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4 March 2016

ASB Bank Limited (ASB) welcomes the opportunity to provide feedback on the review of the Financial Advisers Act 2008 (the Act), as set out in the *Options Paper: Review of the Financial Advisers Act 2008 and the Financial Service Providers (Registration and Dispute Resolution) Act 2008* (the Options Paper).

ASB believes access to quality financial advice is essential for the financial security and wellbeing of New Zealanders and we support the comprehensive review of the regime to ensure it is fit for purpose and meets its intended objectives. We acknowledge the high level of engagement that has occurred during the initial stages of the review and we look forward to future discussions with officials.

ASB supports the outcomes sought by the review. ASB supports enhancements based on Package 1.

ASB is a registered bank, and a Qualifying Financial Entity (QFE) Group which comprises ASB, ASB Group Investments Limited, ASB Securities Limited, Aegis Limited and Commonwealth Bank of Australia (New Zealand Branch), and has over 1.7 million customers.[1]

The QFE Group has approximately 2,800 QFE advisers who are employees. ASB has no QFE advisers who are nominated representatives.

ASB is a subsidiary of Commonwealth Bank of Australia and a related company of Sovereign Assurance Company Limited.

We acknowledge that ASB's submission will be made publically available by being published on the Ministry of Business Innovation and Employment's website. ASB does not seek confidentiality for any aspect of this submission.

If you have any questions relating to this submission, please do not hesitate to contact me.

Yours sincerely
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Victoria Johnstone
Head of Regulatory Affairs
09 337 4776
Redacted

[1] As at 31 August 2015

Executive Summary

ASB supports enhancements based on Package 1. Our submission outlines a number of practical suggestions and considerations to best achieve the outcomes sought by the review, including:

- the need to increase consumer base level financial literacy in New Zealand;
- the need for clear guidance notes, particularly on the delineation of advice categories;
- the removal of section 15(1)(b)(ii) of the Act;
- the introduction of a mandatory requirement that whenever an adviser provides class advice, the adviser must state that the advice is not personalised advice and does not take into account the client's particular circumstances;
- that the robo-advice license should not be a standalone licensing process but should be an additional permission to an existing licence;
- that all advisers should have ethical obligations that are consistent with Code Standard 1 under the Authorised Financial Advisers Code of Professional Conduct; and
- an outline of suggested requirements for a uniform disclosure document.

Further detail on these issues is contained below in the relevant sections, as set out in the Options Paper.

Chapter 3 Barriers to achieving the outcomes

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

Barrier outlined in the Options Paper	Comments
"Hard for consumers to know where to seek advice from"	Agree, however the generally low level of financial literacy amongst consumers contributes significantly to this barrier (see comments under Question 2).
"Certain types of advice aren't being provided for"	We agree that certain types of advice are not available to all consumers in all circumstances, but there is no evidence that this acts as a barrier to consumers being able to access the advice and assistance they need (see comments under Question 6 Option 1).
"Consumers don't always understand the limitations of different types of advice"	Agree.
"Certain conflicts of interest may be leading to suboptimal outcomes for consumers"	There is no evidence that these are barriers to achieving the stated outcomes.
"Consumers may be receiving advice from people without the right knowledge, skills and competency levels"	

2. **Is there evidence of other major barriers not captured in the Options Paper? If so, please explain.**
The barriers listed in the Options Paper are relevant only to consumers who want or seek financial advice. Another significant barrier to achieving the stated outcomes is that many consumers do not recognise the value of financial advice, and therefore do not seek it or accept it when offered. For example, ASB KiwiSaver Scheme customers can obtain free

personalised advice in connection with the Scheme from an AFA, but less than one percent of these customers actually access this resource.

In order to address this barrier, significant work is needed to increase consumer awareness of the importance of financial advice and establish a basic level of financial literacy. For example, the public needs to recognise that if they are investing money or planning for retirement they should seek financial advice, in the same way they recognise that if they are buying or selling a house they should seek legal advice. Although it is fundamental that the legislative settings encourage this outcome, there is a significant role for the Crown (via the Financial Markets Authority and the Commission for Financial Capability) to improve financial literacy generally.

Chapter 4 Discrete elements

3. **Which options will be most effective in achieving the desired outcomes and why?**
   In our opinion, fundamental change to the current regime is unnecessary. There is no demonstrated systemic market failure from the current regime, which is only five years old. Incremental changes to the existing legislation will address any current barriers and best promote the objectives of the review.

