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Financial Markets Policy
Ministry of Business, Innovation and Employment
PO Box 3705
Wellington 6012

By email: faareview@mbie.govt.nz

ANZ submission on the Options Paper for the review of the Financial Advisers Act 2008 and Financial Service Providers (Registration and Dispute Resolution) Act 2008

Thank you for the opportunity to comment on the Options Paper.

In our submission we address Parts 1 and 2 of the Options Paper on the review of the Financial Advisers Act 2008 (FAA). We've submitted separately on Part 3 of the Options Paper on the review of the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (FSPR).

ANZ commends MBIE on the Options Paper. The Options Paper clearly explains the barriers to New Zealanders getting financial advice and presents well-thought out solutions.

As occupational legislation designed to regulate the industry after high profile financial collapses and poor advisory practices, ANZ's view is the FAA has served its purpose. But we now need significant change to build a sensible regulatory framework that enables New Zealanders to get financial advice they need and want.

How products, advice, and advisers are categorised in the FAA has created barriers to financial advice and a conservative approach by the industry. Concepts in the FAA are often poorly understood, unclear, or aren't used as intended. Refining and restructuring the FAA will resolve these issues.

While we accept there is a compliance burden in changing the FAA, ANZ doesn't favour keeping the current regime.

Instead, ANZ supports a reform package that draws on each of the three packages set out in the Options Paper, rather than any one of packages alone. There is opportunity to improve and simplify the legislation for customers and the industry, when dealing with regulated QFEs. And there is opportunity to improve and simplify the disclosure given to customers, so it is more meaningful.

ANZ points out our key messages below. We've set out more detail on these points in Appendix I. And we've set out our responses to the specific questions in the Options Paper in Appendix II.

Key messages

ANZ supports:

1. **Keeping the current definitions of wholesale and retail clients and the 'opt-out' process for wholesale clients.**

2. **Keeping the current licensing and self-regulation model for Qualifying Financial Entities (QFEs).**

3. **Keeping the current Authorised Financial Adviser (AFA) regime, as it sets appropriate competency and ethics levels for advisers providing more complex financial advice.**

4. **Ensuring only licensed entities provide robo-advice, either directly or through extra designation on a QFE licence.**

5. **Allowing QFEs to provide financial advice on all categories of products.**

    - **The distinctions between class advice and personal advice should be removed. Sales of financial products inherently involve some financial advice. At its most basic, that financial advice is a recommendation by a salesperson to get the product being sold.**

    - **QFEs should be able to provide financial advice about their financial products and those of other providers they offer that their customers want and need. Consumers are well protected through licencing and regulation of QFEs, as well as complementary legislation, like the Fair Trading Act, the Consumer Guarantees Act, and Credit Contracts and Consumer Finance Act.**

    - **QFEs must be responsible for having clear frameworks on when or if staff can provide financial advice on its products and when or if a customer must be referred to an AFA. Simplifying the regime will enable QFEs to ensure staff have quality interactions with consumers, providing information and advice to meet the consumer's needs.**

    - **The current controls of who can provide investment planning services and discretionary investment management services should be kept.**

6. **Improving and simplifying disclosure to retail customers so it is meaningful. The focus should be on explaining the extent of advice given and what the limits are.**

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 is a Qualifying Financial Entity and employs one of the largest QFE Adviser networks as well as Authorised Financial Advisers.

Contact for submission

ANZ is keen to discuss our submissions directly with MBIE officials. Please contact Hannah Johnston, Regulatory Affairs Manager on Redacted or (04) 436 4470 to arrange a time to do so.

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

Yours sincerely

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Bruce Macintyre
Chief Risk Officer

Appendix I – More detail on ANZ's suggested reform of the FAA

1. Keep the current definitions of wholesale and retail clients and the 'opt-out' process for wholesale clients

We believe the current distinctions between retail and wholesale clients under the FAA are functioning well. The current distinctions protect consumers, while providing a lighter touch regime for more sophisticated customers if certain criteria are met.

We don't support requiring wholesale clients to 'opt in'. A change to the current model will create an unnecessary and expensive compliance burden. We're also concerned that we would need to classify existing customers, which would be a huge undertaking. Any costs in such a change would also be passed on to all customers.

2. Keep the current licensing and self-regulation model for Qualifying Financial Entities (QFEs)

Self-regulation is appropriate for large organisations with broad product ranges

The existing QFE regime provides an appropriate governance framework for large entities with large staff numbers and broad product ranges. We support keeping the QFE regime, but have proposed some changes in sections 5 and 6 below.

Self-regulation of employees who distribute FAA products is right for businesses of certain size and scale, while still providing suitable consumer protection. A QFE must satisfy the Financial Markets Authority (FMA) on various governance competencies to be eligible for QFE status. The FMA's oversight and supervision of QFEs adds further protections for QFE customers.

