversight, obfuscation of fees and practices - especially of some Fund Managers with QFE status - should be exposed. The distinction between acting as principal and acting as agent for the consumer should be instituted.

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

consistent delivery to consumers and to avoid creating consumer confusion or an incorrect perception as to what is being delivered and by whom.

Having the same Code of Professional Conduct requirements and disclosure rules that apply to AFAs apply to QFEs and QFE advisers will be an improvement.

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

As previously discussed, the ABS serves no purpose for consumers and little purpose for advisers but imposes an undesirable rigidity on small & medium enterprises who could better serve consumers by responding dynamically to changing markets & developments. The PDS should be shortened to include statutorily required information on a half-page, and combined with pertinent, discretionary information in a single document.

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

The broker clauses in the FA Act would provide better understanding if amended further to enable AFAs to understand whether they are unintentionally caught (e.g. by the use of a Direct Debit on a client account for fee payments). We submit that the return to the consumer-recognised meaning of the word 'broker' (e.g. mortgage broker, insurance broker, share broker) will be useful and could be accommodated by amending the 'broker' definition in the FA Act to 'custodian' which more correctly identifies the functional activity being regulated.

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

Yes

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

We understand that regulations prescribing the required disclosure provided under Sections 77D-77G of the FA Act are yet to be promulgated. It would seem sensible that brokers should disclose as is also required of AFAs

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 in the Insurance Intermediaries Act 1994, we consider that equivalent protection should apply.

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

Yes. While no system is completely 'fail-safe', the recent custodian amendments and reporting requirements (e.g. delivery direct to retail investors and independent of a financial adviser) seems appropriate and reasonable

31. Should any changes to these requirements be considered?

Not in our opinion.

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

It is our view that exclusions from the FA Act for such a wide range of people detracts from the ability to satisfy Goal 3 (promotion of public confidence in the professionalism of financial advisers). Media and consumers are unable to determine the difference between investment planning advice and the advice provided by property consultants, real estate agents, lawyers, and accountants. Consumers are unlikely to understand, or even know to ask, whether the answer requested from any of these people to a question about an investment will be constrained. The term 'financial advice' and 'financial adviser' is used by the media loosely when reporting any faulty or questionable advice, irrespective whether the provider in question is exempt from the FA Act. The exemption for non-profit organisations in respect of free financial adviser services will be appropriate when a measure of minimum standards and competency requirements exist. Whether such financial advice is being provided free is considered irrelevant – potential harm exists when information and advice provided is erroneous or misinformed.

We submit that the following be considered to assist in achieving the objective of Goal 3:

- An amendment to the FA Act to remove the exemptions above or,
- An amendment to broaden the definition of financial advice and hence those people subject to meeting the Code Standards (including competence) in the Code of Professional Conduct

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

Yes.

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

While accessibility has improved with the recent changes to the FMA website, it would be helpful to have links added to guidance documents for related documents and previous guidance. The inclusion now of dates for guidance notes is beneficial but we note that this does not appear to extend to all FMA website records (e.g. to speeches from FMA).

The huge volume of frequently changing, confusing and inconsistent compliance material across the FA Act, regulations (including the Code of Professional Conduct) and associated financial services legislation (e.g. AMLCFT) spawned the development of an expensive industry of questionable

competence purporting to provide interpretive AFA compliance support. Given its regulatory function, it had been anticipated that FMA guidance would ameliorate such difficulties concisely, effectively, and with clarity. Regrettably this has not been the case.

Adviser comments noted that their confusion, uncertainty and frustration increased further as a result of FMA 'guidance' because of:

- the use of unfamiliar, inconsistent terminology and often incomprehensible language
- complex requirements that required legal advice to interpret but which could not be relied upon as being acceptable to FMA
- contentious interpretations seemingly indicative of what FMA would have preferred the legislation to provide rather than clarifying or supporting the FA Act, associated legislation and regulations in their current forms
- interpretations of the Code of Professional Conduct that seemed contrary to guidance provided by the Code Committee
- failure to update guidance to reflect changes to legislation, regulations, and other associated legislation (e.g. Code Standard 6, personalised DIMS)

The instruction to deny advice to a consumer failing to comply with AFA regulatory requirements illustrated a solution for those advisers concerned at the risk of inadvertently being found to be non-compliant. Some have reduced their provision of advice (e.g. for Kiwisaver and for limited personalised advice situations) and restricted the type of acceptable client. Others have become a QFE adviser and some have voiced an intention to exit the sector when next year's AFA re-registration occurs. Such decisions detract from the ability to achieve Goal 2 (financial advice is accessible for consumers).

