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24 February 2016

Corporate Law
Labour and Commercial Environment Group
Ministry of Business, Innovation & Employment
PO Box 3705
Wellington
New Zealand

By email: faareview@mbie.govt.nz

To whom it may concern,

Review of the Financial Advisers Act 2008

Please find attached our submission to the Ministry of Business, Innovation and Employment Options Paper.

Any questions regarding our submission can be directed to Cameron Watson or David Sawtell. Their contact details are provided below.

Yours faithfully
Craigs Investment Partners Limited

David Sawtell
Head of Advisory
Redacted

Cameron Watson
Quality of Advice Manager

Executive Summary – Key Submission Points

In this executive summary we provide a summary of the key points in our submission.

Craigs Investment Partners – Key Submission Points

Proposed Option	Our View	Comment
4.1 Restrictions on who can provide certain advice		
Option 1: Remove the distinction between class and personalised advice	Agree	We believe removing the distinction between class and personalised advice would remove a significant barrier to accessibility. At present, the class/personalised advice boundary is blurred, as are the documentation standards for personalised advice. As a result we understand many advisers are operating only at the extreme ends of the advice spectrum; providing only generic class advice or comprehensive personalised advice, as this is where the regulation guidance is clearest. The result is that many consumers who want or need only a limited form of personalised advice cannot access this advice. This should be replaced with information only and advice. Advice then covers the full spectrum of advice, from short-form general advice through to comprehensive financial advice. Advisers should then be able to scale the advice to suit the client's needs. To ensure advisers feel comfortable providing limited or scaled advice, they should be provided clear guidance on documentation and discovery requirements.
Option 2: Remove any distinction based on product category	Agree	Consumers do not understand these categories. Removing them would eradicate a layer of complexity for consumers, which adds nothing to accessibility or protection for consumers.
Option 3: Restrict the provision of certain complex or high-risk services to certain advisers	Disagree	This would add to complexity and is inconsistent with a principles-based approach to adviser regulation. Advisers though should have the required competence to provide the services they offer. They should also disclose any limitations on their advice – such as access to only their employer's products.
Option 4: Require a client to opt-in before being considered a wholesale client	Agree	Will provide additional protection for retail investors. We propose this be combined with an opt-out for professional institutional investors that uses a much higher threshold than currently in the Act.
4.2 Advice through technological channels		
Option 1: Allow financial advice to be provided online by a licensed entity	Agree	We expect any 'robo' advice would be a form of limited (personalised) advice. Therefore, by definition, allowing online advice also requires allowing scaled/limited advice.
Option 2: Adopt a 'hybrid' regulatory model for financial advice through non-traditional means	Disagree	Not required in our view. An entity should be responsible for any online service. Requiring two layers of responsibility could undermine the attractiveness of online services, and therefore be counterproductive in respect to accessibility.

4.3 Ethical and client-care obligations		
Option 1: Extend ethical requirements to all financial advice	**Strongly Agree**	We believe this is a key issue of the Review. There is an urgent need to raise competency and ethical standards of advisers currently not subject to the Code. Any person providing advice, including when through a sales process, should be held to the same ethical, competency and client-care standards as all other advisers.
Option 2: Clearly distinguish between sales and advice	**Strongly Disagree**	As salespeople provide advice through the sales process, we strongly believe they should be held to the same ethical and competence standards as all other advisers. Any 'carve-out' for sales would be a significant backwards step in our view, for both industry professionalism and consumer protection. Any differentiation between sales and advice should be in name only, i.e. advisers who are 'tied' or 'restricted' could be required to use an appropriate title, such as 'product specialist' or 'sales', rather than 'financial adviser'.
Option 3: Suitability requirement for sales of financial products	**N/A**	As we do not support option 2, we also do not support this option. However, we believe an adviser who is a salesperson should be required to disclose that their advice is 'restricted' which limits their application of code standard 1. However, the product sold must still be suitable for the client.
Option 4: Ban or restrict conflicted remuneration	**Disagree**	We believe this would be difficult to define and implement, and would lead to less access to advice for consumers. We believe candid disclosure will greatly mitigate the inherent risk conflicted remuneration presents to consumers, as would the options proposed above which hold all advisers to the same ethical standards.
4.4 Competency obligations		
Option 1: Minimum entry requirements	**Agree**	All advisers should meet the same minimum entry requirements. This training can then be streamed to best fit an adviser's specialisation, e.g. insurance, investment advice, mortages.
Option 2: Create a stepped pathway to adviser roles	**Agree**	We believe it would be helpful to allow advisers to start work under supervision while studying.
Option 3: Require mandatory and structured CPD	**Agree**	We believe advisers should be required to do a minimum number of CPD hours each year. This ensures they keep up to date with regulatory and industry changes, and the latest best practice standards in advice and portfolio management. We believe the current CPD requirements outlined in the Code of Conduct work well and should be applied to all advisers.
Option 4: Competency standards set through licensing process	**Disagree**	To ensure consistency, this should only be allowed above a minimum standard that applies to all advisers.

