**#2**

**COMPLETE**

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**PAGE 2: Chapter 3 - Barriers to achieving the outcomes**

Q1: **1. Do you agree with the barriers outlined in the Options Paper? If not, why not?**

*Respondent skipped this question*

Q2: **2. Is there evidence of other major barriers not captured in the Options Paper? If so, please explain.**

*Respondent skipped this question*

**PAGE 3: Chapter 4 - Discrete elements**

Q3: **3. Which options will be most effective in achieving the desired outcomes and why?**

*Respondent skipped this question*

Q4: **4. What would the costs and benefits be of the various options for different participants (consumers, financial advisers, businesses)?**

*Respondent skipped this question*

Q5: **5. Are there any other viable options? If so, please provide details.**

*Respondent skipped this question*

Q6: **6. What implications would removing the distinction between class and personalised advice have on access to advice?**

*Respondent skipped this question*

Q7: **7. Should high-risk services be restricted to certain advisers? Why or why not?**

*Respondent skipped this question*

Q8: **8. Would requiring a client to 'opt-in' to being a wholesale investor have negative implications on advisers? If so, how could this be mitigated?**

*Respondent skipped this question*

Q9: **9. What ethical and other entry requirements should apply to advice platforms?**

*Respondent skipped this question*

Q10: **10. How, if at all, should requirements differ between traditional and online financial advice?**

*Respondent skipped this question*

Q11: **11. Are the options suggested in this chapter sufficient to enable innovation in the adviser industry? What other changes might need to be made?**

*Respondent skipped this question*

**PAGE 4: Chapter 4 - Discrete elements**

Q12: **12. If the ethical obligation to put the consumers' interests first was extended, what would the right obligation be? How could this be monitored and enforced?**

*Respondent skipped this question*

Q13: **13. What would be some practical ways of distinguishing 'sales' and 'advice'? What obligations should salespeople have?**

*Respondent skipped this question*

Q14: **14. If there was a ban or restriction on conflicted remuneration who and what should it cover?**

*Respondent skipped this question*

Q15: **15. How can competency requirements be designed to lift capability, without becoming an undue barrier to entry and continuation in the profession?**

*Respondent skipped this question*

Q16: **16. Should all advisers be subject to minimum entry requirements (Option 1)? What should those requirements include? If not, how should requirements differ for different types of advisers?**

*Respondent skipped this question*

Q17: **17. What are the benefits and costs of shifting to an entity licensing model whereby the business is accountable for meeting obligations (Option 1)? If some individual advisers are also licensed (Option 2), what specific obligations should these advisers be accountable for?**

*Respondent skipped this question*

Q18: **18. What suggestions do you have for the roles of different industry and regulatory bodies?**

*Respondent skipped this question*

## PAGE 5: Chapter 4 - Discrete elements

Q19: **19. What do you think is the most effective way to disclose information to consumers (e.g. written, verbal, online) to help them make more effective decisions?**

*Respondent skipped this question*

Q20: **20. Would a common disclosure document for all advisers work in practice?**

*Respondent skipped this question*

Q21: **21. How could remuneration details be disclosed in a way that would be meaningful to consumers yet relatively simple for advisers to produce?**

*Respondent skipped this question*

Q22: **22. Is there any evidence that the existence of multiple schemes is leading to poor outcomes for consumers?**

*Respondent skipped this question*

Q23: **23. Assuming that the multiple scheme model is retained, should there be greater consistency between dispute resolution scheme rules and processes? If so, what particular elements should be consistent?**

*Respondent skipped this question*

Q24: **24. Should professional indemnity insurance apply to all financial service providers?**

*Respondent skipped this question*

Q25: **25. What is the best way to get information to consumers? Who is best placed to provide this information (e.g. Government, industry, consumer groups)?**

*Respondent skipped this question*

**Q26: 26. What terminology do you think would be more meaningful to consumers?**

*Respondent skipped this question*

## PAGE 6: Chapter 4 - Discrete elements

**Q27: 27. Do you have any comments on the proposal to retain the current definitions of 'financial adviser' and 'financial adviser service'?**

*Respondent skipped this question*

**Q28: 28. Are those currently exempt from the regime posing undue risk to consumers through the provision of financial advice in the normal course of their business? If possible, please provide evidence.**

*Respondent skipped this question*

**Q29: 29. How can the FA Act better facilitate the provision of international financial advice to New Zealanders, without compromising consumer protection? Are there other changes that may be needed to aid this, beyond the technological options outlined in Chapter 4.2?**

*Respondent skipped this question*

**Q30: 30. How can we better facilitate the export of New Zealand financial advice?**

*Respondent skipped this question*

**Q31: 31. Do you have any comments on the proposal to retain the current approach to regulating broking and custodial services?**