Improvements:

- Resolution of the items above
- Publication of the procedures and checklist manual used by FMA monitoring persons during AFA visits (invaluable in understanding FMA adviser practice expectations)
- Notification when changes are made to legislation, regulation and guidance

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.

- Amend legislation and regulation to become a fully principles-based regime (thus matching the Code of Professional Conduct) with a 'consumer' plus 'advice' focus - including the removal of current complexities. That will allow the consumer to determine what constraints should apply in terms of advice rather than being forced to submit to a regulatory model with unnecessary costs
- Simplify to two distinct terms:

  authorised financial adviser - with commonly recognised terms added that clearly identifies each adviser's 'streams' of competence (e.g. financial planning advice, investment planning

advice, DIMS, personal insurance advice, mortgage advice, financial product recommendations and implementation, specialist referrals, etc), and

product information specialist (e.g. financial product information and sales only – no advice). The former would remain regulated by the Code of Professional Conduct and the FA Act while the sales and information only people could be accountable through their employer or contracting distributor under the FMC Act

- Deleting RFA and QFE adviser acronyms
- Remove all other distinctions (e.g. class advice, personalised advice, category 1 products, category 2 products, wholesale client, retail client, comprehensive advice, limited personalised advice, information only)
- Require AFAs to provide both a written and verbal 'financial health warning' that clearly explains his or her advice limitations (e.g. the suitability of the advice and/or product recommendation does/does not take into account your personal situation and requirements)
- Require Product Information Specialists to provide both a written or verbal 'financial health warning' that clearly states "I cannot provide you with advice as to whether the product I am selling you is suitable for your personal needs. I am paid to sell the financial product by its issuer and/or distributor and can only provide you with factual information provided by them. You are solely responsible for making your own enquiries, including seeking advice from an Authorised Financial Adviser, to determine whether it is suitable for you." – or similar
- Retain a disclosure statement in a single document that clearly identifies the AFA competencies and other matters necessary to inform the consumer of matters relevant in his/her adviser selection process

Comments from prospective consumers have confirmed the much easier processes and lower costs for property investments, when compared with other investment types such as managed funds and capital markets generally, make the former much more attractive. The current regulatory regime is encouraging rather than discouraging consumers from choosing property investments.

Simplicity, with effective regulatory requirements, is expected to improve consumer and adviser confidence, lower adviser and hence consumers costs, and improve the attractiveness of the financial advice sector to graduates and others who may be reviewing their options.

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 are only aware of possible consumer understanding on this issue as a result of media articles and the MBIE focus survey results. We submit that an equally relevant question is whether a consumer understands a QFE adviser who is also an AFA may be able to sell only a specific product or range of products (e.g. as issued by his/her employer or distributor) and the constraints that might impose. A requirement to issue a warning identifying this and other constraints would seem manageable under FMC Act regulation of the product issuer/employer/distributor.

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?

Yes. We have suggested in previous questions a separation of sales/information provision functions from financial advice with the former regulated via FMC Act and the latter as AFAs via the Code of Professional Conduct and FA Act.

Financial advice:

- Provided only by AFAs
- Consumer is provided with a standardised written notice comparing the reasons for, potential benefits from, and disadvantages of (e.g. costs and time required to gather, analyse, and report on data) full financial advice
- Consumers should not be forced to receive advice they do not wish to pay for or receive - for any reason – and an AFA should not be required to provide more advice than is required by the client
- Consumer receives a financial health warning that details and confirms any consumer initiated limitations on advice required
- Consumer receives AFA disclosure that confirms competency to provide the advice required

Sales/information only:

- Provided by financial product information specialist
- Consumer is provided with a standardised written or verbal notice by each person providing sales & information only functions (e.g. including bank tellers and those operating under QFE structures) that clearly notifies;