4. **What would the costs and benefits be of the various options for different participants (consumers, financial advisers, businesses)?**
   Any option that increases costs to provide advice will lead to decreased access to advice for consumers. This is especially relevant in relation to any changes that directly or indirectly increase compliance obligations for advisers, such as many of those in Packages 2 and 3.

4.1 Restrictions on who can provide certain advice

6. **What implications would removing the distinction between class and personalised advice have on access to advice?**
   The removal of the existing advice categories is likely to exacerbate existing problems and create new ones. In particular, if the class advice category is removed (or the cost of delivery of class advice is increased), certain customer segments who currently have access to low-cost class advice will be excluded from accessing advice altogether. Generally speaking, class advice is adequate to promote good financial outcomes for many customer segments. Comprehensive guidance on the delineation between the existing advice categories would allow advisers to more comfortably operate within the current framework.

   A significant contributing factor to the real or perceived ambiguity between class and personalised advice is section 15(1)(b)(ii) of the Act. That section provides that advice is personalised if it is given to, or in respect of, a named or otherwise identifiable client and:

   > *"a client would, in the circumstances in which the [advice] is provided, reasonably expect the financial adviser to take into account the client's particular financial situation or goals (or any 1 or more of them)."*

   This means that an adviser has no certainty that advice will not retrospectively be determined by the FMA or a court to be personalised, despite the provider forming a reasonable opinion at the time that a client would not reasonably have expected his or her circumstances to be taken into account. This judicial risk has been allocated to advisers and, as such, advisers have been extremely cautious when assessing whether a client would reasonably expect his or her particular financial circumstances or goals to be taken into account. This has led to complex processes that have increased the cost of both personalised and class advice and reduced the availability and extent of class advice.

We submit that:

(a) section 15(1)(b)(ii) should be removed;
(b) introduce a mandatory requirement that whenever an adviser provides class advice, the adviser must state that the advice is not personalised advice and does not take into account the client's particular circumstances; and
(c) the FMA should provide clear guidance notes on the delineation of the existing advice categories. In particular, for the purpose of section 15(2) of the Act, targeted advice based on known or deduced characteristics that the client shares with others in a cohort (but which ignores the fact that the client might have other relevant characteristics) should not mean that the advice is personalised (i.e. it does not take into account the client's particular financial situation or goals).

Each option is discussed in detail below.

<u>Option 1 – removal of class / personalised advice distinction</u>
This option will significantly increase the cost of providing class and personalised advice, which will result in reduced access to advice for some customer segments. As stated in the Options Paper, this option must be accompanied by elevated competence requirements for all advisers in order to provide adequate consumer protection, which will increase cost with the inevitable effect of reducing access. In response to the stated benefits of this option:

- It is a false premise that all types of advice should be available to all customers. The reality is that each type of advice has a different cost of delivery, and that personalised advice will not be available to certain customers if there is no financial business case for an adviser to do so. The Options Paper incorrectly characterises this as an uneven playing field. In fact, the reason is the cost of delivery of personalised advice. If the distinction between class advice and personalised advice is removed, or the cost of delivery for class advice is increased, in the name of "levelling the playing field", it will have the opposite effect: that is, more customer segments will be excluded from accessing advice altogether.
- We doubt that this option will reduce the cost of providing personalised advice as claimed in the Options Paper. Even if it does, the cost of advice currently designated as "class advice" will increase under this option and will result in reduced access to advice for certain customer segments.
- We do not believe that this option is the best way to address any confusion by consumers between class advice and personalised advice. The most effective way to do that is to require a statement that the client's particular circumstances have not been taken into account (see (b) above) to accompany all class advice.

The maintenance of the class advice category is important to facilitate the establishment of robo-advice as a legitimate part of the market. Although personalised advice may be able to be provided in the future by artificial intelligence technology, calculator tools currently available provide class advice based on characteristics that classify the customer into a cohort, and provide general recommendations on that basis.

