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Financial Markets Policy
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Submission in response to the Options Paper on the Review of the Financial Advisers Act 2008 and the Financial Services Providers (Registration and Dispute Resolution) Act 2008 – Part 3 – Misuse of the FSPR

Introduction

1. Financial Services Complaints Limited (FSCL) shares the concerns around the FSPR's misuse, primarily by overseas-based transactional service providers, and welcomes steps to address the misuse. Our submission is made from our experience as an approved dispute resolution scheme which includes approximately 150 transactional service providers. For the year ended 30 June 2015, we formally investigated 19 complaints against overseas-based transactional service providers and dealt with approximately 500 emailed complaints and inquiries about overseas-based transactional service providers. Nearly all of the consumers who made complaints about transactional service providers were resident outside New Zealand.

2. In answer to questions 36 to 39:

   (a) **Question 36**: We agree with your assessment of the pros and cons of the options to overcome misuse of the FSPR.

   (b) **Question 37**: We prefer a combination of options as set out above.

   (c) **Question 38**: No comment.

   (d) **Question 39**: We do not think limiting public access to parts of the FSPR would have any marked effect on reducing misuse of the register.

3. Our comments on the six options presented in the Options Paper (pp.52-54) follow.

Option 1: Include stronger registration requirements

4. We are not sure that Option 1 is practicable. Online trading platforms by their very nature offer services in many jurisdictions. It follows that it may be unrealistic and impracticable to expect online trading platforms to be able to show that they are licensed and/or supervised in **all** jurisdictions that they are proposing to provide services to.

5. While, in theory, we support the idea of a level of indemnity cover or bonding for offshore-controlled entities providing services to New Zealand retail consumers, we note that, to date, we have not received or been asked to formally investigate a complaint from a New Zealand-based retail consumer against an offshore-controlled entity. Therefore, at this stage, we are of the view that the likely cost of implementing and operating some form of guarantee fund or bonding outweighs the potential benefits to New Zealand based consumers.

Option 2: Amend the grounds for de-registration

6. We support legislative changes to clarify or provide additional circumstances under which the FMA may direct the Registrar to decline a registration or deregister an entity.

7. However, the suggestion that legislation could also prohibit firms from referring to their registered status in any offshore advertising would, in our view, be very hard and time-intensive to police. A better option may be to require entities which wish to refer to their registered status, to accurately describe that status and its limitations on their websites. Website disclosure should also contain details of the entity's dispute resolution scheme and the dispute resolutions scheme's contact details. We suggest that the dispute resolution schemes could audit their transactional service providers' websites to check for compliance and to report an entity to the regulator if an entity is non-compliant.

Option 3: Amend the territorial scope of the legislation to require a legitimate connection to New Zealand

8. We generally support this option.

9. In our view, all overseas entities (and not just transactional service providers) which are providing services to New Zealand clients, even if only to a few clients, should be required to register on the FSPR and to join an approved dispute resolution scheme. By way of example, we are aware of concerns at present by lenders (banks and finance companies) that overseas companies can lend to New Zealand based customers without being subject to the same regulatory control that New Zealand lenders have (Credit Contracts and Consumer Finance Act, Responsible Lending Code, and requirement to register on the FSPR and join a dispute resolution scheme). This creates an uneven "playing field".

10. However, we agree that overseas-based entities, seeking to misuse the FSPR, are likely to find a New Zealand-based customer to whom to provide services/ undertake one or two transactions for.

Option 4: Require trust and company service providers to register

11. We support this option.

Option 5: Limit public access to all or parts of the FSP Register, and Option 6: Convert the current FSP Register into a non-public notification list

12. We do not think limiting public access to all or parts of the Register would make any practicable difference. An entity would still be able to claim on its website that it was registered on the FSPR and regulated in New Zealand and the entity's dispute resolution scheme would still have to show that entity's details on the scheme's membership list (all dispute resolution schemes are required to have a list of their members publically available for inspection at any time, including on an Internet site) – see Financial Service Providers (Registration and Dispute Resolution) Act 2008, s 62.

13. On balance, we think the benefits of having the FSPR as a consumer tool outweigh the disadvantages. By way of example, FSCL frequently uses the FSPR to check whether a person or entity is registered and if so which scheme that person or entity belongs to and whether they have listed the correct scheme, and to identify persons or entities who claim not to provide services to retail customers, when they clearly do. This enables us to pass on information to the FMA or other regulators where enforcement action may be required.

14. Thank you for the opportunity to provide these submissions. Please contact me if you wish to further discuss any issues.

Yours sincerely
Redacted

Susan Taylor
Chief Executive Officer