4.5 Tools for ensuring compliance with the ethical and competency requirements		
Option 1: Entity licensing	**Agree**	Entities should be responsible for the advice their employees provide. This would boost consumer confidence and protection.
Option 1B: Greater role for industry bodies	**Disagree**	To be effective, we believe any industry body would need to be statutorily established and have the power to set standards and impose discipline. We consider that the current Code Committee and Disciplinary Tribunal can fulfil these roles currently.
Option 2: Individual licensing	**Agree**	A dual licencing model that combines entity and individual licencing is appropriate in our view. It means consumers can have the confidence that the entity they are dealing with stands behind the advice provided, but also that the individual they are dealing with is competent and has ethical obligations.
Option 2B: Code, Code Committee and Disciplinary Committee in support of individual licensing	**Agree**	This option would provide greatest consumer confidence that the adviser they are dealing with has met the required standards.
Option 3: Registration	**Disagree**	A low-level registration process would water down standards, as we have seen under the current model.
Option 4: Align regulatory powers with those in the FMC Act	**Agree**	This proposal would improve efficiency and we support it in principle, subject to understanding the final detail.
4.6 Disclosure		
Option 1: All advisers have the same disclosure requirements	**Agree**	A uniform approach to disclosure will allow easier comparisons across advisers by consumers.
Option 2: Review the information disclosed and form of disclosure to make it more meaningful for consumers	**Agree**	The information disclosed should be reviewed to ensure it is meaningful for consumers.
Option 3: Make further information available on the Financial Service Providers Register or other portal/ website	**Agree**	It may become a useful reference for consumers.
4.7 Dispute resolution		
Option 1: Changes to improve the transparency and consistency of dispute resolution schemes, and promote greater access for consumers	**Agree**	Consistency would be more effective from a consumer's perspective.

4.8 Finding an adviser		
Option 1: Establish a portal with information for consumers on financial advisers	Agree	If the logistics can be managed, we support in principle any proposal that will provide more information for consumers.
Option 2: Work with consumers and advisers to identify useful terminology	Agree	The current Act has a number of terms and acronyms which are meaningless for consumers. Simplicity should be the overriding goal. Covering advice could be 'Information only' and 'advice', with 'advice' being able to be 'scaled' as the adviser sees fit to best meet the client's needs. The different product categories should be removed, as should the different types of adviser. The terms QFEA, RFA and AFA should be replaced with 'adviser'.

How to have your say

Submissions process

The Ministry of Business, Innovation and Employment (MBIE) seeks written submissions on the questions raised in this document.

- Submissions on the questions in Part 3 of this paper (relating to the Financial Service Providers Register) are due by **5pm on Friday 29 January 2016**.
- Submissions on the questions in Part 1 and Part 2 of this paper are due by **5pm on Friday 26 February 2016**.

Your submission may respond to any or all of these questions. We also encourage your input on any other relevant work. Where possible, please include evidence to support your views, for example references to independent research, facts and figures, or relevant examples.