Under the current regime, QFEs are responsible for ensuring their employees are competent, trained, overseen, and performance managed. The regime provides reasonable flexibility for QFEs to decide how to best achieve those requirements. It also allows QFEs to employ other advisers with higher qualifications to provide more complex financial planning services, including on more complex financial products.

Assessing suitability must be limited to assessing what customer types can buy the product

We're concerned at the proposal to introduce a duty to assess suitability of products.

Any duty to assess suitability by QFEs must be limited to assessing general product suitability. When a provider develops a product, identifiable individual customers are unknown. Any duty must instead ensure a provider/QFE only sells a product to certain customers who meet a set of relevant criteria. There should be no duty on the product provider/QFE to consider suitability for an identifiable individual customer or an individual customer interaction under the FAA. We note that other complementary legislation contains suitability assessment requirements for individual customers.

3. Keep the current Authorised Financial Adviser (AFA) regime, as it sets appropriate competency and ethics levels for advisers providing more complex financial advice

ANZ considers the existing framework that applies to AFAs should be carried over to the new regime. Setting minimum entry standards, imposing CPD requirements, and regulator authorisation and licensing are essential for advisers giving more detailed advice on more complex products.

The competency and ethics levels set are also most effectively managed outside of the FAA by the Code Committee. The Code Committee provides greater flexibility to tailor the regime and agility to reflect changing circumstances and market practices over time.

4. Ensure only licensed entities provide robo-advice, either directly or through extra designation on a QFE licence

ANZ recognises that enabling robo-advice will foster greater innovation in the financial services industry. ANZ supports introducing regulated robo-advice, but suggests that entities must be licenced by the FMA before robo-advice can be provided.

We believe there are two ways to effectively licence providers of robo-advice:

- Adding a designation allowing robo-advice on a QFE's licence — a light touch application regime should apply to existing QFEs would want to get this designation

- A new licencing regime for non-QFEs.

Licensees should be subject to a general duty of care to ensure that information or advice provided via the relevant platform is true and not misleading. We believe this duty of care is consistent with legal obligations under other consumer protection legislation. Otherwise, the same requirements for financial advice should apply to robo-advice, including disclosure obligations.

5. Allowing QFEs to provide financial advice on all categories of product

Remove the distinction between class and personalised advice

In ANZ's view, the current distinction between class and personal financial advice in the FAA is arbitrary and has led to an overly conservative approach by QFEs.

Sales of financial products inherently involve some financial advice. At its most basic, that financial advice is a recommendation by a salesperson to buy the product. Providing class advice as currently defined in the FAA still involves highlighting or promoting product elements that encourage a customer to buy that financial product.

Drawing an effective line between class advice and personalised advice is often difficult, given the nature of interaction with a customer. For example, a discussion may begin as class advice and evolve quickly to a personalised service. Separating class and personal financial advice creates difficulties around how or when disclosure is made in a customer interaction.

Customers are also unlikely to appreciate the difference between the two categories – they simply want to trust the information and advice they are receiving is suitable, not misleading, and correct.

ANZ believes that, for QFEs at least, the distinction between class and personalised financial advice should be removed. QFEs should be able to provide financial advice their customers want and need without trying to distinguish between whether that advice is class or personalised.

Rather than trying to distinguish between class and personalised advice, ANZ believes the key is clearly explaining the scope of the financial advice being provided so it is meaningful to the customer. This will help customers understand what the nature of the interaction with the salesperson has been. We have addressed this further in section 6 below.

Allow QFEs to provide advice about all of their products

QFEs should also be able to provide financial advice about all the products they offer, including their own products and those of other providers.

In ANZ's view, the distinction between different categories of products is not working. We believe this is partly due to the difficulty in distinguishing class and personalised advice, and partly because the classifications themselves are inflexible given the nature of interactions with a customer. For example, a customer enquiring about a home loan can receive personalised advice. But the same customer also asking about life insurance to help protect that home loan in the same conversation must be referred to an AFA.

ANZ suggests that QFEs should be able to provide financial advice to their customers. This advice can include information about a product's features, what it is used for, who provides it, who might typically buy it and why.

ANZ believes that allowing QFEs to provide financial advice on all products will not lessen consumer protection. The QFE licensing regime works well to ensure governance and competencies of QFEs and their employees. Consumers are also well protected by complementary legislation, like the Fair Trading Act, the Consumer Guarantees Act, and the Credit Contracts and Consumer Finance Act. But simplifying the regime will enable QFEs to ensure staff have quality interactions with consumers, providing information and advice to meet the consumer's needs.

QFEs must be responsible for having clear guidelines on which products their employees can provide advice on and when interactions must be referred to another qualified employee or to an AFA. QFEs should continue to articulate this to the regulator through their Adviser Business Statements.

We think this can be supported through simple and clear disclosure about the nature and extent of the financial advice given in all interactions by a QFE with its customers. For example, a disclosure could include an explanation that the salesperson may recommend or offer an opinion about the merits of a product based on a limited assessment of the customer's financial situation and goals. The customer would remain responsible for assessing whether they need a more detailed assessment of their needs or expert advice.

