Forsyth Barr Limited
Level 21
157 Lambton Quay
PO Box 5266
Wellington 6145

T: (04) 499 7464
F: (04) 495 8193

0800 367 227
www.forsythbarr.co.nz

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

Email: faareview@mbie.govt.nz

FAA OPTIONS PAPER SUBMISSION

As a NZX Participant firm, QFE and one of the largest single employers of AFAs, Forsyth Barr has a unique perspective on the operation of the Financial Advisers Act ("**FAA**").

We have contributed to the Security Industry Association submission, but also wish to provide a separate but simpler submission on what we see as some key issues raised by the options paper. We otherwise support the Security Industry Association submission.

As this submission focuses on a small subset of the options paper questions, we have not used the submission template. We are happy to provide a template-based version of the points below if required.

No part of this submission is confidential.

Question 3: Which options will be most effective in achieving the desired outcomes, and why?

The current approach to regulation of advice is a complicated 'category/status' approach, where advice is separated into categories according to degree of personalisation, product complexity and client sophistication, and only advisors with a particular status can provide advice in a particular category. This approach has been confusing for consumers: as outlined in the options paper, consumers do not understand the distinctions between the various statuses of advisors, and the approach has also resulted in certain types of advice not being available in practice.

As a result the current regime is ineffective, as evidenced by falling numbers of AFAs and the confusion of both consumers and those in industry. Both of these factors have limited consumer access to advice.

This situation will not meet the future needs of New Zealand consumers. In particular, KiwiSaver is fast becoming New Zealanders' largest non-real estate asset, and increased consumer interest in comparing the performance of their scheme to that of other providers is inevitable. However, it is not clear how the current AFA population (or the smaller number of these who actually provide advice across KiwiSaver providers) will be able to meet this need.

We therefore support a move away from the current approach to a simpler and 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.

Product dimension should be retained

While we support the removal of the distinction between class and personalised advice and the introduction of ethical and competency obligations for all advisors, we think that the suggestion that any financial advisor should be able to provide advice on any product will detract from the achievement of the identified outcomes. We say this because:

- The current category 1/2 distinction has not in of itself created any issues for consumers or industry. Rather, the class/personalised divide and different restrictions and obligations for AFAs, QFEAs and RFAs have been the sources of the issues.
- We believe that the regulatory environment should support the development of the profession of 'financial advisor'. However, without a product dimension there will literally be tens of thousands of 'financial advisors' in New Zealand, some providing advice as limited in scope as recommendations as to the most appropriate of their employer's term deposits. We believe this will be detrimental to the development of an identifiable profession, both adding to consumer confusion and severely limiting consumer access to the advice and assistance that they need.
- Retaining a product dimension to the regulation of advisors will assist in managing minimum competency standards. Competency in product is a key driver of competency overall.
- Most importantly, we believe that maintaining 'product dimension' differentiation between advisors will assist consumers in knowing from where to seek financial advice. If a financial advisor is anyone who offers financial advice, then the title 'financial advisor' does not provide any information to the consumer as to the limitations on the advice that that advisor will offer – in effect, the role title is the starting point of the disclosure framework in that regard.

While only so much information can be provided by way of title, in our view the two most important things to flag to consumers are whether advice is provided:

- on both complex and simple products, or just simple; and
- on products from a range of providers, or just one or two providers.

So, for example, the following role titles could be adopted:

Product Providers	Kinds of products: Both Category 1 & 2	Category 2 only
Many	Authorised financial advisor	Financial consultant
One or two	Sales advisor	Sales consultant

We also suggest that the product dimension should be delineated by looking at the amount of financial risk involved (in the context of the consumer), taking into account the nature of the product. So, for example, KiwiSaver accounts with a balance of less than (say) $20,000 could be categorised as 'category 2'. Insurance products which aren't effectively investment products could also be categorised as category 2.

In simple terms, advice on category 1 products would be provided by financial advisors or (in the case where the products of only one or two providers were advised on) sales advisors. Advice on category 2 products could be provided by any kind of advisor.

This approach would be consistent with consumer expectations, and improve accessibility to advice for those with smaller amounts to invest. As the legislation stands, these consumers are effectively frozen out of the advice market.

Question 7: Should high-risk services be restricted to certain advisors? Why or why not?

As discussed in our response to question 3 above, we believe that advice on certain products should be restricted to certain advisors, but we believe the delineation should be according to the amount of financial risk for the consumer rather than just the risk of the product type as such.

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

We note that, in this context, 'sales' is a <u>kind</u> of advice (sales without advice is not regulated by the FAA). So the question becomes what distinguishes 'sales' advice from 'other' advice.

While it is difficult to draw a bright line, in our view the hallmarks of 'sales' advice are that:

- the advice process is centred on products, not the advice itself
- the products in question are from a small number of product providers – perhaps one or two
- the advisor in question is contractually restricted from advising on products from other providers (i.e. is an employed or otherwise 'tied' advisor).

As noted above, we believe that salespeople who provide advice should be subject to the same ethical and competency requirements as other advisors. We also believe that there should be clear and upfront disclosure to consumers that they will be receiving advice in a 'sales' context.

Question 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?

As noted in our response to question 3 above, we think that role titles play a key part in the disclosure framework.

Question 20: Would a common disclosure document for all advisors work in practice?

We think anyone providing financial advice should have to provide standardised written disclosure. Similarly to the current rules for AFAs, this would be provided before any advice was provided. The document should be short-form (no more than a side of A4) and, as well as matters such as fees and conflicts of interest, clearly and effectively set out any restrictions on the scope of the advice engagement offered, including:

- restrictions on product types advised on; and
- restrictions on product providers whose products are advised on.

Question 35: Can you suggest any alternative packages of options that might work more effectively

We do not comment on the entire suite of options set out in the options paper, but summarising the above note that the key components of any package should include:

- No distinction between class/personalized advice
- The maintenance of a product dimension, delineated by the amount of financial risk for the consumer rather than just the risk of the product type as such
- Clear delineation between those who provide 'sales' advice and other advisors
- Competency, ethical and suitability obligations for all advisors

In this way we believe that the FAA review can support the long-term advice needs of New Zealanders by both simplifying the regulatory regime to remove the current impediments to access by consumers to the advice that they need, and supporting the continuing development of a profession of 'financial advisors' who can provide advice across the products of many providers.

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