  : the 'no advice' rule

  : identifies other limitations (e.g. a limited range of product), and

  : gives a financial health warning along the lines of: "no attempt has been made to compare the benefits of this product being sold to you against those provided by another product (including any benefits that you might lose if you are replacing a currently owned product with this one now being sold to you) and that you, the consumer, are solely responsible for ensuring this product is able to meet your personal requirements"
- Consumer is provided with a document that confirms that the current product information and features sheet has been delivered to FMA and that the product is fit for the purpose noted in the information data

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

No. While they are adequate for non-aligned AFAs, inconsistencies appear to exist for those employed by or contracted to a QFE or other institution such as a Bank or Fund Manager. Notwithstanding the desire of those organisations to require salary and bonus confidentiality,

disclosure should be required when the sale of services and products (including the switching of clients from a previous investment/policy) determines the outcome. Similarly, preferential fees and other fringe benefits available to the AFA as a result of sales performance should also be disclosed. Commissions represent a mechanism to remunerate advisers and have been accepted by consumers for decades.

Although adequate disclosure requirements exist, it is unknown whether they are being used as was probably intended. For example, an adviser dependent on commission for remuneration may need to disclose that recommended products will be drawn only from those paying adviser commissions and that there may be other less expensive options offering better opportunities. If that is correct, the consumer will have been informed about the potential impact the receipt of commissions may have on the adviser's advice thus enabling an informed decision whether to use that adviser's services.

We are also concerned that where the adviser works for a QFE, they do not appear to have an obligation to disclose the fees that the QFE will earn from the QFE's own products that the adviser recommends. In the limit, a salaried QFE adviser could say to a client that she/he earns no remuneration additional to her/his salary, but does not disclose the fees her/his employer will earn from the products recommended. We think the QFE-earned fees should be disclosed.

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

By combining the Primary and Secondary Disclosure documents and redesigning the mandatory content requirements which offer little comparative information for prospective consumers.

If retention of the current wholesale and retail distinction is retained, we recommend removal of the requirement for advertising to carry a message that a disclosure statement is available on request and free of charge. Primary Disclosure Statements (PDS) are required for retail clients but not for wholesale clients. The former enjoys access to the AFA's external Dispute Resolution Service as notified in his/her PDS but that does not apply to the latter. It is unlikely that a consumer requesting a disclosure statement will disclose at that time information allowing determination as to whether or not he/she meets wholesale criteria. Delivery of the PDS to a wholesale client means that person is provided with misleading information (e.g. in respect of DRS access) and the AFA becomes exposed to a potential complaint alleging false advertising.

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?

Yes. We submit that identical standards of care, ethics, competency and disclosure in the Code of Professional Conduct should apply to all financial advisers, irrespective of their distinctions (i.e. 'streams' of competence) and irrespective whether employed/contracted by a QFE or other institution such as a bank, fund manager, or insurance company.

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?

We have to ask: "What is the problem that this question sets out to resolve?" Commissions represent but one form of remuneration received in the main by self-employed financial advisers who, as with any other business, need to meet expenses (including significantly increased regulatory compliance costs), invest into the business to ensure future viability, and receive an income to support their own families. We do not subscribe to the view that any form of payment, irrespective whether commissions or alternatives, should be banned or restricted by regulation. However, we support the requirement for all payments and inducements to be fully disclosed to consumers before advice and/or product implementation.

Payment to a financial adviser on a fee only basis is recognised by some as being bias-free and therefore better aligned with the consumer's interests. However, biases that might persuade an adviser about the improved value of one product over another exist in many forms (e.g. friendships with people employed by a product provider; an adviser's personal preferences; etc).

While we are aware of the suggestion that a 'churn' problem exists in NZ, we are unaware of evidence in support of either that view or the assertion that commission payments incentivise systemic bad behaviour and advice that requires the imposition of state initiated regulatory controls. Changing attitudes through education and the requirement for all financial advisers to abide by the standards in the Code of Professional Conduct, combined with public awareness, is considered likely to be more successful at managing such issues when they arise.

