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The Review of the Financial Advisers Act 2008 (FAA) and the Financial Service Providers (Registration and Dispute Resolution) Act 2008

1. Introduction and Executive Summary

- 1.1 Thank you for the opportunity to comment on the Options Paper for the Review of the Financial Advisers Act 2008 (FAA) and the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (the **Options Paper**).
- 1.2 Overall Kiwibank supports the continuation of the current regime as we believe it reflects the spectrum of advice and generally provides a proportionate regulatory response especially for simple advice about low risk well understood products. A proportionate regime is important to ensure that the compliance burden is not unduly heavy for everyday financial advice, so that such advice remains accessible for all. We also support a digitally agnostic regime. Kiwibank sees digital tools as an effective way of providing even greater access to low or no cost sound everyday financial advice.
- 1.3 A number of the issues raised in the paper relate to the current regime being too complex for customers to understand. We believe that these issues could be addressed by changes in the way that advisers are labelled or presented, without the need for change in the underlying regime.

2. Kiwibank's FAA Review Principles and Views

2.1 In assessing the Options Paper Kiwibank was guided by the following principles; that any financial advice regulatory regime should:

- Enable simple everyday financial advice to be accessible to consumers, provided in a sound and efficient manner and at low or no cost;
- Accommodate the diversity of the market, including different types of advice, products, organisations and consumer needs;
- Provide consumers with comfort that they are being provided with suitable advice by a competent financial adviser;
- Provide consumers with appropriate transparency regarding their financial adviser;
- Have requirements that are proportionate to the type of advice, the product being advised on and the context in which the advice is being given; and
- Be digitally agnostic.

2.2 Applying these principles to the Options Paper Kiwibank formed the following views; we:

- Support the continuation of the current QFE model as an effective way of regulating entities who primarily provide everyday financial advice and who have a mature regulatory infrastructure, with appropriate control and oversight;
- Support the continuation of the class and personalised advice categories as a way of recognising the consumer need for a spectrum of advice;
- Support the continuation of the category 1 and category 2 products approach as it recognises differences in product complexity;
- Support a broadening of class advice to encompass certain limited advice and digitally generated advice about everyday products as a means of increasing accessibility in a low risk area;
- Support changes that better facilitate a digitally agnostic regime, by specifically allowing for both class and personalised advice to be provided by an entity;
- Support the facilitation of 'robo-advice' as an effective mechanism to provide low cost, accessible advice, subject to appropriate governance;
- Support introducing measures such as a new code to govern the provision of robo-advice;

- Support the continuation of the FAA conduct standards in sections 33, 34 and 35 to all advisers to ensure a base line level of confidence in adviser competency;
- Do not support changing the wholesale client regime to an opt-in model;
- Do not support the imposition of the Code of Professional Conduct for Authorised Financial Advisers (the **Code**) on all financial advisers as it would be disproportionate for advisers across the spectrum and would ultimately hinder access to everyday financial advice;
- Do not support delineation of and disclosure by sales advisers in a banking context as it would be unnecessary and impracticable in that context.

2.3 We comment on each of these aspects in turn below, by reference to our principles.

2.4 We are concerned that in a number of areas, changes are contemplated without sufficient evidence of harm and with an underlying assumption that minor changes cannot deliver improvements. Regulation of financial advice is a complex area, and it is likely to be impossible to totally remove grey areas. New requirements could simply have the effect of moving the grey areas. There is a danger that further changes will result in significant implementation costs being incurred and a further period of uncertainty created, without any attendant customer benefits.

3. Accessible Financial Advice

3.1 We think it is imperative that consumers have the ability to access simple advice at low or no cost. This is desired by consumers and supports consumer education and savings. To facilitate this the regime needs to:

- Recognise that simple financial advice is different from complex advice as the products and advice are generally less risky and better understood by consumers so there is less need for regulation of it;
- Ensure that the regulation for simple financial advice is not disproportionately heavy otherwise there is the real risk that:
 - the burden of providing such advice will outweigh the benefits and it may be withdrawn from the market in whole or in part; and
 - The complexity, cost and time required to obtain such advice will discourage consumers from seeking it.
- Broaden the criterion for class advice, in particular to accommodate certain limited advice and digitally delivered rule based advice for everyday products and

KiwiSaver. When combined with appropriate disclosures these are low risk and present the best options for making low cost streamlined advice available to consumers where there is the greatest need;

- Be digitally agnostic. We consider that technology offers real opportunities to deliver good quality financial advice to consumers in a manner that is low cost and accessible. We deal with this further below at paragraph 8.