<u>Option 2 – removal of product category distinction</u>
We do not support the removal of the restrictions on who can provide advice based on a product's complexity. We believe it is appropriate to continue distinguishing between products based on their complexity and their potential for customer harm, and the current two-tier adviser model correctly balances the cost of delivery against consumer protection. We acknowledge that the current names to denote registered financial advisers and authorised financial advisers might be confusing to some consumers, and if this were determined to be a material problem with the current regime, we would support revised names. Importantly, however, that is a separate issue from the validity of the two- tier adviser model and any renaming should not change that model inadvertently or otherwise. Please see our response to question 26 for further detail.

While the distinction between category 1 and category 2 products will always be somewhat arbitrary, this could be mitigated by introducing a designation power for the regulator to assign certain products to a different category if needed. This approach aligns with the FMA's equivalent power under the Financial Markets Conduct Act, and would allow for correcting of certain anomalies in the category distinction.

<u>Option 3 – restriction of complex/high-risk services to certain advisors.</u>
For the reasons noted above in relation to Option 2, there is a need for some products to be limited to more qualified advisers because of their complexity and potential for harm, while at the same time keeping to a minimum the overhead costs for advisers who provide only advice on less complex or risky products. However, Option 3 essentially recreates the product category distinction and we submit that minor changes to the existing categories as discussed above under Option 1 would be sufficient to address these concerns.

<u>Option 4 – opt in of wholesale clients</u>
We have seen no evidence of consumer harm from the current wholesale client arrangements. Introducing an opt-in mechanism would increase complexity, cost, customer inconvenience, and is unlikely to be well understood by consumers or lead to improved consumer outcomes.

7. **Should high-risk services be restricted to certain advisers? Why or why not?**
We agree that high-risk services should be restricted. We consider that the current product category distinction adequately achieves this.

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?**
We have seen no evidence of consumer harm from the current wholesale client arrangements. An opt-in regime would add additional compliance costs and customer inconvenience without any demonstrable benefit. The wholesale/retail distinction also aligns with other legislation and disrupting this would create more problems than benefits.

4.2 Advice through technological channels

9. **What ethical and other entry requirements should apply to advice platforms?**
We support enabling innovation in the financial services industry. We agree with the benefits of robo-advice outlined in the Options Paper, especially with regard to improved access and availability of advice.

We agree that a carefully considered licensing regime is appropriate to monitor the provision of automated advice. We submit that any robo-advice license should not be a standalone licensing process but should be an additional permission to an existing licence, consistent with the Australian regime. An effective licensing regime should produce consistent standards across providers and recognise the differing levels of other regulation and supervision across provider types under other legislation.

In addition, any licence would need to be flexible enough to allow for developments in technology throughout the term of the licence and should be principles based. For example, there would be significant technological advancement during a five year licence term, and the licensing regime will need to reflect this by licensing outcomes by way of governance and risk management processes, rather than the individual technology solutions.

10. **How, if at all, should requirements differ between traditional and online financial advice?**
    In our view, there is no reason to treat online advice differently to traditional advice. From a content perspective, online financial advice should be subject to the same requirements as if that advice were given in person. The legislation should be technologically neutral to accommodate all different delivery channels.

11. **Are the options suggested in this chapter sufficient to enable innovation in the adviser industry? What other changes might need to be made?**
    We support Option 1 whereby financial advice can be provided online by a licensed entity. We consider the mandatory requirement to have a choice to speak to a person as set out in Option 2 is unnecessary and limits much of the benefits of electronic delivery. Many advisers will offer a face-to-face service on request for customer service reasons, but we do not support it being a legal requirement.

4.3 Ethical and client-care obligations

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?**
    We support an extension of the requirement to put the consumers' interests first to all advisers. This appropriately recognises and supports that the ultimate goal of the regime is to increase customers' confidence to act on the advice they receive.

    The obligation should be consistent with Code Standard 1 under the Authorised Financial Advisers Code of Professional Conduct. This would require all advisers to place the interests of the client first, and act with integrity in accordance with the overarching purpose of the Act. What is required in order to place a client's interests first should be determined according to what is reasonable in the circumstances of that advice, as is the case currently for AFAs.

    This enhanced ethical obligation would need to be tailored for QFEs to ensure that, where a QFE adviser recommends the QFE's own product that reasonably meets the needs of the client, the QFE adviser will still meet the test of placing the interests of the client first even if there is another equivalent product offered by a different provider (but which the QFE adviser cannot legally or contractually advise on) that might be, for example, marginally cheaper.