We don't support packages two or three in the Options Paper

Packages two and three in the Options Paper seek to remove the categories of class and personalised advice and introduce new concepts of 'sales' and 'advice'. Conditions will be attached to a 'sale' interaction. ANZ suggests the proposals in packages two and three go too far. We believe there is a strong likelihood the regime will become overcomplicated, not simplified.

ANZ also doesn't believe it relevant whether a salesperson is providing financial advice on the organisation's own financial products or those of another provider. The same requirements must apply. Distinctions will only increase compliance burdens.

We recommend clarifying the exemption for providing information about products

We also suggest amending section 10(3) of the FAA to clarify the exclusion for providing information about a financial product. Information should include factual information about a financial product, such terms and conditions, all disclosure documents, and brochures, as well as how to apply for the product.

The content of factual information is already well regulated without needing to be addressed in the FAA. For example, the Consumer Guarantees Act 1993, Fair Trading Act 1986, Financial Markets Conduct Act 2013, and the Credit Contracts and Consumer Finance Act 2003 all address product information requirements.

We suggest amending section 10(3)(a) of the FAA to distinguish 'information' from 'financial advice' as follows:

> *(3) However, a person does not give financial advice for the purposes of this Act merely by—*
>
> *(a) providing information, including but not limited to:*
>
> *(i) facts about a product, including rates and fees;*
>
> *(ii) disclosure such as terms and conditions, client agreements, PDS, disclosure documents, brochures, flyers and other marketing material; and*
>
> *(iii) how to get or dispose of the product;*

The FAA should only regulate salespeople or advisers providing incorrect information if such conduct or dealing isn't regulated under other legislation.

6. Improve and simplify disclosure to retail customers so it is meaningful

ANZ suggests improving QFE disclosure. Disclosure must be consumer friendly, timely, and appropriate.

Standardising the format and information given by advisers is necessary and desirable. But we suggest keeping flexibility to tailor disclosure to the relevant adviser or advice model.

In our view, disclosure documents must be free of technical financial or legal jargon, in plain language, and bring the information to the attention of a reasonable person.

Given our proposed changes to allow QFEs to provide financial advice on all of their products, we think the disclosure model should change. As discussed above, the need to disclose before giving personalised advice is often impractical given the nature of interactions with a customer.

Instead, we recommend that QFEs should make the following standard information available on its website or if asked:

- The name and contact details of the organisation
- The products its advisers can advise on
- The nature of advice, including any limits on it
- How it pays advisers

- How to raise issues or complaints, internally and through disputes resolution schemes.

During an interaction with a customer, we suggest a QFEs employee should also:

- Disclose whether they allowed to advise on a particular product
- Disclose whether they have considered the customer's personal circumstances in providing that financial advice
- Recommend a customer seek expert advice if the advice hasn't considered the customer's personal circumstances
- That they can provide a written disclosure if asked.

ANZ considers that AFAs should disclose:

- The name and contact details of the adviser
- The name and contact details of the adviser's employer
- The products they can provide advice about
- The service or advice they provide and that they will consider a client's personal financial situation or goals
- A high level description of likely fees and charges for services
- A description of any conflicts
- How to raise issues or complaints, internally and through disputes resolution schemes.

Disclosure must be technology neutral and must reflect that providers and advisers interact with customers in different ways, including by phone, online, or in person.

ANZ considers that businesses and advisers should be free to decide the best way to disclose information to clients. For example, whether the adviser gives information to consumers or whether it is available online.

AFA disclosure could be made available on the financial advisers FSPR entry. ANZ does not consider there is a case for primary and secondary disclosure under the FAA. If a situation arises where an AFA is dealing with a customer and makes a recommendation that does not take that client's personal financial situation or goals into consideration, the AFA should have a duty to advise the client of this. Any extra information (such as fees payable) would be disclosed to the client when the financial advice is provided.

Appendix II – Options Paper Questions

#	Question	ANZ response
1	Do you agree with the barriers outlined below? If not, why not?	Yes. In ANZ's view, the Options Paper clearly explains the barriers to New Zealanders getting financial advice they want and need.
2	Is there evidence of other major barriers not captured here? If so, please explain	ANZ is unaware of any other major barriers to financial advice.
3	Which options will be most effective in achieving the desired outcomes and why?	While we accept there is a compliance burden in changing the FAA, ANZ doesn't favour keeping the current regime. Instead, ANZ supports a reform package that draws on each of the three packages set out in the Options Paper. We need more significant change to improve and simplify the legislation for customers and the industry. See Appendix I and our answer to question 35 for more detail our suggestion reform areas.
4	What would the costs and benefits of the various options be for different participants (consumers, financial advisers, businesses)?	**Package 1** Package 1 doesn't impose new compliance costs on advisers and businesses. But, the barriers to consumers accessing financial advice will remain. However, it's unclear how advisers can show they've put consumers' interests first when giving 'class advice'. Under current definitions, 'class advice' doesn't consider a recipient's circumstances. **Package 2** Package 2 is a more sensible approach to regulating financial advice services. It removes the distinction between types of advice to improve customers' access to financial advice. Another advantage is the package introduces different competency standards for more complex products. However, we believe package 2 will introduce regulatory doubt. It's unclear how we will distinguish a 'complex matter'. And not all customers deliberately 'request' a service. We believe this will lead to a regulatory gap or practical difficulties in applying the regime. ANZ doesn't support package 2 in its entirety. ANZ considers that package 2 will lead to unintended results and loopholes. **Package 3** ANZ struggles to see benefits in package 3. Distinguishing 'sales' as distinct from financial advice is unnecessary and introduces complexity.

