

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?

Yes we agree with the barriers as outlined. Nearly all clients we work with have no idea of the difference between RFA and AFA. In many cases it is a case of .."what you don't know you don't know.." Consumers cannot ask questions of advisers if they don't know the differences or what they are suppose to be looking for. Many think RFA's are more qualified than AFAs.

Because of the complexities around the different types of advise consumers are missing out on advice on discrete issues as indicated. It is common practice in our business to avoid advice discussion around fundamental areas such as KiwiSaver as the resulting compliance requirement is too costly for the business.

Disclosure statements are not simplistic and there is a lack of a level playing field between advisers. Disclosure statements should be consistent and simple – there should be one disclosure state not two.

As AFA's who advise in the risk space we have to provide full disclosure on remuneration and conflicts plus any incentives etc that may influence our advice. We have no problem with that but an RFA providing the same advice does not have to disclose the same information.

2. Is there evidence of other major barriers not captured in the Options Paper? If so, please explain.

Chapter 3 captures the main barriers as far as we can see.

Chapter 4 – Discrete elements

3. Which options will be most effective in achieving the desired outcomes and why?

We believe a combination and simplification of all the options would produce the best outcomes. However the options that would have the most cost effective and quickest impact would be:

Simplification of disclosure documents into one document. Similar to the current secondary disclosure.

Removal of the RFA/AFA structure with all RFA's having to meet that minimum level that AFA's

have to meet.

All advisers being bound by the same code and disclosure requirements as well as CPD requirements

Advisers restricted to only advise on areas in which they have proven competency.

Category 1 and 2 product structure is removed as these do not necessarily reflect the complexity of the advice.

4. What would the costs and benefits be of the various options for different participants (consumers, financial advisers, businesses)?

We believe costs to the consumer would be minimal if any at all.

Cost to AFA's would be minimal as they have already operating in this space. There could be a cost reduction due to simplification of some of the above and other proposed changes.

RFA's would incur costs of becoming compliant. This is part of doing business and being professional.

5. Are there any other viable options? If so, please provide details.

We believe the options outlined cover the key areas for improvement. Other high cost areas such as the AML-CT obligations fall outside the scope of this document.

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 the suggested option is good. The key is that the scope of advice is agreed to between the adviser and clients (as simply as possible) and is documented. We do not see any negative implications only positive ones for both consumers and advisers.

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

We like the concept of having only certain advisers advise in high risk and complex areas however we would need to better understand how any differentiation would be made. It would be impractical to remove the Category 1 and 2 structures then replace it with something similar here. This might have some merit if the distinction was process/service rather than product based eg providing a full financial plan is limited to Certified Financial Planners or Business Insurance was restricted to Chartered Life Underwriters or advisers with relevant qualifications.

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 don't see any negative impact from this

4.2 Advice through technological channels

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

We don't have any specific views on this as we need to better understand what constitutes "robo advice". The area does need to be addressed and there should be some compliance obligation for online services to at least maintain consistency.

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

No comment as need to better understand what is meant by technological channel advice.

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

The entity licensing would make sense and we do not foresee any restrictions to innovation.

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?

No need to reinvent the wheel. Just have all advisers obligated under the FAA and the Code as AFA's are currently. The low number of complaints lodged against AFA's in recent years would suggest this is working. Our business has 3 AFA's and 3 RFA's. We operate our business for all our advisers at AFA level.

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

If you are restricted to only offering one product or it is clear that you are not taking the consumers interest or needs into account then fully disclosing this should be mandatory. We don't believe the suitability obligation in package 3 would add any value. The best outcome is that the consumer understands clearly that they are being sold a product or a receiving financial advice.

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

Soft dollar remuneration should be either banned or required to be fully disclosed. Soft dollar options such as overseas trips can only be considered conflicted remuneration. The definition of soft dollar would need to be clear ie. where it clearly influences the advice being provided so as to avoid things like receiving a company pen or ticket to the rugby been caught.

We do not see any need to apply any other restrictions on commissions as long as all advisers are subject to full and simple disclosure of potential remuneration. We have been fully disclosing our remuneration for several years now and never had any client issues.

Given that most commission business is risk and most of this is carried out by RFA's then the already outlined proposed improvements would address a number of the issues here especially around replacement business.

It would be a sad day for the NZ Govt was to start imposing remuneration restrictions on the private sector and if so this is more likely to have a negative impact on availability of advice.

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 options outlined should not be seen as a barrier. To enter any profession or indeed trade you have to meet minimum standards as well as ongoing requirements. Why should advisers be any different including QFE advisers. Many RFA's argue that they have years of experience so if that is the case then meeting minimum standards would be easy for them. For new entrants to the industry the requirement to meet minimum standards should be seen as a positive not negative. We have been involved in mentoring of advisers for IFA and this type of system works well and would be ideal for new advisers or an "earn as you learn" scenario akin to apprenticeship.

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?

Yes – as outlined same as AFA.

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 like the idea of entity licensing as long as the obligations of the individual are not undermined. Our business carries out much of its compliance obligations at business level and under the current regime we are just replicating much of the requirements. One option might be to have a combination of or choice of entity or individual where an entity would get a discount on regulation costs.

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

As members of the IFA we believe it is essential to have an industry body that provides resources to advisers as well as being a voice for industry issues. One industry body would seem to make more sense.

We do not believe that the industry body should play a formal role in compliance but one of guidance and support. Having an industry body managing compliance would be seen negatively by consumers.

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?

Written and as per option 1 outlined. Whilst some consumers may not read disclosure documents then that we believe cannot be resolved..."you can only lead a horse..") at some point consumers must take on some responsibility.

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

Yes

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

Along current lines. Actual fees specific to client form part of the client engagement

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 would have thought that consistency was paramount.

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

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)?
One portal with all advisers and relevant details and under a URL or name that is meaningful and relevant. Promote so consumers actually know it exists eg links on other key sites such as sorted.org. Much of the other changes already suggested would resolve the jargon issues.
26. What terminology do you think would be more meaningful to consumers?
Financial Adviser, Sales only Adviser, “branded adviser”

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’?
No need to change

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.
Only anecdotal evidence that yes we are aware of accountants and lawyers who are providing advice on insurance and investment but tends to be in smaller practices.

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?
No comment
30. How can we better facilitate the export of New Zealand financial advice?
No comment

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?
No

Chapter 5 – Potential packages of options

32. What are the costs and benefits of the packages of options described in this chapter?
We believe a combination of packages 2 and 3 would have the best outcomes.
33. How effective is each package in addressing the barriers described in Chapter 3?
Only time will tell
34. What changes could be made to any of the packages to improve how its elements work together?
outlined above
35. Can you suggest any alternative packages of options that might work more effectively?
No at this point.

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?
no comment
37. What option or combination of options do you prefer and why? What are the costs and benefits?
no comment
38. What are the potential risks and unintended consequences of the options above? How could these be mitigated?
no comment
39. Would limiting public access to parts of the FSPR help reduce misuse?
no comment

Demographics

1. Name:
First Capital Financial Services
2. Contact details:
Redacted
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 As an individual
 On behalf of an organisation
6 Adviser and 2 admin staff. Insurance (not general), investments and employee benefits

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