3.2 Customers' desire and confidence to seek advice is also dependent in their understanding of the regime. The regime currently expects the customer to engage with the regime's structure. The different types of advisers and the way that these are disclosed and discussed make the regime appear more complicated than it is. Many of these perceived complexities could be addressed by removing prescriptive labels and allowing more appropriate labelling focused on what consumers want to do (e.g. mortgage adviser, insurance adviser). The customer should be able to rely on the regime to ensure that an adviser is allowed to perform the activities that he holds himself out to do. Separation of customer labelling from the regime's structure is likely to facilitate better packages in the review of the regime.

4. Accommodate Market Diversity (Questions 6, 8, 12 and 17)

4.1 While it is tempting to seek a regime that treats all advisers, advice and products the same, we consider that a 'one size fits all approach' is ultimately not desirable and could be detrimental to consumers. In our experience consumers frequently seek simple advice about a limited range of products and they want this quickly and easily at no or a low cost. The current regime accommodates that by recognising class advice and category 2 products, such as bank term deposits, and reducing the requirements that apply to them. Whilst we accept that interpretation of class advice is currently difficult, the grades in the regime give industry confidence that different standards are expected and will be applied by regulators. It allows advice to be given on them in a more streamlined fashion, more freely and with less cost. It is appropriate given the low risk nature of those products and consumer familiarity with them.

4.2 By contrast a one size fits all regime would impose the full gambit of requirements upon all advisers and products across the spectrum, from someone providing personalised advice about complex offshore hedge funds, to a bank officer providing class advice about a simple bank account. The obligations and costs would be

disproportionate for simple advice and low risk products. It would likely deter participants from providing such simple advice. Instead a customer may be handed a brochure or directed to a website without the opportunity for any discussion or guidance. This reduction in the availability of advice would be to the detriment of consumers.

- 4.3 Even if the intention were not to apply the same standard across the spectrum of advice recognised in the paper, removal of the advice and product distinctions is likely to create uncertainty in the industry about the standard expected. This would perpetuate the issue identified currently as ‘risk aversion by those providing personalised advice’, increasing its scope. The effect is likely to be a period of uncertainty following which the Financial Markets Authority (FMA) would need to provide further guidance to provide clarity on the standard. That might effectively reintroduce a similar, possibly more complex regime.
- 4.4 Removal of the distinction between types of product or advice will not necessarily lead to more access to products. The number of advisers and the depth of advice that they can provide is also a function of commercial factors such as volumes of sales, training costs versus frequency of advice needed and the profitability of products. So, for example, removal of products categories might not necessarily lead to all QFE advisers being permitted by a QFE to sell KiwiSaver.
- 4.5 Part of recognising the diversity of the market is the role that large established financial organisations such as banks play in providing advice. They can be easy targets for criticism but this is probably where most people are first exposed to financial products and obtain simple and fee-free financial advice from. Changing to a one size fits all approach (by removing product and advice categories or imposing one approach to competence) would impose additional obligations on this important channel of advice and ‘turn off the tap’ or reduce that simple free advice to a trickle.
- 4.6 Kiwibank like most bank operates under the QFE regime. We wonder if the ‘one size’ thinking might driven by misperceptions about the QFE regime. Some outside it have suggested it is a light touch relative to other market participants. We disagree. The QFE regime does not remove FAA conduct obligations and oversight for the QFE advisers. In fact it imposes a multi-layered compliance regime upon those advisers and QFE:
 - QFE Advisers must comply with the QFE conduct and disclosure requirements;

- The QFE (usually the advisers' employer) must develop and implement a system to effectively support and oversee their advisers' conduct and disclosure;
- The QFE must seek approval to operate as a QFE from the FMA; and
- The QFE actively reports to and is monitored by the FMA who can take enforcement action against the QFE if it does not measure up.