		Under the FAA, salespersons can provide 'information only'. While well understood, we've suggested expanding the scope of this (see Appendix I). All other sales activity is likely to involve providing some financial advice. At its most basic, that financial advice is the salesperson recommending the product sold. We believe the FAA should remove any distinctions between class and personalised financial advice. QFEs should be able to advise on any products. We also disagree with distinctions between products manufactured by the provider or third party providers. Restricting salespeople to distributing only their own products isn't viable for large organisations with many products. We believe this will lead to a lack of innovation, as businesses must bear the cost of developing complementary products that otherwise would be outside of their core businesses. Niche providers will also be prevented from leveraging larger distribution networks. Overall, we believe this proposal will restrict consumer access to financial products.
5	Are there any other viable options? If so, please provide details?	We recommend the following reform: ▪ Keeping the current definitions of wholesale and retail clients and the 'opt-out' process for wholesale clients. ▪ Keeping the current licensing and self-regulation model for Qualifying Financial Entities (QFEs). ▪ Keeping the current Authorised Financial Adviser (AFA) regime, as it sets suitable competency and ethics levels for advisers providing more complex financial advice. ▪ Ensuring only licensed entities provide robo-advice, either directly or through extra designation on a QFE licence. ▪ Allowing QFEs to provide financial advice on all categories of products. – The distinctions between class advice and personal advice should be removed. Sales of financial products inherently involve some financial advice. At its most basic, that financial advice is a recommendation by a salesperson to get the product being sold. – QFEs should be able to provide financial advice about their financial products and those of other providers they offer that their customers want and need. Consumers are well protected through licencing and regulation of QFEs, as well as complementary legislation, like the Fair Trading Act, the Consumer Guarantees Act, and Credit Contracts and Consumer Finance Act. – QFEs must be responsible for having clear frameworks on when or if staff can provide financial advice on its products and when or if a customer must be referred to an AFA. Simplifying the regime

		will enable QFEs to ensure staff have quality interactions with consumers, providing information and advice to meet the consumer's needs. – The current controls around who can provide investment planning services and discretionary investment management services should be kept. ▪ Improving and simplifying disclosure to customers so it is meaningful. The focus should be on explaining the advice and its limits. Given customer interactions, we recommend removing up-front written disclosure. Replace written disclosure with standardised disclosure by the entity and an explanation of the advice and its limits by the salesperson or adviser. See Appendix I and our answer to question 19 below.
6	What implications would removing the distinction between class and personalised advice have on access to advice?	*Remove the distinction between class and personalised advice* ANZ recommends removing the distinction between class and personalised advice. In ANZ's view, the current distinction between class and personalised financial advice in the FAA is arbitrary and has led to an overly conservative approach by QFEs. With reform of disclosure duties, removing the distinction would be positive for consumers and QFEs. Sales of financial products inherently involve some financial advice. At its most basic, that financial advice is a recommendation by a salesperson to buy the product. Providing class advice as currently defined in the FAA still involves highlighting or promoting product elements that encourage a customer to buy that financial product. Drawing an effective line between class advice and personalised advice is often difficult, given the nature of interaction with a customer. For example, a discussion may begin as class advice and evolve quickly to a personalised service. Separating class and personal financial advice creates difficulties around how or when disclosure is made in a customer interaction. Customers are also unlikely to appreciate the difference between the two categories – they simply want to trust the information and advice they are receiving is suitable, not misleading, and correct. ANZ believes that, for QFEs at least, the distinction between class and personalised financial advice should be removed. QFEs should be able to provide financial advice their customers want and need without trying to distinguish between whether that advice is class or personalised. Rather than trying to distinguish between class and personalised advice, ANZ believes the key is clearly explaining the scope of the financial advice being provided so it is meaningful to the customer. This will help customers understand what the nature of the interaction with the salesperson has been.

