

29 January 2016

Financial Markets Policy
Ministry of Business, Innovation and Employment
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Wellington 6012

By email: faareview@mbie.govt.nz

To whom it may concern,

Submission on the Options Paper: Review of the Financial Advisers Act 2008 and the Financial Service Providers (Registration and Dispute Resolution) Act 2008 – Misuse of the FSPR

Thank you for the opportunity to provide feedback to the Ministry of Business, Innovation and Employment (**MBIE**) on the Options Paper for the Review of the Financial Advisers Act 2008 and the Financial Services Providers (Registration and Dispute Resolution) Act 2008 (**FSPR Act**) (**Options Paper**), specifically Part 3, Chapter 6 – Misuse of the Financial Service Providers Register (**FSPR**).

ANZ Bank New Zealand Limited (**ANZ**) and certain related body corporates are registered on the FSPR as Financial Service Providers (**FSPs**). Generally, ANZ and its related companies have had a positive experience of the FSPR, particularly after the work undertaken by MBIE to amend and align the descriptions of financial services (that is, activities such as “giving financial guarantees”) that an FSP can select it provides. We set out below certain additional administrative issues that ANZ considers could be addressed to further enhance FSPs’ experience when using the FSPR. ANZ also appreciates the concerns raised by MBIE in the Options Paper about the misuse of the FSPR by, in particular, offshore-controlled providers. While not directly impacted by such changes, ANZ has considered the Options presented by MBIE and other steps that MBIE could take to address these challenges.

Administrative challenges posed by the FSPR

General comments

ANZ notes that there are now multiple registers (Companies, FSPR, Disclose etc) that FSPs are required to use and maintain for the various activities that they undertake. ANZ considers the transparency enabled by these registers about entities and individuals operating in New Zealand, provides an important public service and notes New Zealand’s approach is world leading in this regard. While each of these registers has a specific purpose (and different enabling legislation), ANZ considers that MBIE should continue to consider how to best enable FSPs to utilise these registers without a significant administrative burden to complete entries, especially where information is replicable. The work being undertaken by MBIE on the NZBN will go some way to assisting providers to seamlessly update information across registers and ANZ supports this initiative.

ANZ also considers MBIE could continue to improve the functionality of the FSPR. For example, any changes that could be made to ensure that the FSPR is updated closer to real time upon filing of notifications relevant to FSPR entries would be appreciated. Our concern is that it can take several weeks for information to be amended on an FSPR entry which is problematic from an accuracy and transparency perspective. Another

challenge is when the date of an amendment to an FSPR entry is different to the date of the actual event that is relevant to the change (for example, an FSP is amalgamated on date X, but the FSPR entry shows date Y because it takes four days for the amendment to take effect on the FSPR entry). Another challenge are the limitations around change records on FSPR entries. For example, an FSP may make changes to the 'activities' categories it provides which do not show up on the FSPR entry (so if an entity has previously held a licence for an activity, this is not identifiable from the FSPR entry).

Comments specifically in relation to FSPR entries relevant to Financial Adviser Act requirements

ANZ notes that FSPs (typically being licenced Qualifying Financial Entities) that employ Authorised Financial Advisers (**AFA**s) can face issues in relation to updating the registration details of AFAs. The responsibility (and ability) to update the FSP entry is the responsibility of the AFA, not the FSP employer. This can cause challenges when an AFA leaves the employment (either by resignation or as a result of employment consequence management or regulator action) of the FSP but fails to update the FSPR entry to reflect the changes. The FSP itself is unable to request the AFA's FSPR entry be updated where an AFA fails, or ignores requests of the FSP, to do so themselves. In ANZ's view a mechanism for an FSP to request the Registrar to update the AFA's FSPR entry should exist, provided the FSP can evidence the need for the update to occur.

ANZ also notes that there is a lack of consistency in entries made in the 'Trading Name' and 'Employer Name' field by AFAs who are employed by FSPs. A quick sample of ANZ's AFAs' FSP entries in these fields turn up over 10 different derivations ranging from "ANZ Bank New Zealand Ltd", "ANZ Bank NZ Ltd", "ANZ Bank", "ANZ Private Bank", "ANZ Private", "ANZ New Zealand Limited" through to simply "ANZ". It would be helpful if the 'Trading Name' and 'Employer Name' fields either self-populated with the Name nominated by the FSP to the Registrar or, alternately, linked through to the FSP's own FSPR entry to ensure that the fields are completed consistently. This would assist greatly with search functionality by users of the FSPR and install confidence that the AFA is actually an employee of that FSP. Taking this approach would also assist in easily identifying and being able to validate any AFAs who have mis-registered or failed to update an FSP entry where their employer has changed.

Options to prevent misuse of the FSPR by offshore-controlled entities

ANZ notes each of the Options in Part 3 identified by MBIE to assist in preventing misuse of the FSPR by offshore-controlled entities. ANZ considers that this misuse largely appears to arise from the use of the word "Register" and associated terms (e.g. 'FSP Status: "Registered"'). The definition of or status implied by these terms appears to have, in some circumstances, indicated a higher threshold or standard has been achieved by the FSP than in reality and causes confusion when compared with other industries or jurisdictions that use these same terms to indicate this. For example, in the context of banking, teaching and nursing the term "Registered" equates to a status that an entity or individual has had to achieve and be granted/validated by an independent body. ANZ therefore considers that one option MBIE could consider is renaming the FSPR a single word (equivalent to the approach taken for Disclose - the online offer register under the Financial Markets Conduct Act 2013) or using a different phrase such as "FSP Portal" together with using different associated terms. For example, 'FSP Status' could state "Pending / Complete" (whichever is relevant).

ANZ considers that each of the Options offers solutions to assist achieving this goal and does not favour any Options over another. However, apart from the suggestion above around the specific terms used to describe or refer to the FSPR, ANZ particularly supports the suggestions made under Option 2 relating to prohibiting firms from referring to any registered status in offshore advertising or requiring firms to provide a

standard warning/statement where they do so refer. Requiring an accurate description of what the FSP registration means, or does not mean, is an effective approach to mitigating its misuse by those who are attempting to utilise it to appear more legitimate than they actually are. Finally, ANZ considers that the suggested phrase could be enhanced as follows: "registered in New Zealand but not licenced or subject to active supervision or oversight by any New Zealand regulators". ANZ does not consider the word 'active' to describe supervision adds any additional significance to the phrase.

ANZ considers that Options 3, 5 and 6 are the least favourable of the Options and notes in relation to 5 and 6 that the public access to the FSPR and transparency this provides is one of the main benefits of having such a register.

About ANZ

ANZ is the largest financial institution in New Zealand. The ANZ group comprises brands such as ANZ, UDC Finance, ANZ Investments New Zealand, ANZ New Zealand Securities and Bonus Bonds.

ANZ offers a full range of financial products and services including a significant range of financial advisory services, personal banking, institutional banking and wealth management products and services. ANZ, many of its subsidiaries and ANZ's AFA employees are all registered on the FSPR.

Contact for submission

ANZ welcomes the opportunity to discuss any of our submissions directly with MBIE officials. Please contact Hannah Johnston, Head of Regulatory Affairs on **Redacted** or (04) 436 4470.

Once again, we thank MBIE for the opportunity to have input into this element of the Options Paper.

Yours sincerely

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Bruce Macintyre
Chief Risk Officer

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