NZ consumers in general have been used to, and arguably prefer, 'easy' payment mechanisms – especially those that do not require them to physically make separate payments from their own bank account. Governments have long recognised this advantage with tax payments deducted at source (e.g. by interest or dividend payer, and by employers) – administratively simple and cost effective for both IRD and the taxpayer.

Consumers set prices through their selection of services and products and we note the impact on the NZ retail sector of offshore facilities meeting product range and price demands. We submit that additional NZ regulatory and compliance complexities will likely accelerate a similar outcome for the financial services sector as offshore roboadvice options increase. It is interesting to recognise that many existing and most new non-stock exchange listed investment products now provide no up-front or trail commissions.

Decisions on commission levels should remain the domain of the product issuers, consumers and their advisers with government action designed to encourage effective competition.

Possible impact of banning and/or restricting commission payments:

- Reduction in availability of advice, most noticeably in the personal insurance sector, as some advisers determine the impact makes their practices economically unviable and/or, given the majority of financial advisers working in the sector and belonging to professional bodies are over 55, unwilling to tolerate government interference in their incomes

- Potential reduction in insured New Zealanders who may not be prepared to pay for advice without significant public relations and marketing campaign informing the public of the benefits of doing so – and the benefits of obtaining personal insurance cover
- Improve opportunity for offshore roboadvice models to be adopted by those who do wish to investigate personal insurances – without the regulatory controls applied to local insurers
- Less assistance from financial advisers for insured clients when claims are required because the financial advisers will not be paid for those 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)?

No. It is our submission that all financial advisers (i.e. including those currently known as RFAs and QFE advisers) should meet minimum quality standards. However, exposing RFAs and QFE advisers to the excessive regulatory costs, confusion and uncertainty faced by current AFAs will likely cause further reductions in adviser numbers (particularly in the mortgage and insurance advice sectors) thus lessening competition and consumer access to advice. Contentious boundary issues and increased withdrawal of advice for specific situations (e.g. limited advice) is certainly not a positive outcome for consumers.

The regulatory impact has been particularly devastating for AFAs offering independent and unbiased advice and who tend to operate as small, independently-owned financial advisory practices. While some chose to exit the sector altogether, some are continuing the trend of moving into QFEs and other institutions which reduces competition further. We consider it is time for the Government and regulators to assess whether an independent AFA sector is deemed desirable for NZ consumers. The alternative is financial advice being offered through a small number of very large and mainly overseas owned institutions providing little competitive options.

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

Attempts at engineering outcomes by expanding or retaining the current mix of prescriptive plus principles-based regulations, inconsistently interpreted legislation, regulation (including the Code of Professional Conduct), guidance and FMA enforcement is unlikely to achieve this objective – and potentially an opposite outcome as adviser numbers and the type of advice decline.

Competition exists presently but is decreasing as regulatory imposts cause switches from independently-owned practices and by independent plus non-aligned financial advisers into the vertically integrated institutional models, thus depriving consumers of choice. Those regulatory imposts and failure to provide for a career pathway present barriers to new entrants without whom the large number of current advisers contemplating exit as they move ever closer to 65 cannot be replaced let alone increase current numbers.

As disruptive developments such as roboadvice increase, competition at a simplistic level may rise but it is unlikely to increase access to personalised advice. Restrictive local regulatory settings will likely reduce local competition in favour of those offshore alternatives and which will be very difficult to control from a NZ perspective.

Options:

- modifying regulatory compliance requirements to remove confusion existing as a result of the mix of prescriptive and principles-based options plus inconsistencies across all legislation, regulation and guidance
- separating advice from sales and ensuring everyone in the former discloses to the same standards including disclosure of remuneration and all other possible conflicts of interest

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?

From the perspective of AFAs, we think this is the most important matter for review.

No, we do not think the right balance has been struck.

The way this question is phrased is a good example of the inconsistent language used throughout our regulation. The issues paper talks about "discrete issues". The FMA guidance note calls the subject "limited personalised advice". And the Code is pretty silent on the matter – it talks about "limited advice", but this is restricted to circumstances where the client refuses to give the adviser all the advice she/he needs, or where the client in writing tells the adviser she/he does not need to consider the suitability of the advice (an oxymoronic notion if ever there was – "I want you to advise me but don't take suitability of your advice to me into account.").