		We also recommend clarifying the exemption for providing information about products ANZ also suggests amending section 10(3) of the FAA to clarify the exclusion for providing information about a financial product. Information should include factual information about a financial product, such terms and conditions, all disclosure documents, and brochures, as well as how to apply for the product. The content of factual information is already well regulated without needing to be addressed in the FAA. For example, the Consumer Guarantees Act 1993, Fair Trading Act 1986, Financial Markets Conduct Act 2013, and the Credit Contracts and Consumer Finance Act 2003 all address product information requirements. We suggest amending section 10(3)(a) of the FAA to distinguish 'information' from 'financial advice' as follows: *(3) However, a person does not give financial advice for the purposes of this Act merely by—* *(a) providing information, including but not limited to:* *(i) facts about a product, including rates and fees;* *(ii) disclosure such as terms and conditions, client agreements, PDS, disclosure documents, brochures, flyers and other marketing material; and* *(iii) how to get or dispose of the product;* The FAA should only regulate salespeople or advisers providing incorrect information if such conduct or dealing isn't regulated under other legislation. In our submission, we've focussed only on the principles of how financial advice should be regulated. Any technical terms settled on when redrafting the legislation must be considered, at length, to avoid creating the arbitrary labels that have led to many of the current barriers.
7	Should high-risk services be restricted to certain advisers? Why or why not?	QFEs should be able to provide financial advice about all the products they offer, including their own products and those of other providers. In ANZ's view, the distinction between different categories of products is not working. We believe this is partly due to the difficulty in distinguishing class and personalised advice, and partly because the classifications themselves are inflexible given the nature of interactions with a customer. For example, a customer enquiring about a home loan can receive personalised advice. But the same customer also asking about life insurance to help protect that home loan in the same

		conversation must be referred to an AFA. ANZ suggests that QFEs should be able to provide financial advice to their customers. This advice can include information about a product's features, what it is used for, who provides it, who might typically buy it and why. ANZ believes that allowing QFEs to provide financial advice on all products will not lessen consumer protection. The QFE licensing regime works well to ensure governance and competencies of QFEs and their employees. Consumers are also well protected by complementary legislation, like the Fair Trading Act, the Consumer Guarantees Act, and the Credit Contracts and Consumer Finance Act. Simplifying the regime will enable QFEs to ensure staff have quality interactions with consumers, providing information and advice to meet the consumer's needs. QFEs must be responsible for having clear guidelines on which products their employees can provide advice on and when interactions must be referred to another qualified employee or to an AFA. QFEs should continue to explain this to the regulator through their Adviser Business Statements. We think this can be supported through simple and clear disclosure about the nature and extent of the financial advice given in all interactions by a QFE with its customers. For example, a disclosure could include an explanation that the salesperson may recommend or offer an opinion about the merits of a product based on a limited assessment of the customer's financial situation and goals. The customer would remain responsible for assessing whether they need a more detailed assessment of their needs or expert advice.
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?	ANZ doesn't support requiring wholesale clients to 'opt-in'. Changing the model for wholesale clients would negatively impact advisers. We believe the current distinctions between retail and wholesale clients under the FAA are functioning well. The current distinctions protect consumers, while providing a lighter touch regime for more sophisticated customers if certain criteria are met. A change to the current model will create an unnecessary and expensive compliance burden. We're also concerned that we would need to classify existing customers, which would be a huge undertaking. Any costs in such a change would also be passed on to all customers.
9	What ethical and other entry requirements should apply to advice platforms?	ANZ recognises that enabling robo-advice will foster greater innovation in the financial services industry. ANZ supports introducing regulated robo-advice, but suggests that entities must be licenced by the FMA before robo-advice can be provided.

		We believe there are two ways to effectively license providers of robo-advice: ▪ Adding a designation allowing robo-advice on a QFE's licence — a light touch application regime should apply to existing QFEs would want to get this designation ▪ A new licencing regime for non-QFEs. Licensees should be subject to a general duty of care to ensure that information or advice provided via the relevant platform is true and not misleading. We believe this duty of care is consistent with legal duties under other consumer protection legislation. Otherwise, the same requirements for financial advice should apply to robo-advice, including disclosure obligations.
10	How, if at all, should requirements differ between traditional and online financial advice?	The FAA must be technology neutral. While licensing of robo-advice providers is necessary, there must be no other distinction drawn between how online financial advice is regulated. The same duties for financial advice should apply to robo-advice, including disclosure obligations.
11	Are the options suggested sufficient to enable innovation in the adviser industry? What other changes might need to be made?	See our answers to earlier questions on the scope of reform.
12	If the ethical obligation to put the consumers' interest first was extended, what would the right obligation be? How could this be monitored and enforced?	While protecting consumers is chief, ANZ doesn't support extending the ethical duty to put consumers' interests first to all advisers and providers. We believe the duty is best kept only for authorised financial advisers who provide financial planning and more complex financial advice that considers a consumer's personal financial situation and goals. We believe the right approach is for advisers to explain the nature of the advice and its limits. We believe this will be more meaningful for consumers, provide certainty for providers, and make regulatory enforcement easier. ANZ proposes that for QFEs/product providers assessing suitability must be limited to assessing what customer types can buy the product. We're concerned at the proposal to introduce a duty to assess suitability of products. Any duty to assess suitability by QFEs must be limited to assessing general product suitability. When a provider develops a product, identifiable individual customers are unknown. Any duty must instead ensure a provider/QFE only sells a product to certain customers who meet a set of relevant criteria. This includes identifying whether a product is not suitable for certain customer segments, for example, a commodity derivative cannot be provided to retail customers. There should be no duty on the product provider/QFE to consider suitability for an identifiable individual customer or an