Please include your name, or the name of your organisation, and contact details. You can make your submission:

- By filling out the submission template online.
- By attaching your submission as a Microsoft Word attachment and sending to faareview@mbie.govt.nz.
- By mailing your submission to:

  Financial Markets Policy
  Ministry of Business, Innovation & Employment
  PO Box 3705
  Wellington
  New Zealand

Please direct any questions that you have in relation to the submissions process to: faareview@mbie.govt.nz.

Use of information

The information provided in submissions will be used to inform MBIE's policy development process, and will inform advice to Ministers on the operation of the Financial Advisers Act 2008 and the Financial Service Providers (Registration and Dispute Resolution) Act 2008.

We may contact submitters directly if we require clarification of any matters in submissions.

Submissions are subject to the Official Information Act 1982. MBIE intends to upload PDF copies of submissions received to MBIE's website at www.mbie.govt.nz and will do so in accordance with that Act.

Please set out clearly with your submission if you have any objection to the release of any information in the submission, and in particular, which part(s) you consider should be withheld, together with the reason(s) for withholding the information under that Act.

If your submission contains any confidential information, please indicate this on the front of the submission, mark it clearly in the text, and provide a separate version excluding the relevant information for publication on our website.
MBIE reserves the right to withhold information that may be considered offensive or defamatory.
The Privacy Act 1993 establishes certain principles with respect to the collection, use and disclosure of information about individuals by various agencies, including MBIE. Any personal information you supply to MBIE in the course of making a submission will only be used for the purpose of assisting in the development of policy advice in relation to this review.

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Chapter 3 – Barriers to achieving the outcomes

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

2. Is there evidence of other major barriers not captured in the Options Paper? If so, please explain.
   The uncertainty around the documentation and discovery requirements for advisers providing 'limited' personalised advice creates a barrier to advice. We believe this can be solved with clearer guidance in the Act and Code for advisers on these requirements. This would be a major step forward for consumer accessibility to advice, in our view.

Chapter 4 – Discrete elements

3. Which options will be most effective in achieving the desired outcomes and why?
   We summarise our views on the effectiveness of the individual options proposed in the Executive Summary and provide our views on a possible combinations of options that could together form an effective package in our response to Question 35. In general terms, we support allowing advisers to provide scaled advice, and also the proposal to require the same ethical and competency obligations for all who provide advice. We do not agree with the Expert Financial Adviser proposal although some differentiation by role may be appropriate, especially to distinguish salespeople from financial advisers. We support a more principles-based approach, where anyone providing advice is subject to ethical and competency obligations, the content of which are determined by the context in which the advice is provided. This approach allows for the scope of an advice engagement to be tailored to the needs of the consumer, and, given appropriate safe harbours and guidance, will provide industry with the certainty it needs to meet those needs.

   In general terms, we support enabling advisers to scale their advice, and also the proposal to require the same ethical and competency obligations for all who provide advice. Appropriate disclosure is key in the regulation of advice, particularly so under a principles-based approach and the proposal to develop uniform, more meaningful disclosures is also supported.

4. What would the costs and benefits be of the various options for different participants (consumers, financial advisers, businesses)?
   The benefits to consumers, advisers and businesses are outlined in our response to question 3. Costs will vary dependent upon the extent of change that selected options require to implement and whether the options eventually selected increase or reduce obligations. In principle we do not believe that associated compliance costs need be excessive, given that the changes envisaged are designed to promote, rather than reduce, flexibility in the provision of advice to consumers.

5. Are there any other viable options? If so, please provide details.
   We consider that the Options paper has canvassed a reasonable range of options and we do not propose any other viable options for consideration. We think that the most effective package would be a mix of discrete elements. Our suggested alternative is contained in our answer to Question 35.

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?

We believe removing the distinction between class and personalised advice would remove a significant barrier to accessibility. At present, the class/personalised advice boundary is blurred, as are the documentation standards for personalised advice. As a result we understand many advisers are operating only at the extreme ends of the advice spectrum; providing only generic class advice or comprehensive personalised advice, as this is where the regulation guidance is clearest. The result is that many consumers who want or need only a limited form of personalised advice cannot access this advice.