It seems to us that the underlying premise of the regulators (as evidenced by the FMA guidance) is that all clients should be given comprehensive planning services, except in pretty exceptional circumstances. "And by the way, we will examine those exceptional circumstances pretty closely"

In our view, a great majority of potential clients do not want a comprehensive review all the time – they often just want advice on a discrete problem or opportunity that they face.

So we submit the Code and Guidance needs to be rewritten from this viewpoint – it should be easy for a consumer to get personalised advice on a discrete matter if that is what they want.

The reality is that because of the way the guidance is interpreted, almost all advisers think it is too dangerous (from a possible FMA monitoring viewpoint) to offer discrete advice and so have completely pulled away from offering it. Who loses? – the consumer. Who are the regulations supposed to benefit – isn't it the consumer?

We think regulation in this area suffers from a serious defect – there is no specification of what the problem is that this particular regulation is designed to solve.

We think consumers might need to be tempted to take financial advice. Why not allow them a taster on a specific issue – if they get a successful outcome, then perhaps they might just seek advice on some other issues.

However if they are forced to eat their way through the whole menu of comprehensive advice, they might just eschew seeking advice from advisers who have been adjudged competent to provide such

advice, and instead fall back on their family, friends and co-workers for advice. We think a lot of this sort of behaviour has occurred since the implementation of the FA Act.

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?

When consumers do not understand, what hope is there of encouraging them to seek advice? Consumers are reluctant to pay a fee (to non-commission remunerated AFAs) during consultations just to hear what these categorisations all mean. We have an opportunity to make regulation simple for consumers and AFAs alike – and we need to grasp it with both hands.

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

Disclosure statements – requiring that consumers receive at least three types (Primary, Secondary, and a further secondary Secondary) and reissuance whenever there is a change; time consuming and expensive with difficulty in having signed copies returned – unsurprising perhaps given some comments from consumers that they consider them boring and irrelevant.

ABS & AFA Annual Return & AMLCFT Annual Return – much of the information in the former is reflected in the two latter returns.

Compliance requirement complexity – inconsistencies and confusion increasing the need for expensive legal advice and/or compliance support businesses

Although the IFA provided an analysis of around $20,000 per AFA annually to meet regulatory requirements, individual AFA costs can be considerably higher dependent on the type of customers and the category of advice being provided. The IFA figure also does not include the costs of increased educational requirements specific to individual AFAs.

Although this question focuses on the FA Act, it must be remembered costs also arise from requirements for FSPR (including EDRS), AMLCFT, FATCA, DIMS, PDP & CPD to name but a few plus FMA guidance. Additional costs apply when a group of advisers opt to contract a Compliance Officer in an endeavour to mitigate risks of becoming non-compliant. Logically, all such costs should be paid by consumers. The reality is different - AFA reports of some consumers moving to institutions (especially to those offering advice and financial planning services free) rather than face full cost recovery. Those advisers who decided to absorb some of the increases are concerned about the negative impact on the economic viability of their practices. The outcome is a narrowing and/or reduction in advice being provided.

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

Remove inconsistencies and varying interpretations across all parts of the regulatory environment, including FMA guidance; transfer costs from advisers to the taxpayer; reduce categorisations for types of advice and advisers; separation from FMA of Code Committee which will allow AFAs options in terms of different consumer advice requirements. Please refer also to answers in previous questions.

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

The impact of AMLCFT compliance has been huge for AFAs, both in financial terms and in the loss of revenue producing hours (e.g. between $6,000 and $12,000 for initial one off costs, and annual compliance costs of $4,000 to $6,000, dependant on the type of client and number of transactions). This came as a surprise to many who had understood from the FMA, and previously the Securities Commission, that advisers not accepting cash transactions were considered low risk for AMLCFT. As transaction payments are made to or from a consumer's bank, which itself provides AMLCFT compliance, the systems, procedures and costs imposed on financial advisers appear disproportionate to the actual risks.