		individual customer interaction under the FAA. We note that other complementary legislation contains suitability assessment requirements for individual customers. For example, the Consumer Guarantees Act requires suppliers to ensure a product is suitable for the purpose made known by a customer. Also, the Credit Contracts and Consumer Finance Act requires lenders to consider whether it is likely that a product will meet a borrower's requirements and objectives. AFAs, however, provide financial planning services and more complex financial advice which considers the consumer's own circumstances and goals. So, we believe it right that AFAs continue to have a duty to assess the suitability of products for that customer.
13	What would be some practical ways of distinguishing 'sales' and 'advice'? What obligations should salespeople have?	Please see our answer to question 6 above. We believe salespeople must: ▪ exercise the care, diligence, and skill of a reasonable financial adviser in the same circumstances (the existing section 33 FAA test) ▪ clearly explain to the consumer the nature of advice and any limits on it — for example whether or to what extent the adviser has considered the consumer's own circumstances or goals in giving the advice their interaction with the consumer. Packages 2 and 3 in the Options Paper seek to remove categories of class and personalised advice and introduce new concepts of 'sales' and 'advice'. Conditions will be attached to a 'sale' interaction. ANZ suggests the proposals in packages 2 and 3 go too far. We believe there is a strong likelihood the regime will become overcomplicated, not simplified. ANZ also doesn't believe it relevant whether a salesperson is providing financial advice on the organisation's own financial products or those of another provider. The same requirements must apply. Distinctions will only increase compliance burdens.
14	If there was a ban or restriction on conflicted remuneration who and what should it cover?	ANZ considers that any 'conflicted remuneration' must be clearly explained to customers in the relevant disclosure document.
15	How can competency requirements be designed to lift capability, without becoming an undue barrier to entry and continuation in the profession?	The FAA must impose a duty on advisers to be competent to give advice in that circumstance. We agree with option 4 on page 28 of the Options Paper. In practice, licensed entities like QFEs can then decide the right training, qualifications, and experience for employees who provide advice. To protect consumers, the FMA provides valuable oversight of QFE systems and controls. Otherwise, ANZ considers the existing framework that applies to AFAs should be carried over to the new regime. Setting

		minimum entry standards, imposing CPD requirements, and regulator authorisation and licensing are essential for advisers giving more detailed advice on more complex products. The competency and ethics levels set are also most effectively managed outside of the FAA by the Code Committee. The Code Committee provides greater flexibility to tailor the regime and agility to reflect changing circumstances and market practices over time. ANZ also supports a stepped pathway to adviser roles (option 2 on page 28 of the Options Paper).
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?	No. Advisers that are not AFAs but employed by licensed entities like QFEs should not be subject to minimum entry requirements. The licensed entity should set its own competency requirements, with necessary oversight by the FMA on systems and controls. We believe AFAs, who provide financial advice services and complex personalised advice should continue to be subject to minimum entry requirements. See our answer to question 15 above.
17	What are the benefits and costs of shifting to an entity licensing model where by 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?	ANZ suggests that self-regulation is right for large organisations with broad product ranges. The existing QFE regime provides an appropriate governance framework for large entities with large staff numbers and broad product ranges. We support keeping the QFE regime, but have proposed some changes in sections 5 and 6 of Appendix I. Self-regulation of employees who distribute FAA products is right for businesses of certain size and scale, while still providing suitable consumer protection. A QFE must satisfy the Financial Markets Authority (FMA) on various governance competencies to be eligible for QFE status. The FMA's oversight and supervision of QFEs adds further protections for QFE customers. Under the current regime, QFEs are responsible for ensuring their employees are competent, trained, overseen, and performance managed. The regime provides reasonable flexibility for QFEs to decide how to best achieve those requirements. It also allows QFEs to employ other advisers with higher qualifications to provide more complex financial planning services, including on more complex financial products.
18	What suggestions do you have for the roles of different industry and regulatory bodies?	ANZ has no comments on this question.