*Respondent skipped this question*

## PAGE 7: Chapter 5 - Potential packages of options

**Q32: 32. What are the costs and benefits of the packages of options described in this chapter?**

*Respondent skipped this question*

**Q33: 33. How effective is each package in addressing the barriers described in Chapter 3?**

*Respondent skipped this question*

**Q34: 34. What changes could be made to any of the packages to improve how its elements work together?**

*Respondent skipped this question*

**Q35: 35. Can you suggest any alternative packages of options that might work more effectively?**

*Respondent skipped this question*

## PAGE 8: Chapter 6 - Misuse of the Financial Service Providers Register

**Q36: 36. Do you agree with our assessment of the pros and cons of the options to overcome misuse of the FSPR?**

*Respondent skipped this question*

**Q37: 37. What option or combination of options do you prefer and why? What are the costs and benefits?**

In Summary, Option 6 (with the suggested change), or Option 3 (with some suggested changes) are the preffered options.

Option 4 should also be implemented (with changes). There should also be total consistency between the list of FSP providers with that of Reporting Entities. This is to ensure that there can be confidence that the same interpretation of concepts applies across different legislation. At the moment there are similar but different concepts in the FSPA, the FFA, AML/CFT Act and FATCA (through the IGA).

If you wanted a simple solution (similar to Option 6), your could rename the FSPR list as “list of AML/CFT reporting entities”. That way, an overseas provider can’t mislead that it is a FSP registered in NZ. You could prescribe a health warning for use on websites where there is reference to registration that says “Registered as a Financial Institution for AML/CFT purposes in NZ [and must comply with NZ AML/CFT requirements].”

OPTION 1

I am not sure how you see Option 1 working on a practical level with a requirement to demonstrate being licenced or supervised in an overseas jurisdiction.

If you have a NZ company providing services to offshore clients that is not required to be licenced or supervised in NZ, and are similarily not required to be licenced or supervised in another jurisdiction (because they deal with Investment businessess or HNWI), then what can the NZ company do to demonstrate that it should be registered?

If you had such a NZ company and they could not be registered, is your intended consequence that they could not carry on business? Or just that they cannot be registered? There would be no issue if they didn’t need to be registered to carry on their business, but why would you prevent a legitimate NZ business continuing to operate as such? If they cannot be registered (but can still carry on business) does this affect the usefulness of the list for FATF compliance?

Also, why would you require offshore-controlled entities to be bonded or have indemnity cover when you don’t require that from NZ controlled providers? The rules should be the same if the intention is to protect NZ retail investors. Most NZ retail investors deal with NZ controlled companies.

I understand that the main area of concern is foreign FX providers that have incorportated a company in NZ. If this is the concern, why don’t you just require that all FX providers be licenced?

OPTION 2

The problem that I see with the suggestion of requiring “substantial amount of services” is what does this mean? Would guidance be provided in the legislation or otherwise?

Would a single NZ person company (sole director/employee living in NZ) who operates a Cayman Island fund for offshore investors, with administration and custody based in Singapore, an online adminstration assistance be regarded as having substance?

Or, what if you have a NZ adviser to high net worths (the NZ adviser is a sole operator) who has returned from overseas and has kept his offshore clients. Assume that the adviser uses an online DIMS/internet brokerage platform based overseas. Would that person have a “substantial amount of services” in NZ to be able to be registered?

What would they need to do to demonstrate that they do?

If they could not be registered would they still be entitled to operate their finacial services businesses?

To avoid the issues around what qualifies as “substantial”, a health warning of the type that you suggest would seem to be the simplier answer at targeting misuse of the FSPR. This would be better than putting the legitimate business activities of NZ companies at risk of not being able to be registered and not being able to carry on their business in NZ.

OPTION 3

In terms of a sensible option, the test of registration should be the same as that for foreign companies registering under the Companies Act. The test should be Is there a carrying on of a buinsess in NZ. That way if you have an overseas company conducting business here then they will need to register as an overseas company and as an FSP. Having overseas companies registered as such should provide greater enforcement opportunities for regulators and assist consumers to seek redress. The company also needs IRD consent to deregistr so will help ensure that that company is also paying appropriate tax.

The Companies Office and the FSPR could then provide guidance on what “Carrying on business in NZ means”. It will be a test that is not necessarily based on “substantial services”, not necessarily require NZ clients, but will require more than mere incorporation.

On your concerns, an overseas provider with 1 or 2 clients is unlikely to be “carrying on business in NZ” – they would just have clients in NZ – which would be consistent with the way, as I understand it, that the Companies Office and major law firms interpret the carrying on business requirement in Companies Act.

You could also make registration conditional on complying with NZ AML requirements. That way you ensure that the company is operating appropriately for AML purposes, and if they were to seek to misuse the FSPR there would be a cost involved – IE complying with the AML Act (having a programme, being audited, etc).