We also believe consumer access would be further enhanced if better guidance, (including appropriate safe harbours) was provided to advisers on the level of documentation required for different levels of 'scaled' personalised advice. This would allow for advice to be provided within whatever constraints a consumer requires, such as limitations on financial cost, information provided, time available or products considered.

We note the objectives of the Review to allow 'robo' style advice. This may well essentially be a limited form of advice, given it will often involve a short-form online discovery process and basic analysis and recommendations, with no human involvement. The same principle of scalability of advice to suit the consumer should be available to all advisers. However, the vital element of scalability is clear guidance for advisers on documentation requirements.

Any safe harbour provision should include a condition that the entity or adviser outlines to the consumer the limited nature of the service and the risks arising from the service being limited. The responsibility is thereby left with the adviser to ensure that the (advice, product, service) is suitable and that it meets the consumer's objectives and needs.

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

Advisers should be required to be competent to provide the services they offer.
In this regard, we support option 2, that the category 1 and 2 distinctions for products are removed and replaced with an obligation that advisers be subject to a broad obligation to only provide advice within their areas of competence – in a similar way to the legal requirement that lawyers only provide services they are competent to provide. We do not support the option to add further complexity to the regulations by restricting the provision of certain complex investments to certain advisers. The overriding goal of this review should be to reduce complexity; creating additional classes of adviser would appear to us to run counter to this goal.

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?

The opt-in requirement would provide additional safeguards to consumers and should therefore be considered on this basis. We cannot identify any major negative implications for advisers dealing with retail investors. However, it could create further administrative barriers for advisers dealing only with institutional investors. We recommend any opt-in would need to be a simple process or it could impact New Zealand's competitive advantage when dealing with foreign institutional investors.

An alternative solution could be to modify the definition of wholesale in the Act to have two levels; a lower level (perhaps use the current test) which requires an 'opt-in', thereby protecting retail investors who meet the current definition of wholesale only because their net assets are above the definition in the Act. This could be combined with a much higher second

test, perhaps raising the current financial bright line test (by at least a factor of 10). Investors who meet this much higher hurdle would only require an 'opt-out'. This should alleviate any issues with additional compliance for genuine institutional wholesale investors.

4.2 Advice through technological channels

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

   We support option 1. The same standards should apply to financial service providers delivering advice through a 'robo' platform to one providing advice with a team of advisers. A regulatory barrier would be removed, allowing for innovation in financial advice and increasing access to financial advice for those currently unserved by the regime

   Requiring a provider to give consumers the option to speak to a person as stated under option 2. seems overly prescriptive. We would expect there would be enough competitive pressure that companies offering a robo service may decide to offer the ability to talk to an adviser, without the need for a regulatory response. An entity should be able to provide 'robo' advice.

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

    We cannot see need for requirement to differ between traditional or online advice. The key issue we see will be defining when a robo service is advice or sales (see below).

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

    Yes, the changes, to allow advice to be provided by an entity, rather than just a natural person, will be sufficient, in our view.

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 agree with option 1 to extend the ethical obligation to put the consumer's interest first to all advisers. In our view, any person or entity identified as an 'adviser' should be accountable to a Code of Professional Conduct.

With respect to option 2, which suggests having a clear distinction between sales and advice, and allowing salespeople to provide advice but not be required to put the client's interest first, we appreciate the challenges underlying this question; that is, to balance the need to reduce barriers to advice, while protecting consumers from poor and/or conflicted advice.

We also recognise this is a key question in the Options Paper.

We are concerned, however, that there are risks involved in allowing financial advice to be provided outside the protection offered to consumers by the Code of Conduct. We suggest that a solution could be based on a slightly different approach; that is, allowing salespeople to provide advice as proposed, but also requiring these salespeople to be advisers. We do not support any 'carve-out' from the Act or Code for sales.

If we define a salesperson as an adviser who can only offer a restricted range of products, often only their employer's products, they should still be able to provide advice – as they generally will anyway through the sales process.

Given they provide advice, these salespeople should be required to meet all the regulatory obligations of any other adviser. This means they would have the same educational and CPD requirements and would also be subject to the Act and Code. This would help prevent consumers receiving poor advice from salespeople, which we understand is, and agree should be, a key objective of this review.