As each product reporting entity can develop its own AMLCFT requirements, AFAs face differing compliance requirements from each of the financial services providers involved when interacting on behalf of consumers for the sale and/or purchase of financial assets. It is not only inefficient but also confusing, expensive and time consuming for consumer and AFAs alike.

SiFA endeavoured several times to have AFAs added to the list of "trusted referees" in the Identity Verification Code of Practice thus mirroring the process in Australia. All this fell on deaf ears – largely in our view because of bureaucrats' unwillingness to even consider the issue. Allowing AFAs to be trusted referees for AMLCFT will lower time and cost requirements for AFAs and their clients.

Removing the requirement for an independent audit of each AFA reporting entity's risk assessment and compliance program once every two years (or when required by FMA) will save it between $1,500 and $8,000, excluding GST per audit. For the small practice AFA, that cost represents a greater percentage of turnover than is the situation for a larger reporting entity. Consequently, the consumers of the small AFA practice currently pay a higher dollar figure to meet full recovery than those from the larger reporting entity. One option is to exempt the smaller practice AFA entity (perhaps below 250 clients) from AMLCFT audit requirements and another is to have the audit costs met by the taxpayer. While the government's RealMe facility does not appear to be used extensively at present, it might be a suitable mechanism to confirm consumer identification.

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?

No regulatory changes specific to Kiwisaver or decumulation generally appear to be required apart from the usual expected competency requirements for an AFA. Avoidance of lobbying for regulatory controls from QFEs and other institutions, which will be keen to retain control of the funds, should be resisted. Government promotion of the benefits of independent advice, perhaps up to 5 years before ceasing work, and increased funding for the Commission of Financial Capability to further develop its Sorted website for the supply of generic information will be helpful.

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?

It is expected that the FMC Act will regulate the product issuers and also sales/information elements (i.e. currently termed 'class advice') to minimise product miss-selling opportunities. The latter may be assisted by requiring the previously discussed 'health warnings' and all sales plus information material to be in writing. The concerns expressed in paragraph 168 and 169 of the Issues Paper about new facilities and offerings such as the NZX NXT market and crowd funding are adequately covered by the Code of Professional Conduct requirements in respect of standards of competency and ethics.

The inclusion of DIMS 'own product' offerings within the FMC Act does pose some interesting questions in terms of managing the separation of advice from sales/information when related to 'own products'. Many AFAs voiced disappointment that independent custody requirements for consumer investments was not introduced in the FA Act 2008 which would have avoided the need for the expensive and time consuming DIMS licence application process. Those who could not identify any benefit in applying for a DIMS licence and who cancelled their DIMS authorisation believe their previous current clients now denied that service could be attracted by offshore facilities that fulfil the same result – albeit with possibly increased risks. No regulatory responses come to mind to manage such action but a response alerting New Zealanders to the potential risks of depending on offshore DIMS facilities might be useful.

Correction of inconsistencies across all financial services and associated sector legislation will be useful in reducing confusion and unnecessary angst.

We have previously expressed our opinion that the consistent application of overarching standards in the Code of Professional Conduct to all who provide financial advice, including those currently with exemptions from the FA Act such as lawyers, accountants, real estate agents and property consultants, is likely to build public confidence.

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

The uptake of internet-based travel arrangements and retail shopping amongst New Zealanders has been nothing short of stunning - providing ease of access and a level of customer service and choice unavailable in NZ meant any remaining resistance simply melted away. Suggestions by NZ retailers that consumers using those sites do so to escape GST is considered far from the truth – that just happens to be an added benefit.

Anecdotal evidence indicates Kiwis are already accessing offshore sites to obtain 'advice' about investments, buy them and receive custodial plus reporting services at a fraction of the cost here in NZ. As algorithm based software suitable for NZ consumers develops further, we predict the numbers using such sites will increase rapidly. This is not only a potentially disruptive threat to AFAs and the extensive regulatory development in NZ, but also to NZ-domiciled fund managers, other NZ product issuers and NZ's AMLCFT management plus tax collection.

The FA Act is clearly not set up appropriately to facilitate and regulate this activity. As an example, requiring personalised advice to be provided by an individual will clearly not stop offshore options being used by Kiwis. And it is questionable whether any new legislated controls can be effective in isolation. SiFA is interested in assisting MBIE to consider this issue further.