- 4.7 The QFE regime effectively imposes requirements, including competence requirements, and has already implemented regulatory oversight of advice on category 2 products, in excess of that experienced by non-QFE advisers selling similar products. This includes some ethical standards. (Question 12, 15 and 16)
- 4.8 In practice that means an entity who has gained QFE status provides on-going training and operating tools for these advisers and actively assesses and monitors them. Under the QFE standard conditions any adviser breaches must be reported to the FMA. Such entities are usually well resourced and have a range of generalist and specialist advisers and the internal infrastructure to deliver advice competently and consistently. Arguably they are better placed to do this than an individual adviser might be. The QFEs take this seriously as they have a lot at stake; serious misconduct by one or a group of their advisers could affect their ability to provide advice across the business.
- 4.9 We do not support changing the wholesale client regime to an opt-in model. There are already safeguards in the regime to inform eligible investors of the consequences of their categorisation as wholesale. There does not seem to be any evidence of current customer harm to support a cost-benefit analysis for change. (Question 8)

5. Suitable and Competent Financial Advice

- 5.1 We believe consumers should be able to seek financial advice with confidence that their adviser is competent and that the advice is suitable for them. How this is best achieved needs to be assessed in the context, looking at the relative simplicity or complexity of the advice being provided and the risks involved. In particular, we do not support the extension of the Code obligations to all advisers. We think that would be disproportionate and unduly costly, and would ultimately reduce availability of advice for consumers.
- 5.2 For example it is appropriate that an adviser giving personalised advice about international equities should be held to a high standard such as those in the Code.

However, such obligations might be too onerous and unnecessary for a bank officer providing class advice about a credit card for instance. Such products are generally well understood and the advice more straight forward, thus the risk of misunderstanding and/or resulting loss to the consumer is lower. Conduct standards should still apply to such advice but they can be simpler to reflect the lesser risk. For such advice Kiwibank considers the general FAA conduct standards remain appropriate, namely:

- to exercise the care, diligence, and skill that a reasonable financial adviser would exercise in the same circumstances (s33 of the FAA);
- not to engage in conduct that is misleading or deceptive or likely to mislead or deceive (s34 FAA);
- not to advertise a financial adviser service in a way that is misleading, deceptive, or confusing (s35 FAA).

5.3 Whilst change is proposed, we note that it is not yet clear whether the current standards haven't and can't deliver desired adviser change. Unlike the Code at present there is little guidance on how they are to be applied and little experience to test their application.

5.4 As set out above having a one size fits all regime may impose too light a burden on some and too heavy a burden on others. That would be both unfair to advisers and detrimental to consumers. Those for whom the burden was too heavy may be deterred from providing advice. This could lead to a further reduction in the number of advisers available for consumers in the simpler product areas where advice is most frequently sought.

6. Transparency (Questions 19-21)

6.1 Kiwibank agrees that consumers need to have appropriate transparency regarding who is providing them with advice and any conflicts or incentives they might have. Such transparency is normally achieved via a written disclosure statement. We think the need for this is greater the more complex the advice and the products involved. It is especially important in situations where it may not be clear who the adviser is employed or remunerated by. For example, it is needed where an adviser appears to be independent but in fact only recommends a limited product set and receives commission from those product providers.

- 6.2 Conversely where a bank officer is providing class advice about a simple bank product in a branch or via a call centre then no disclosure is needed. This is because it is already inherently clear who the bank officer is employed by, and that the advice will be regarding that bank's products. There is little risk to the consumer of confusion. Moving across the advice spectrum where a bank officer is providing more complex advice and there may be a lack of clarity around their incentives or allegiances then some level of disclosure may be warranted. This is currently achieved via the QFE disclosure statement or for bank employed AFA's via their disclosure documents.
- 6.3 Following from this Kiwibank does not support the proposal that bank sales people must make an additional disclosure to identify themselves as such. In a banking context it is normally abundantly clear that the staff member's role includes sales of bank products. It would be artificial and disruptive if each time a staff member interacted with a customer they had to 'pause' the conversation to expressly identify themselves as a sales person.
- 6.4 Further many interactions with customers are quite fluid; they may be part transaction, part sales and part advice. This is largely driven by the customer's needs. It is also not always clear from the outset what the customer is seeking e.g. sales, advice or a transaction or some combination of the three. If such a requirement was imposed across the board then this would mean that the staff member would either have to:
- disclose up front that they perform a sales function on every occasion just in case the customer seeks a sale; or
 - allow the conversation to commence and interrupt it to make a sales disclosure each time it veers towards sales.
- 6.5 To the extent our staff do give advice we are comfortable with the current obligations upon them within a QFE regime. Accordingly in a banking context we see no need for this additional and somewhat awkward obligation and believe it would have little benefit for our customers.
- 6.6 Whilst a distinction between sales staff (allied to one product provider) and advisers (with more than one providers' products available) might assist transparency (and have some cost efficiencies), more work is needed to consider the potential impact on

customers and the industry compared to disclosure solutions. In practice, the distinction might increase customer confusion and the complexity of the regime. For example, customers may place undue faith in an adviser, who may only have available two providers' products and might habitually sell one. Alternatively, it is unclear whether a person selling one provider's insurance product and a different provider's home loan product would be a seller or an adviser. (Question 13)