Salespeople should be required to make a candid disclosure/warning, both verbally and in writing to consumers that their advice solutions are restricted to a limited product range, often only their employer's products.

Turning to access to advice, in the short-term this proposal risks creating a barrier to advice for consumers as some current salespeople would potentially no longer be "authorised" (or whatever the term and qualifications will be for advisers after the changes to the Act). We believe though that this would be quickly overcome, provided appropriate transitional arrangements were put in place to allow salespeople to up-skill over a period of time. In our view, the risk of some minor short-term disruption to accessibility is worth it given the significant uplift in the standard of advice consumers will receive under this change.

We discuss these issues further in our response to Q13. Essentially, we propose that anyone providing advice must be a 'qualified' adviser and subject to the same ethical and regulatory obligations. However, advisers who are salespeople should be required to make this clear to consumers.

13. What would be some practical ways of distinguishing ‘sales’ and ‘advice’? What obligations should salespeople have?

The instinctive difference between ‘sales’ and ‘advice’ can be argued to be the degree of freedom to recommend a range of products. A salesperson will usually be ‘tied’ or ‘restricted’ in what products they can recommend – most often this will be just their employer’s products. They may work through a discovery process as an adviser would, but the solution recommended will be limited to products issued by their company. This is in effect a form of limited scope advice.

An adviser conversely, will typically have a broad suite of products they recommend and will have no restriction on what products they may choose to research and offer to clients. An adviser may also have in-house product which sit alongside other products. Advisers in this position would need to disclose this potential conflict of interest and demonstrate to clients why they have recommended this product to a consumer over others.

This ‘restriction’ in product offering then could become the distinguishing feature of advice relative to sales. Salespeople should be obliged to clearly disclose this restriction while advisers, as noted above, should continue to be required to disclose any conflicts of interest that potentially impinge on their recommendations.

Salespeople should be required to meet the same standards as advisers given they will be providing financial advice through the sales process. If any amendments to the Act will allow sales as distinct from advice, we recommend the Act treat these salespeople as advisers. They will be providing advice through the sales process, with the only difference being that their product suite will be much more limited than an adviser. They should therefore be held to the same standards as all other advisers.

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

We believe a ban or restriction on conflicted remuneration would be difficult to define and implement, and would lead to less access to advice for consumers. We believe candid disclosure will greatly mitigate the inherent risk conflicted remuneration presents to consumers.

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?

We concur with option 1 which requires a minimum entry requirement for all advisers. The current situation where RFAs are outside this requirement creates the potential for significant harm to consumers in our view.

We strongly agree with option 2, creating stepped pathway for advisers to allow them to commence work under supervision while studying.

In respect to option 3, we agree that all advisers should be required to do a minimum number of CPD hours each year. This ensures they keep up to date with regulatory and industry changes, and the latest best practice standards in advice and portfolio management. We believe the current CPD requirements outlined in the Code of Conduct for AFAs works well and should be applied to all advisers.

We do not agree with option 4. We believe it will result in more consistency if the CPD requirements are set in the Code of Conduct, not by individual businesses. In our view, there is ample flexibility under the current CPD guidelines in the code for businesses to develop CPD that is relevant for their advisers.

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 believe all advisers should be subject to the minimum standards.

We take the point made by other submitters to the Issues Paper (such as Massey University) that the Level 5 certificate is a reasonably low-level qualification for such an important industry. Proposals to lift the minimum qualification to a Level 7 Diploma or even a bachelor degree warrant consideration. The same approach used with the introduction of the AFA regime could be used again where current advisers could 'prove competence' under whatever standards the Code Committee determine, with those unable to meet this standard having a transitional timeframe to gain competence at the level of the required qualification. Any higher qualification standard could be phased in over time (5 years perhaps). We do not believe a higher qualification standard will stop people joining the industry – in fact by raising the credibility of financial advice as a career it may actually attract more people.

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 consider option 1, which requires entity licencing, is the most effective option, given it makes entities responsible and accountable of their employees and agents.