19	What do you think is the most effective way to disclose information to consumers (e.g. written, verbal or online) to help them make more effective decisions?	ANZ considers that businesses and advisers should be free to decide the best way to disclose information to consumers (for example, whether the information is handed out to consumers during an interaction with an adviser, or whether it is available online). ANZ suggests improving QFE disclosure. Disclosure must be consumer friendly, timely, and appropriate. Standardising the format and information given by advisers is necessary and desirable. But we suggest keeping flexibility to tailor disclosure to the relevant adviser or advice model. In our view, disclosure documents must be free of technical financial or legal jargon, in plain language, and bring the information to the attention of a reasonable person. Given our proposed changes to allow QFEs to provide financial advice on all of their products, we think the disclosure model should change. As discussed above, the need to disclose before giving personalised advice is often impractical given the nature of interactions with a customer. Instead, we recommend that QFEs should make the following standard information available on its website or if asked: ▪ The name and contact details of the organisation ▪ The products its advisers can advise on ▪ The nature of advice, including any limits on it ▪ How it pays advisers ▪ How to raise issues or complaints, internally and through disputes resolution schemes. During an interaction with a customer, we suggest a QFEs employee should also: ▪ Disclose whether they allowed to advise on a particular product ▪ Disclose whether they have considered the customer's personal circumstances in providing that financial advice ▪ Recommend a customer seek expert advice if the advice hasn't considered the customer's personal circumstances ▪ That they can provide a written disclosure if asked. ANZ considers that AFAs should disclose: ▪ The name and contact details of the adviser ▪ The name and contact details of the adviser's employer ▪ The products they can provide advice about ▪ The service or advice they provide and that they will consider a client's personal financial situation or goals ▪ A high level description of likely fees and charges for services ▪ A description of any conflicts ▪ How to raise issues or complaints, internally and through disputes resolution schemes. Disclosure must be technology neutral and must reflect that

		providers and advisers interact with customers in different ways, including by phone, online, or in person. The disclosure itself should be appropriate in the circumstances, with the aim to bring the information to the attention of a reasonable person. With that threshold, ANZ considers that businesses and advisers should be free to decide the best way to disclose information to clients. For example, whether the adviser gives information to consumers or whether it is available online. AFA disclosure could be made available on the financial advisers FSPR entry. ANZ does not consider there is a case for primary and secondary disclosure under the FAA. If a situation arises where an AFA is dealing with a customer and makes a recommendation that does not take that client's personal financial situation or goals into consideration, the AFA should have a duty to advise the client of this. Any extra information (such as fees payable) would be disclosed to the client when the financial advice is provided.
20	Would a common disclosure document for all advisers work in practice?	ANZ believes standardising the format and information given by advisers is necessary and desirable. But we suggest keeping flexibility to tailor disclosure to the relevant adviser or advice model. We think the format and the general information categories that need to be completed can be standardised. See our answer to question 19 above. Disclosure documents should be free of technical financial or legal jargon, in plain language, and bring the information to the attention of a reasonable person. However, prescribing standardised disclosure must focus on ensuring meaningful information is given to consumers. There must be flexibility to highlight the differences between businesses and advisers.
21	How could remuneration details be disclosed in a way that would be meaningful to consumers yet relatively simple for advisers to produce?	The most effective method is for advisers and licensed businesses to provide some standard information on their website or if asked. This information must include: ▪ a list of 'payment types' (fees only, fees, commissions, extra payments from my employer, non-financial benefits from other organisations with standard descriptions of each). ▪ who remuneration is received from and a description of how it is determined. When recommending a product, advisers should disclose the specific fee payable or commission received, as well as ongoing commission, on that product. For 'payment types', we suggest standardising descriptions across the industry: ▪ <u>Fees only</u>: The service is paid for by the fee charged to the

		client. The adviser doesn't get payments from other people or organisations that may influence the adviser's advice. ▪ Fees and other: The service is paid for by the fee charged to the client. The adviser also gets payments from other people or organisations that may influence the adviser's advice. ▪ Commissions: The adviser or adviser's employer is paid by other organisations for the products they sell. The payment depends on the product or decision the client makes. ▪ Non-financial benefits: Other organisations may give the adviser or the adviser's employer non-financial benefits, like travel or event tickets. The benefits depend on the product or decision the client makes.
22	Is there any evidence that the existence of multiple schemes is leading to poor outcomes for consumers?	ANZ has no evidence that multiple schemes are leading to poor results for consumers. Each scheme is a specialist in the products and disputes it supervises. ANZ does note large organisations typically need to belong to more than one scheme because of the different products they provide. This imposes an administrative burden on the organisation. And sometimes can cause confusion about which dispute resolution scheme has jurisdiction.
23	Assuming that the multiple scheme model is retained, should there be greater consistency between scheme rules and processes? If so, what particular elements should be consistent?	Yes. ANZ supports aligning compensation scheme caps as set out in MBIE's consultation in 2015 on dispute resolution schemes.
24	Should professional indemnity insurance apply to all financial service providers?	ANZ has no comments on this question.
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)?	The best way to get information to consumers is using the channel chosen by the consumer. Different groups of consumers use different channels. For example, younger consumers often prefer digital channels. Flexibility and technology neutrality is critical. No one group is best placed to give information to consumers. A co-ordinated approach between providers, Government, industry bodies, regulators, and consumer groups is needed. It is everyone's responsibility to promote and improve financial literacy and access to financial advice in New Zealand. Each has a natural role. For example, industry bodies can communicate for the participants they represent. Regulators can explain consumer rights and warn against inappropriate behaviour. Strong communication by all groups will increase consumer confidence and understanding of financial advice and financial products in New Zealand.