13. **What would be some practical ways of distinguishing 'sales' and 'advice'? What obligations should salespeople have?**
    We do not support any attempt to draw a distinction between "sales" and "advice". This is because we believe that every salesperson (whether corporate, such as in the case of a QFE, or individual) should be satisfied that the product being sold meets the consumer's need. That need might be established by a full needs analysis or by simply asking the consumer (as in the

case of a consumer who has conducted his or her own needs analysis and research). Even in that the latter case, the salesperson should be satisfied that the product is suitable to meet that need. That process by its very nature is a recommendation or opinion in relation to acquiring the product. Creating a new category of "sales" but imposing the suitability requirement on salespersons would corrupt the fundamental definition of advice in the Act.

Furthermore, an explicit sales/advice distinction could result in an influx of salespeople who are less regulated than those currently permitted to give class advice. It also would incentivise sales due to a lesser compliance burden, and therefore reduce the availability of comprehensive advice. When similar changes were introduced in the United Kingdom the provision of advice and the number of advisers actually decreased[2]. We consider the introduction of a sales category here is likely to have the same effect.

We do support, however, the FMA providing clear guidance on the line between providing information or transmitting the financial advice of another person (particularly where that is done verbally) for the purpose of section 10(3) of the Act, and giving financial advice. In our experience, many front office staff (such as receptionists at adviser offices and bank tellers) are reluctant to convey information to customers out of fear of over-stepping the line into giving advice. In part, this is the responsibility of the employer to provide clear instruction but because responsible employers and organisations want to ensure compliance they are taking a conservative interpretation to the giving information exception. This is contributing to sub-optimal customer outcomes, because customers cannot easily and readily access all the information that they might want to help them make good financial decisions. We would support the FMA providing clear guidance on this issue by way of example scenarios that are, or are not, within section 10(3).

14. **If there was a ban or restriction on conflicted remuneration who and what should it cover?**
    We do not support a ban on commission and other forms of conflicted remuneration. Despite the existence of a conflict, there is only a problem in the event that it results in a detriment to the consumer. The most appropriate way to manage the conflict is by disclosure to the customer.

    Commission structures actually increase access to advice. FMA/CFFC data points out that almost 75% of those who have received financial advice have not paid for it. It cannot be assumed that all these people would pay directly to receive advice. Banning commission is likely to have the effect of limiting access to advice, particularly for consumers in lower socio-economic groups.

4.4 Competency obligations

15. **How can competency requirements be designed to lift capability, without becoming an undue barrier to entry and continuation in the profession?**
    The existing competency requirements of the Act are set at an appropriate level, with no evidence of market failure or poor consumer outcomes. The issue is not the level of competency required of different types of adviser but, rather, confusion around which types of adviser provide advice in relation to the different categories of products (including the

[2] Association of Professional Financial Advisers, *The Financial Adviser Market: In Numbers*, edition 3.0 (2015) at 2.3, http://www.apfa.net/documents/publications/financial-adviser-market/apfa-the-financial-adviser-market-in-numbers-v3.0.pdf.

qualifications of the adviser relative to other types of adviser, and any limitations on that advice).

Requiring all advisers to meet a common standard of competency is not practical or economic. Applying a blanket minimum education standard would create an unnecessary compliance burden that would in turn make advice more expensive, reducing access. This will disproportionately limit access to advice by lower socio-economic groups less able to pay for advice themselves. The focus should be on outcomes and demonstrating appropriate competence for the type of advice that will be given by each adviser, rather than on prescribing how that competence is achieved.

We therefore support the preferred option four.

The entity licencing regime currently allows QFEs to determine and demonstrate that their advisers have the requisite competency tailored to their particular circumstances.

We recognise the benefits of ongoing/continued training and support the concept of continuing professional training managed through the licencing process. A stepped pathway to compliance would be hugely beneficial in terms of improving the declining numbers of AFAs in the market. This would recognise the significant investment by large providers in improving the competency of its advisers, and could rely on existing training and support services as outlined in a QFE's annual Adviser Business Statement.