    In respect to option 1B which suggests a greater role for industry bodies, we consider the only way industry bodies could be effective is if there was one statutorily established industry body that all advisers must belong to where that body has the power to set standards and impose discipline. We consider that the current Code Committee and Disciplinary or similar structures can and will satisfactorily fulfil these roles.

    Option 2 proposes that individual advisers are also licenced. We understand this to be essentially a continuation of the current approach with AFAs, extended to include QFEAs and RFAs. We believe having dual licencing is a prudent approach. It would provide consumers with the confidence that not only is the entity licenced, but also that the adviser they are dealing with has met a required standard of competence and ethical standards. Specific obligations for individual advisers should start with meeting the requirements of the Code of Conduct, as amended by the Code Committee as appropriate for the increased range of advisers and potential services provided.

    We strongly disagree with the proposal under option 3 to weaken licencing for individuals to be a simpler registration process. This would water down quality standards in advice and risks resulting in the same problems for consumers that have been identified with RFAs and QFEAs.

    The proposal under option 4 to align regulatory powers with those in the FMC Act appears to offer a more flexible and proportionate enforcement approach. We support this proposal in principle, subject to understanding the final detail.

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

    As outlined above, any significant lift in the role for industry bodies in our view would require a consolidation of the various bodies representing advisers into a statutorily established single body that represents all advisers. This body could act like industry bodies in other industries, such as law – providing support, some regulation and discipline. Without this step-change, we would support a continuation of the current situation.

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?

    A combination of all three methods needs to be available as different methods may suit different clients' needs. Clearly, more online disclosure is probable over time. In this vein, we support option 3 to make more information available on the Financial Service Providers Register. While requiring some capital investment, it would provide a much higher level of

information for consumers and allow them to source additional information that may not be included in disclosure statements

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

Yes we believe a common disclosure document for all advisers would work in practice. It would allow easier comparisons across advisers by consumers. Differences in adviser's services, fee structures, etc., can be better assessed by consumers if shown on a form that shows all the other options, rates and services advisers offer. Consequently, we support options 1 and 2 that propose that all advisers have the same disclosure requirements and that the information disclosed should be reviewed to ensure it is more meaningful for consumers. These options would ensure the information disclosed is relevant for consumers (which may make them more likely to read and absorb it). As well, this option would likely streamline disclosure documents, resulting in decreased costs of disclosure over time.

Given the diversity of advisers, products and services that exist, developing such a disclosure that can meet the "most effective" test is clearly challenging. The risk is that either the disclosure becomes so brief that it does not provide consumers what they need to know or so detailed that it is overwhelming to consumers.

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

As an initial disclosure, stating both the percentage level of any fees and the inferred dollar value based on a nominated dollar value, such as $10,000 or $100,000, could be a way of expressing fees in dollar terms, which consumers appear to find easier to understand and quantify. All advisers would need to use the same methodology and dollar values. More specific fees could be provided to a client in a secondary disclosure. Our comments here are in respect to investment advice. Different dollar values may be required for other forms of advice, such as derivatives, mortgages and insurance, to ensure the disclosed figures are meaningful.

4.7 Dispute resolution

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

Not that we are aware of.

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 perceive consumer benefits to there being consistency between dispute resolution scheme rules and processes but do not have a view to submit on which particular elements should be consistent.

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

The answer depends upon the financial resources available to an entity to meet all claims that may fall due, for example, for restitution awarded via dispute resolution. To the extent that an entity is unable to meet a claim that would be able to be met from insurance, a requirement for mandatory insurance may be justified. Otherwise it is questionable what the benefit of imposing a mandatory insurance requirement would be.

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)?
    The government could have a role in establishing a central register, although there are alternative approaches that may also be worth exploring, such as a central register or website established by a government agency (e.g. the Ministry, the Commission for Financial Capability "Sorted" website, the FMA, or a combination thereof) that might also contain links to relevant industry or consumer bodies' material containing more relevant detail.