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

We have only one Member taking advantage of these arrangements. As Australia adopts a 'hard line' attitude towards financial adviser minimum education requirements, which seem unlikely to be adopted in NZ, continuation of the arrangement may struggle. However, it would be churlish not to encourage expansion of the arrangement.

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

The capacity for technological change is unlimited. Disruptive software similar to that used by Uber, Alibaba et al may well consign current financial advice regulations to dust – and most financial intermediary businesses to boot. Our highly focused, 'tech-savvy' Kiwi consumer already expects instant responses via social media and cell phone – imagine how watch phones will add further pressure for such results free of inhibiting factors such as restrictive regulatory controls.

We suspect considerable change will be required in our approach to regulation and should not be surprised if failure to do so encourages NZ consumers to surge past them enroute to their next 'fix' of instant gratification. Cost benefit analysis and lateral thinking will become important tools.

So-called roboadvice may be at early stages of disruption but what follows might well turn our perceptions on their head. Many advisers believe roboadvice will only ever be capable of presenting template solutions and not cater to 'what if' and 'multi-option' advice scenarios. We are not sure that view will be proven correct given the capability of military drones using artificial intelligence.

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

The best approach will be for Government to fund rapid financial literacy and capability improvements in the population so that probable scams and frauds can be identified and the benefits of seeking financial advice from NZ domiciled, regulated advisers is well understood. Alternatively, stand aside and or introduce considerable regulatory flexibility. Unfortunately, governments and regulation have historically moved much slower than the technological developments they are seeking to manage.

Developing a small group of "tech savvy" teens will be helpful.

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

Broadly, it seems the existing ethical standards are appropriate but there is inadequate evidence other than from anecdotal sources to confirm their success.

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

Yes, absolutely.

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

We support retention of the Level 5 Certificate as the minimum qualification level until such time as a review suggests a change is required.

It is disappointing to learn that no linkage exists to allow the holder of other higher qualifications such as a Degree, or Diploma in Financial Planning, to proceed to AFA. Compelling someone holding a higher level qualification to return and complete a lower level certificate seems a disincentive for anyone considering becoming an AFA. We submit there should be no monopoly on who can provide assessment on Level 5 subjects.

An appropriate solution would seem to have the level 5 vocational subjects included in acceptable Degree programs and in the Diploma of Financial Planning. We need to avoid discouraging anyone who has interest in developing financial adviser skills. Similarly, a career pathway that incentivises further education should be encouraged.

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?

Yes, and that the minimum should be the same Level 5 Certificate as it is for AFAs. However, it is suggested that existing RFAs should be provided up to 5 years from the introduction of such a requirement to successfully complete the necessary papers. It is envisaged that the Code Committee will agree to introduce varying subjects for various financial adviser streams (e.g. personal risk insurance, mortgage advice, etc).

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

None. There is no evidence that any country has 'got this right' yet, and certainly not in Australia or the UK. However, it would be foolish to ignore what might have worked for each country in setting standards that, with adequate assessment by legislators, consumers and Professional Financial Adviser Bodies, could prove beneficial for NZ.

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

There has been a history of professional bodies fostering professionalism amongst their Members through continuing education and ethical development as evidenced in SiFA's case through its biannual conferences, which have a very high CPD content, and through its encouragement of Massey University in the development of a degree qualification. Similarly, IFA has always encouraged its Members to aspire to achieve higher academic qualifications above the minimum requirements specified by regulation.

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

Professional bodies have been informally involved in discussions with regulators. However, this has been a frustrating exercise as in particular the FMA has been unwilling to involve the professional bodies in the early stages of (e.g. guideline) development, and we have spent a lot of time trying to educate them about the realities of the industry, after they have produced draft documents, in an attempt to make the outcome more appropriate.

Parliament's decision in 2008 to abandon the originally proposed co-regulatory model in favour of a single government regulator effectively shut professional bodies out of a more involved role in the regulatory framework. It would take a significant reversal by government to return to the initially proposed coregulatory model and, since we think this is unlikely, we refrain from further comment on this matter.

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?