If you were requiring the FSP to have NZ clients, what would be the effect on the 2 businesses described in Option 2. It looks like they would not be entitled to register. Does this mean that they cannot continue to operate their business? Or does it mean that they can continue to operate their business in NZ, it is just that they do not need to comply with the obligations in the FSP Act?

OPTION 4

Yes, trust and company service providers should also be on the FSP. Arguably, they should be on there anyway as “brokers” by providing a custodial service.

To go a step further, the desription of the financial services business in the FSP Act should match the same descriptions as are in the AML/CFT Act. This is to ensure that there can be confidence that the same interpretation applies across different legislation. At the moment there are similar but different concepts in the FSPA, the FFA, AML/CFT Act and FATCA.

If you wanted a simple solution, why not just rename the FSPR as “list of AML/CFT reporting entities”. That way, an overseas provider can’t mislead that it is a FS regiserted in NZ. You could then insert a health warning that says “Registered as a Financial Institution for AML/CFT purposes in NZ and must comply with NZ AML/CFT requirements.” Anyone who is separately licenced can say that, but saying that someone is registered for AML purposes doesn’t suggest that there is any supervisor oversight, other than in respect of AML.

All FSPs should be registered for AML, so all that you would be doing is expanding the list to capture other persons who are not FSPs but subject to AML. That should also make that list more robust for FATF purposes. Anyone who is separately licenced can advertise that fact, but saying that someone is registered for AML purposes doesn’t suggest that there is any supervisor oversight, other than in respect of AML.

Option 5 and 6

It would be helpful to keep the register public. When I used to work as a lawyer, when dealing with the FMA or DIA, you generally need to provide the FSP number of the entity that you are dealing with. Being able to search for this is very helpful. It also helps you to do due diligence on your potential clients as you can see that through registration the directors and senior managers have been through a police check process. Having worked for some FSPs as well, being able to get the FSP number from the register is also a fast process – rather than having to find it in a file.

On option 6, if someone gives notice of their intention to provide financial services, and they get a confirmation that their notification has been recieved, what is to stop them still saying “registered with the [FSPR/Companies Office]” to provide financial services. The fact that you have put them on a list would suggest that, based on the ordinary meaning of “registered” that they are “registered” wouldn’t it?

As suggested in Option 4, if you wanted a simple solution (similar to Option 6), why not just rename the FSPR as “list of AML/CFT reporting entities”. That way, an overseas provider can’t mislead that it is a FS regiserted in NZ. They are only saying that they are registered as a financial institution for AML purposes. You could then insert a health warning that says “Registered as a Financial Institution for AML/CFT purposes in NZ [and must comply with NZ AML/CFT requirements].” Anyone who is separately licenced can say that they are, but saying that someone is registered for AML purposes doesn’t suggest that there is any supervisor oversight, other than in respect of AML.

### Q38: **38. What are the potential risks and unintended consequences of the options above? How could these be mitigated?**

As stated in Question 2, Options 1, 2 and 3 as currently proposed could put existing legitimate NZ businesses at risk of not being able to be “registered” and then in the unclear position of whether they are still legally able to carry on their business in NZ if they are not registered. Do you really want to be forcing such persons out of NZ; taking their taxable income with them? I understand that there are a few business of the nature described in the examples above operating in NZ. Indeed, more of these business need to be encouraged, because they also employ people and service providers (office assistants, accountants, auditors, lawyers) and their registration fees assist FMA. Keeping such businesses is consistent with Government messages that New Zealand should be encouraged as a financial services hub. Please don’t make business harder for these people, when a simple health warning on FX websites would be simplier than having legitimate NZ businesses have questions over their heads as to whether they are doing enough activity in NZ to be “registered”.

### Q39: **39. Would limiting public access to parts of the FSPR help reduce misuse?**

I suspect not. A consumer assumes statements on company websites to be correct. I suspect that a consumer does not separately search for the FMA or FSPR website to confirm the registration. If someone registers or notifies an intention to provide financial services (and is “registered”) then they can still say that on their website and that doesn’t address the “misuse” that you are trying to address. It would be helpful to keep the register public. When dealing with the FMA or DIA, one generally needs to provide the FSP number of the entity that you are dealing with. Being able to search for this is very helpful and fast way to find it.

## PAGE 9: Demographics

### Q40: **1. Enter your name and/or the name of the group of people, business, or organisation you are providing this submission on behalf of.**

*Respondent skipped this question*

### Q41: **2. Enter your email address or other contact details**

*Respondent skipped this question*

**Q42: 3. Are you providing this submission:**

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- As an individual

**Q43: 4. Please select if your submission contains confidential information:**

*Respondent skipped this question*