7. Proportionate Requirements

- 7.1 Kiwibank believes that any financial advice regime should have requirements that are proportionate to the type of advice and product being advised on and the environment in which the advice is being given. This removes undue burden and cost from advisers and drives more efficient and accessible advice for consumers.
- 7.2 As we have stated above a regime that imposes the same requirements regardless of the product, advice and context will likely over regulate simple advice and products. That will deter advisers from advising on those product, or only advising on them at a high cost. That in turn will reduce access to advice for consumers.
- 7.3 This sentiment is not just adviser driven. In our experience many customers do not want to go through a complex process when seeking everyday financial advice. For simple bank products many are familiar with them and are just seek simple guidance on one or two points to clarify their thinking before proceeding. If they were faced with a more time consuming, costly and onerous process they may choose not to seek that clarification at all and instead opt for execution only product purchases or to not proceed at all.
- 7.4 We also think the regime needs to recognise the environment in which advice is being given. For example a larger organisation such as a bank may be best placed to train and monitor its adviser staff due to its size, experience and infrastructure. Banks generally have a high level of 'regulatory maturity' given they have to be licensed by the Reserve Bank of New Zealand and are used to operating in a heavily regulated sector. Also their staff generally provide everyday financial advice, with AFAs available for more sophisticated advice needs.
- 7.5 The current QFE model reflects that position, with control being provided by:
 - The QFE approval process;
 - The FAA conduct and disclosure requirements for the QFE and QFE Advisers;

- The QFE standard conditions
 - The need to operate to systems considered by FMA, as outlined in the QFE Adviser Business Statement and to inform FMA of significant changes in advance;
 - Internal training, support and monitoring by the QFE of its advisers and systems;
 - Regular QFE reporting to and close oversight of the QFEs by the FMA.
- 7.6 Of course AFAs employed by the QFE remain subject to the Code and its obligations. Now it is established and operational we think the QFE model provides effective and proportionate regulatory oversight for such organisations.
- 7.7 This aligns with our comments above and in particular in section 4; that the regime needs to accommodate and not stymie the diversity of the market.
- 7.8 In keeping with a proportionate approach we think it would be appropriate to broaden the criterion for class advice. In particular it should accommodate:
- certain limited advice; and
 - digitally delivered rule based advice,
- about everyday financial products and KiwiSaver. These are generally low risk and the products and advice parameters are well understood by consumers. To the extent limited or digital advice is a concern then a simple disclosure that the advice is of a limited or rule based nature should suffice. Facilitating more class advice will make it more accessible for consumers.

8. Digitally Agnostic (Questions 9-11)

- 8.1 As set out in our submission of 22 July 2015, we think technology can and should play an important role in delivering sound, accessible and low cost financial advice. The FAA regime needs to support this by being digitally agnostic. In particular it needs to permit technology, backed by an appropriate entity or person, to deliver both class and personalised advice.
- 8.2 Some industry participants have suggested that it is difficult to regulate such advice, but we disagree. It is different but not difficult. For example to ensure it is transparent and sound the regime could require that a digital advice tool must:

- Have a specified person or entity take responsibility for the advice, such as an AFA or a QFE;
- Clearly disclose its ownership on the advice platform or tool;
- Provide advice that meets certain standards, for example that it is suitable and not misleading. This could be assessed looking at the underlying rules and the possible outcomes;
- Be clear what the geographical limitations of its advice are e.g. only for NZ residents; and
- Make appropriate disclosure, for example about the limitations of the advice, who is providing it and what if any conflicts or incentives they have.

8.3 As we submitted earlier, we think this could best be achieved by a code for digital financial advice. That could address the nuances of this channel and would have the flexibility to seek market input and change as technology evolves.

8.4 We do not believe that digital advice will or should replace face to face personal advice. However we do think it provides a valuable means of providing low cost and competent advice to consumers in an accessible manner. It will simply become part of the suite of advice options available to them. Some may choose to use it exclusively. Others may use it to supplement face to face advice or as part of a preparation and education process before seeking that advice, thus broadening and enhancing the advice process overall.

9. Contact Details

9.1 We are happy to discuss this further or answer any questions. The contact details for this are:

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Yours sincerely

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