Answers to previous questions recommended that financial advice of any type be provided only by an AFA and that advice be separated from sales/information activities. The individual adviser carries the responsibility and accountability for his/her own professional conduct regulated under the FA Act while the QFE or non-QFE employer or contractor of an individual providing product information sales services of any employee or contractor will be regulated under the FMC Act.

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?

While QFEs note they are required to meet the same Code standards as AFAs, the exclusion at times of the rider 'except to the extent that an "if not, why not" analysis has been completed and identified appropriate areas of relief' undermines confidence. So too does the failure to disclose the documented relief provided and the allegations of Kiwisaver account churn. This distrust of QFEs is furthered as they entice increasing numbers of non-aligned and independent AFAs to move to their operations on the basis that they offer an easier compliance solution. It can be argued that the QFE regime favours large vertically integrated product providers at the expense of advice providers who can present a range of products. The declining number of AFAs and, increasing number of QFE consumer facing people suggests a reduction in the independent and non-aligned advice options available to the public.

The split of advice from sales/information may assist in addressing that issue.

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

Yes, however it has more importance to the Government and its regulator than it does to the AFA and other financial service providers and consumers. It is virtually unknown to consumers and difficult to access. We do not support the Register being upgraded with costs levied against AFAs

and other advisers. Professional bodies provide facilities on their websites to search for a financial adviser and the Register would seem to duplicate some of that information.

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

Reduce registration costs to advisers; improve accessibility, accuracy, relevance of its data and usefulness by improving the software functions and especially its search engine. Ignore acronyms such as AFA, RFA, QFE and provide searchable terms such as financial planner, insurance adviser, mortgage adviser, investment planner, discretionary investment management, etc.

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

Agreed. However, we consider that an appeal process should be available to both parties. The current regime is grossly weighted in favour of the consumer – they pay no cost, and they have the choice of accepting a determination or not. The adviser meets all the cost and has no alternative but to wear the scheme's determination. We would simply point out that lower level Courts and Tribunals don't always get it right.

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

They are all important.

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

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

No submission

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

Yes

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

Yes

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

Yes. No changes are required – they work.

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?

Yes. Competition is good as evidenced by reduced membership fees

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?

No, the limit should not be raised.

We note that the current District Court limit is $250,000.

There is no evidence to suggest the current EDRS limit is inadequate and we do not wish to see litigation firms encouraging complaints (on a success fee basis) because the system is biased to the complainant. Higher jurisdictional limits could encourage this behaviour. The suggestion that increasing the limit a little will provide adequacy for property insurance disputes is flawed when considering the average price of Auckland properties.

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

We do not believe so and note that sufficient avenues exist already through the Courts. While the existing system demands no cost from the consumer to lay a complaint with a DRS, FMA or professional body, the provider is exposed to the potential for significant costs which is more than sufficient for the ordinary adviser/QFE to behave well.

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

Information provided to consumers advising that it exists and the method of entry to the Register; confidence that it will work when required and provide access to useful, current information; and that its software and search engine can locate required data. We see little benefit in loading Primary Disclosure Statements because they provide information that is misleading to wholesale investors and of little value to retail investors because of their limited information. We do not support additional costs being levied against financial advisers to pay for increased data collection.

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

While inclusion of adverse regulatory disciplinary outcomes may be useful, their rarity thus far suggests little information will be listed. We do not support additional costs being levied against financial advisers to pay for increased data collection.

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, very much so.

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.

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

No submission.

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

No issues identified

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

Yes. There are requirements for DRS details to be included in Primary Disclosure Statements, offer documents and some adviser websites advertise the avenues for complaints. Advisers are also compelled to tell the client of these avenues in the instance they make a complaint, which all appear adequate

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:

Murray Weatherston & Robert Oddy

SiFA Incorporated SiFA Incorporated

84. Please provide your contact details:

18(d)

85. Are you providing this submission:

On behalf of an organisation

Please describe the nature and size of the organisation:

SiFA Incorporated is an incorporated Society operating as a professional body for around 60

Authorised Financial Advisers operating independently-owned financial adviser practices throughout NZ

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?

>60

87. We do not require our submission to be kept confidential