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?**
    We do not support an overall minimum entry level competency requirement for the following reasons:

    - Given the variety of adviser types, minimum entry requirements would be impractical. Instead, competency should be set through the entity licencing process so it is tailored and fit for purpose for each type of adviser.
    - There is no evidence of a systemic lack of competence by advisers that justifies changes to the status quo.
    - Minimum entry requirements will introduce significant cost to the industry, especially if these requirements were set too high. For example, requiring all ASB QFE advisers to hold a National Certificate in Financial Services Level 5 would cost approximately $3,200 per person, and take up to a year to complete. Across our approximately 2,800 QFE advisers, this is a significant additional compliance cost to address an issue where no market failure has been shown to exist.

4.5 Tools for ensuring compliance with the ethical and competency requirements

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?**
    We are supportive of the entity licencing approach (Option 1). It would be duplication of effort to require advisers licensed through their entity's QFE (or other) status to also obtain additional individual licences.

    Any entity licencing framework needs to appropriately recognise and take into consideration other licences that an entity already holds, such as registered bank status and any market service licences. This will avoid duplication and ensure that additional licence requirements are proportionate to the additional risk.

The licensing model adopted should:

- recognise stepped competency requirements based on complexity and risk of the advice provided by each type of adviser; and
- ensure uniform ethical standards are applied to all advisers, irrespective of licensee type.

4.6 Disclosure

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?
All disclosure material for all advisers should be available online for access by all consumers at all times. Where the client agrees to receive disclosure material online then referring a client to that material (by, for example, providing a website link to the material) should be deemed to be adequate disclosure to the client. However, the legislation should not otherwise prescribe or limit the manner in which an adviser chooses to deliver disclosure to any particular client. This will allow flexibility of delivery.

20. Would a common disclosure document for all advisers work in practice?
We support a review of the disclosure requirements in order to make disclosure more meaningful to consumers. Disclosure should be clear, concise and effective. Our experience is that in practice advisers have developed a precautionary practice of 'over' disclosing, which customers find irritating.

This uniform disclosure requirement should aim to reduce the quantity of disclosure, be more meaningful and digestible for the average consumer, and align in content, form and terminology across advisers and product types. A single disclosure document should be allowed to cover both AFA disclosures and entity disclosures for QFE advisers who are also AFAs so that one disclosure can be made, tailored to the adviser's particular disclosure requirements.

We consider that only the following should be dealt with in a common disclosure document:

- the type of adviser they are (e.g. whether they are an AFA, RFA, or QFE adviser);
- the products and services that the adviser may advise on;
- whether the adviser may give class and/or personalised advice in relation to any or all of those products and services;
- the nature and, where practical, amount of the adviser's remuneration;
- any conflicts of interest; and
- where to find further information (e.g. websites).

21. How could remuneration details be disclosed in a way that would be meaningful to consumers yet relatively simple for advisers to produce?
In our view, the key consideration here is that the consumer knows whether or not the adviser is incentivised in a way that might influence the impartiality of their recommendation. In order to lead to a more informed and confident consumer, remuneration disclosure must be clear and concise and avoid "over" disclosing to avoid confusing consumers. We believe it is

unlikely that disclosure of complicated and technical fee structures will achieve this aim, so should be qualified to the extent that is reasonably practical.

4.7 Dispute resolution

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

In our view there is no evidence of harm caused by having multiple dispute resolution schemes.

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?

We have seen no evidence that the current model is not working as intended or delivering poor consumer outcomes, despite some minor inconsistencies across the various schemes. With no strong driver for change in this area, resources should be focussed elsewhere.

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

All financial service providers should have adequate capital and/or professional indemnity insurance relative to their scope of operations.

4.8 Finding an adviser

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)?

We support any efforts to increase consumer awareness of the value of advice and advisers, particularly in the context of a broader financial literacy drive.

A more consumer-focused FSPR and a dedicated section on websites such as Sorted.co.nz would be a positive step.

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

The distinction between AFAs and RFAs is not well understood by consumers. This could be addressed by calling all non-QFE advisers simply "financial advisers", with an additional denotation of qualification for advisers currently known as AFAs, e.g. chartered financial adviser. This would indicate to consumers a higher standard of competency.

In our experience, the QFE adviser label has not created any material confusion for consumers. An enhancement could be to provide explicitly that a QFE may brand and promote its QFE advisers as an "XYZ financial adviser", where XYZ is the name or an abbreviation of the name of the QFE, without falling foul of the prohibitions in the Act against indirectly holding out that the QFE adviser is an authorised financial adviser.