26	What terminology do you think would be more meaningful to consumers?	We suggest that the term 'financial adviser' is the most meaningful to consumers. From there, the focus must be on explaining the skill of the adviser, the products they can advise on, and the advice and its limits are most meaningful. For example, we suggest that 'Registered Financial Advisers' should change. We believe that this terminology creates an impression of having met minimum entry requirements. We suggest '<u>Financial Advisers (Registered but Not Authorised)</u>' to reflect those advisers are not employed by a QFE or have met minimum entry requirements to be Authorised Financial Advisers. ANZ disagrees a portal is needed to help consumers find financial advisers. Information about financial advisers is already on the FSPR and the FMA websites. Instead, standardising information in the FSPR entry for Authorised Financial Advisers would help the accuracy of the FMA website. We've submitted on this in our response to part 3 of the Options Paper on 29 January 2016. The FMA providing a webpage of AFAs rather than an excel spreadsheet would also help further.
27	Do you have any comments on the proposal to retain the current definitions of financial adviser and financial adviser service?	See our answer to question 6 above. We remain comfortable with the general phrases 'financial adviser' and 'financial adviser service'.
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.	ANZ disagrees that anyone currently exempt from the regime poses risks to consumers if they provide financial advice in their business.
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?	ANZ considers the territorial scope of the FAA is appropriately set. To improve, we suggest providing a schedule in the FAA of countries that have an equivalent and recognised level of regulation of financial advice. These countries could be exempted from some requirements to reduce compliance overlap, for example around disclosure.
30	How can we better facilitate the export of New Zealand financial advice?	New Zealand must set a world leading legislative model for regulating financial advice. Jurisdictions have long-struggled with how to regulate financial advice and no-one has right. This result could also help alignment across jurisdictions, particularly for businesses working in multiple jurisdictions.

31	Do you have any comments on the proposal to retain the current approach to regulating broking and custodial services?	No.
32	What are the costs and benefits of the packages of options described below?	Please see our answer to question 4 above.
33	How effective is each package in addressing the barriers described in Chapter 3?	As set out in our key messages, we support a reform package that draws on each of the three packages, rather than any one on its own. Our view of the effectiveness of each package is as follows: ▪ Package 1 – not effective ▪ Package 2 – better, but unlikely to change existing barriers to consumer understanding and will lead to complexity in practice ▪ Package 3 – most effective, but unlikely to change existing barriers to accessibility of financial advice if the proposed warning and restrictions on selling own-manufactured products are kept.
34	What changes could be made to any of the packages to improve how its elements work together?	As set out in our cover letter and Appendix I, we support a hybrid model. ANZ doesn't consider package 1 is viable. We also don't support packages two or three in the Options Paper Packages two and three in the Options Paper seek to remove the categories of class and personalised advice and introduce new concepts of 'sales' and 'advice'. Conditions will be attached to a 'sale' interaction. ANZ suggests the proposals in packages two and three go too far. We believe there is a strong likelihood the regime will become overcomplicated, not simplified. ANZ also doesn't believe it relevant whether a salesperson is providing financial advice on the organisation's own financial products or those of another provider. The same requirements must apply. Distinctions will only increase compliance burdens. Please our answer to question 35 below on what we believe is an appropriate reform package.
35	Can you suggest any alternative packages of options that might work more effectively?	We recommend the following reform: ▪ Keeping the current definitions of wholesale and retail clients and the 'opt-out' process for wholesale clients. ▪ Keeping the current licensing and self-regulation model for Qualifying Financial Entities (QFEs). ▪ Keeping the current Authorised Financial Adviser (AFA) regime, as it sets right competency and ethics levels for advisers providing more complex financial advice. ▪ Ensuring only licensed entities provide robo-advice, either directly or through extra designation on a QFE licence.

		▪ Allowing QFEs to provide financial advice on all categories of products. – The distinctions between class advice and personal advice should be removed. Sales of financial products inherently involve some financial advice. At its most basic, that financial advice is a recommendation by a salesperson to get the product being sold. – QFEs should be able to provide financial advice about their financial products and those of other providers they offer that their customers want and need. Consumers are well protected through licencing and regulation of QFEs, as well as complementary legislation, like the Fair Trading Act, the Consumer Guarantees Act, and Credit Contracts and Consumer Finance Act. – QFEs must be responsible for having clear frameworks on when or if staff can provide financial advice on its products and when or if a customer must be referred to an AFA. Simplifying the regime will enable QFEs to ensure staff have quality interactions with consumers, providing information and advice to meet the consumer's needs. – The current controls around who can provide investment planning services and discretionary investment management services should be kept. ▪ Improving and simplifying disclosure to retail customers so it is meaningful. The focus should be on explaining the extent of advice given and what the limits are. Given customer interactions, we recommend removing up-front written disclosure. Written disclosure should be replaced with standardised disclosure by the entity and an explanation of the advice and its limits by the salesperson or adviser. See Appendix I and our answer to question 19 above.