26. What terminology do you think would be more meaningful to consumers?
    Thinking particularly about a searchable register, words and phrases that consumers use every day when thinking about financial matters are more relevant. Examples include terms as simple as "Buying a house," "Getting a loan," "Saving," "Retirement," "KiwiSaver", "Shares" and "Investment" to list a few.

4.9 Other elements where no changes are proposed

The definitions of 'financial adviser' and 'financial adviser service'

27. Do you have any comments on the proposal to retain the current definitions of 'financial adviser' and 'financial adviser service'?
    We generally support the retention of these terms and definitions.

Exemptions from the application of the FA Act

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.
    We consider that those that are exempt or that fall outside of the regime (but, for example, purport investment value in such things as diverse as real estate, gold, art and spot FX trading) do pose risks to consumers. We have not though conducted any statistical analysis of this or have evidence to provide. Consideration should perhaps be given to providing a simple and readily accessible dispute resolution service for consumers that have been disadvantaged by the actions of such exempt entities.

Territorial scope

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?
    There will always be limitations on the ability of New Zealand legislation to capture international financial advice provided to New Zealanders and to deliver appropriate and effective consumer protection. The obvious limitation that compromises consumer protection is the inability to take effective enforcement action, even when it is clear that the activity conducted from overseas is captured under and breaches New Zealand law.
    We consider that there are two opportunities available by which consumer protection can be enhanced. First, to the fullest extent possible, regulation of local financial advice provision should be set at a level that remains proportionate and cost effective to reduce the prospect that New Zealand consumers, by virtue of the barriers placed in front of accessing local services, see little choice but to seek service from offshore that is perceived to be cheaper or even just simpler to access.

The second opportunity available is for government and industry to work together to heighten consumer knowledge and understanding of the benefits of using a local (or overseas) provider that is fully and effectively accountable under the New Zealand legislative regulatory structure versus the potential difficulties of seeking redress and/or restitution from an overseas provider that cannot effectively be held accountable for its actions by a New Zealand consumer or even by a New Zealand regulator.

30. How can we better facilitate the export of New Zealand financial advice?
First, we simply reiterate that the regime should be set at a level that is proportionate and cost effective. Then, to the extent that it is practical and cost effective, government pursuing mutual recognition regimes can be useful. We then consider that it is a matter for those entities seeking to export financial advice to market the advantages that the New Zealand regime delivers to overseas consumers versus using their own local suppliers.

The regulation of brokers and custodians

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

The use of the term 'broker' is confusing in this context. Could 'settlement' and 'custodial' be better terms to use? The current regulation of custodial services appears adequate in our view.

Chapter 5 – Potential packages of options

32. What are the costs and benefits of the packages of options described in this chapter?
We consider that the benefits have, to large extent, already been outlined in the paper. Costs will vary dependent upon the extent of change that selected options require to implement and whether the options eventually selected increase or reduce obligations. In principle we do not believe that associated compliance costs need be excessive, given that the changes envisaged are designed to promote, rather than reduce, flexibility in the provision of advice to consumers.

33. How effective is each package in addressing the barriers described in Chapter 3?
As noted earlier, we believe a package that combines a range of discreet options is preferred, as outlined in Q35.

34. What changes could be made to any of the packages to improve how its elements work together?
Our preference is to consider an alternative package of options rather than to amend the three options provided (see question 35 below).

35. Can you suggest any alternative packages of options that might work more effectively?
Key elements that we believe should be included in an alternative options package are as follows:

Supported option	Comment
No distinction between class/personalised advice and category 1/2 products	Virtually all of the current complex categorisations that currently have little meaning to consumers or simply lead to confusion can be removed, including categorisations of different products (Category 1 or 2) and advisers (AFA, RFA, QFEA), entities (QFE, Registered, Licensed).
Clear guidance on scaled advice	Allow advisers to provide 'scaled' advice to suit the client's needs, and to remove the current uncertainty in this area, provide clear guidance to advisers on required discovery and documentation standards for scaled advice.
Same competency, ethical and suitability obligations for all advisers	Anyone providing advice, i.e. including 'salespeople', should be subject to the same competency, ethical and suitability obligations. The content of the obligation (that is, what is required to fulfil it) would depend on the scope of the advice offered.
Standardised disclosure for all advisers	Anyone providing an 'advice' service should be required clearly to disclose the scope of that service and the limitations and risks associated with a consumer receiving the particular advice service. This approach would assist consumers to understand the risks where the service provided may be limited in some way. Anyone providing advice to a consumer in a 'sales' context should be required clearly to disclose the limited product range on which advice is being provided and the limitations and risks associated with a consumer receiving such a service.
Entity licensing	Entities should be responsible and accountable for the actions of employees and agents via registration or a licensing structure that, while maintaining appropriate levels of consumer protection, is designed to be proportionate to the size and scope of an entity's business to avoid the development of inappropriate barriers to an entity entering the industry. Entity licensing would also be a pathway to allowing robo-advice.
Individual licensing	Individual advisers should be responsible or accountable via registration or a licensing structure, be required to meet minimum requirements at entry to the industry appropriate to the products and services that the adviser intends to offer, allow for stepped development under appropriate supervision.
Adviser standards	Adviser standards and discipline should be developed and delivered via a structure the same as or similar to the existing AFA Code Committee and the Financial Advisers Disciplinary Committee applicable to all advisers but standards and discipline to be developed proportionate to the various products and services being delivered, such standards and discipline being the same for all advisers delivering the same products and services.

Our rationale behind including these elements include:

- Evidence in Australia (entity licensing with little individual adviser accountability) and in New Zealand (individual registration or authorisation with little entity accountability, other than that taken on voluntarily by QFE's generally removing individual adviser accountability) have both failed to deliver effective outcomes for consumers. We consider a hybrid-licencing model where both entities and individual advisers are responsible and accountable would provide the best outcome for consumers.

- Having already established the Code Committee, Financial Advisers Disciplinary Committee and Dispute Resolution structures, we consider that these are effective mechanisms to develop adviser standards. Also, the Code structure offers flexibility and the ability to change rapidly if needed, which would not be available if these regulations where included in statute. This has

recently been demonstrated with the Code Committee consultation proposing Code changes.

The suggested requirement that disclosure of scope of service (sales or advice) including disclosure of any resulting limitations and risks be mandatory is, we believe, an effective way of alerting a consumer to the different nature of particular services without imposing additional suitability tests or other requirements at extra cost on to the consumer.

We should recognise that the consumer may simply want to go ahead regardless and no regulation should preclude a consumer from doing so where appropriate warnings have been provided.

The rationale supporting the scrapping of all of the confusing designations is inherent in the survey results obtained by the Ministry ahead of this consultation.

Chapter 6 – Misuse of the Financial Service Providers Register

36. Do you agree with our assessment of the pros and cons of the options to overcome misuse of the FSPR?
    Our firm's view on this was submitted as part of the SIA Submission completed on 29 January 2016.

37. What option or combination of options do you prefer and why? What are the costs and benefits?
    Our firm's view on this was submitted as part of the SIA Submission completed on 29 January 2016.

38. What are the potential risks and unintended consequences of the options above? How could these be mitigated?
    Our firm's view on this was submitted as part of the SIA Submission completed on 29 January 2016.

39. Would limiting public access to parts of the FSPR help reduce misuse?
    Our firm's view on this was submitted as part of the SIA Submission completed on 29 January 2016.

Demographics

1. Name:
   David Sawtell, head of Advisory, Cameron Watson, Quality of Advice Manager, Craigs Investment Partners

1. Contact details:
   Redacted
   Redacted

2. Are you providing this submission:
   ☐As an individual
   ☒On behalf of an organisation

   Craigs Investment Partners Limited is one of New Zealand's largest investment advisory and management firms, offering bespoke investment solutions to private, corporate and institutional clients. We have 16 offices across New Zealand, 125 financial advisers (all AFAs), 300 staff, 50,000 clients and over $10 billion of client funds under management.

3. Please select if your submission contains confidential information:

☐I would like my submission (or specified parts of my submission) to be kept confidential, and attach my reasons for this for consideration by MBIE.
Reason: