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Financial Markets Policy
Ministry of Business, Innovation and Employment
P O Box 3705
Wellington

By Email: faareview@mbie.govt.nz

Submission – Options Paper: Review of the Financial Advisers Act 2008 and the Financial Service Providers (Registration and Dispute Resolution) Act 2008

This submission is made on behalf of Moneyworks NZ Ltd and its three financial advisers. Peter Church and Carey Church are AFA's, CFP's and Paul Swarbrick has nearly completed his AFA training.

We have answered some specific questions below, but after much consideration have elected to outline our thoughts on the proposed solutions and what a new environment could look like and how it could work.

A. Comments on the proposed solution - Carving out Sales from Advice

We do not believe that this a desirable step to take for the following reasons:

1. This adds additional complication to the system.

At present, the majority of interactions that a consumer in relations to their personal financial services are covered by the Financial Advisers Act. By **having a 'sales' environment and a separate 'advice' environment** we believe that this adds additional confusion for consumers.

2. The most common consumer financial experience will become being 'sold to'

If we assume that the estimated 26,000 QFE financial advisers become 'sales' people, and at a guess 1/3 of the existing RFA's, then the most common consumer experience will be an interaction with with a sales person. We estimate that this could mean that 28,000 people out of an estimated total 34,300 people would be 'sales people' (81.6%).

Therefore, the consumer are likely to believe that this is the normal situation and will not be aware that advice is available as an alternative.

3. How does the 'sales person' option achieve outcomes of FAA review?

The goals stated on page 13 of the options paper state that the outcomes sought are:

- a. More informed and confident consumers
- b. Consumers can access the advice and assistance they need
- c. Advice improves consumers financial outcomes
- d. Consumers have access to effective redress.

We do not understand how having between 75.8% (if only QFE advisers) and 81.6% (as estimated in point 2 above) of financial services participants being sales people and not advisers will achieve any of these outcomes.

4. The proposed scope of 'sales people' offering of services appears to include investment portfolios

Page 49 of the Options Paper states that: There will be no distinction between product types'.

Over the last 2 years our clients have had presentations from bank employees who have recommended that they invest their nest eggs in excess of \$700,000 into the banks Investment Portfolio Service. This is a bank labelled product, therefore, under the Sales stream where there is no distinction **between product types, this investment portfolio could be 'sold' to a client.**

Does this proposal mean that any bank employee can 'sell' an investment portfolio, as long as they state that they are 'selling' the portfolio?

5. What is the suitability standard for sales people going to be?

Pages 48 and 49 of the Options paper states that a sales person or sales platform can 'sell' but will have a 'product suitability requirement (p48)' or 'would be subject to an obligation to ensure the product being sold is suitable for the consumer (p49)'

What is this standard going to be? There is a difference in suitability definitions around the world, with the UK regime having a large number of decisions relating to the rulings around suitability and stringent rules, **guidance's** and requirements. (As an example, see Financial Services Authority).¹

In New Zealand, The Code of Professional Conduct for Authorised Financial Advisers, Code Standard 8 sets a standard for New Zealand advisers in relation to suitability.²

One thing that all these suitability definitions have in common is that they require a knowledge of the clients financial situation, needs, goals and risk profile.

How does having a **suitability requirement fit with a 'sales' situation**. Our belief is that if a sales person undertakes a suitability analysis – even in the narrowest interpretation of suitability, the customer is likely to believe that **they are being given 'advice' rather than being 'sold a product'**.

Alternatively, if 'suitability' is going to mean something like 'the customer is between the ages of 18 and 65 and therefore needs KiwiSaver', how does this impact on any suitability requirements for advisers in New Zealand? How does it also fit in with strengthening NZ's capital markets credibility if sales people are acting under a very 'dumbed down' suitability requirement?

6. How is a sales person going to be defined?

¹ Financial Services Authority, 'Assessing Suitability: Establishing the risk a customer is willing and able to take and making a suitable investment selection'. March 2011. <www.fsa.gov.uk/pubs/guidance/fg11_05.pdf>

² Financial Markets Authority, 'Code of Professional Conduct for Authorised Financial Advisers' May 2014, Standard 8.

Does the sales person need to have any knowledge or expertise or experience, or could the security guard, or cleaner who is an employee of the business sell a financial product.

Page 48 of the Options paper clearly indicates that these sales people would need 'No educational standard'.

7. Will a 'sales' environment increase the 'bad churn' that already exists to the detriment of the consumers financial health, and confidence in financial service providers?

There is both anecdotal and empirical evidence that indicates that the QFE's are regularly moving people from one KiwiSaver scheme to another. There is also evidence that this process means that people are moved from KiwiSaver schemes that provide good consistent performance to KiwiSaver schemes that have a significantly lower return (of up to 2% per annum over the last 5 years.)

While this may mean that the consumer can see their KiwiSaver balance on their bank statement or internet banking, this could have a significant financial detriment to their financial well being. If an investor has a current balance of \$20,000 and 25 years until retirement, if the consumer received a return of 5% pa instead of 7% pa, this could make a difference of nearly \$41,000 in their total assets in 25 years.

The same situation exists with 'selling' a basic trauma insurance policy with 6-10 conditions with limited wording to claim on, when the consumer could have spent a few dollars more to get a comprehensive insurance that would pay out when something actually happened to them.

B. Comments on the proposed solution - an advice environment that believe would work

1. Retaining all current Financial Advisers under the Financial Advisers Act as advisers (see comments in section A above).

2. All participants to be called Financial Advisers with endorsements:

- a. For non-tied, non-aligned, and independent advisers, endorsement by product. Eg:
 - i. Financial Adviser – Insurance (Personal)
 - ii. Financial Adviser – Insurance (Fire & General)
 - iii. Financial Adviser – KiwiSaver
 - iv. Financial Adviser – Mortgages
 - v. Financial Adviser - Investments
- b. For all aligned, tied advisers, QFE employers, endorsement by the name of the organization they are associated with, and if relevant by any of the product endorsements above. Eg:
 - i. Financial Adviser – ASB only (Insurance Personal, KiwiSaver, Mortgages)
 - ii. Financial Adviser – ANZ only (KiwiSaver, Investments)
 - iii. Financial Adviser – Westpac only
 - iv. Financial Adviser – AMP only (Insurance, KiwiSaver)

3. Reintroduce the ability to be called independent if the adviser has no tied, aligned, employee or quota agreements.
4. No additional complications of adding 'expert' or 'specialist' financial adviser.

By being endorsed by what you are competent and licenced to advise on, this will distinguish people who can deal with more complicated solutions.

If necessary, these endorsements could have additional levels (while trying not to make the system too complicated) including:

- Business Insurance
- Foreign Exchange
- Derivatives
- Commodities
- DIMs

5. Mandated one page initial disclosure for ALL participants and a secondary disclosure statement for ALL. (If Sales are carved out, all sales people should also be required to provide these disclosure documents as well.)

There should be no differentiation between who has to disclose what and consumers will not read disclosure documents that are complicated or legalistic. We recommend a standard disclosure for all participants (an example of how this could work is attached in Appendix One) when they first interact with the client, and a simple secondary disclosure stating the actual income generated by the business that the consumer has put in place.

These Standard disclosures need to identify the following information:

- a. Name, Address, Contact Information
- b. Employer or business name
- c. Advisers qualifications and areas that they are licenced to work in
- d. Independent or tied/aligned relationships
- e. How the adviser or business is going to earn money
- f. Any conflicts of interest
- g. Dispute resolution provider

The adviser can then choose to attach any other marketing material or explanatory material in a separate document.

If the adviser has to extend the document to more than one page, this should be noted in Colour OR Bold and larger font.

The Secondary disclosure document can be a simple table as follows, in the plan and annual review documents:

Direct Fees to You	Annually after year one (Includes GST)
Membership Fee	\$650 includes GST pa
Investment platform income	Annually after year one (plus GST)
Implementation Fee	1% of all additional funds invested including regular investments (\$2,000 a fortnight = \$240 pa)
Monitoring Fee	All Assets Under \$250k 1.10% , (\$1,565.16 pa)
KiwiSaver Income	Annually after year one (no GST)
(Suppliers name) KiwiSaver	0.25% of funds invested (\$230,872 = \$577.18 pa)
Insurance Income	Annually after year one (Includes GST)

(Suppliers Name)	20% of annual premium = \$1,782.21 pa 20% of annual premium = \$854.02 pa 20% of annual premium = \$11.88 pa
TOTAL	\$5,700.37 pa (INCLUDES GST)

6. All advisers would have to achieve a principles based competence level to receive a licence to provide advice based on current National Certificate Level 5.

This competence could be achieved in two ways:

1. Completing the education courses and achieving the performance standard by formal examination and assessment (as at present.) OR
2. For people with extensive experience, have an honesty based test that they can sit to measure their competence. These tests would be designed to assess all of the standards required by the current Certificate, but for people with experience, they may be able to achieve these through the testing process without doing formal study.

Professional Bodies and Educational Institutions could provide 'gaps' training to assist people to meet the competence.

Proof of competence achievement through this testing facility (online, automatically marked through computer), would be required before the licence was issued.

A phase in period would be required to enable people to establish their competence.

For Tied/Aligned/Employees who are only advising on their employers products, there could be tests for competence for those products as well as general principles associated with them (ie needs analysis for insurance.)

7. CPD required for all advisers

This would be tailored to the area in which they were licenced/had competency, with a larger requirement for more complicated solutions like investments. The current AFA CPD requirements would be a starting place to develop these requirements.

8. All advisers can provide No Advice, Limited Advice or Full Advice in the areas that they are licenced.

A declaration needs to be made to the client when the advice is made. This should be a simple grid tick box format or a simple one line in colour, bold or larger font, so that the client can easily understand.

9. All advisers should complete an annual return to the FMA.

However, this should be much simpler than the current FMA return, and include things that can be analysed and collated by a computer system. This should consist of simple declarations including:

- a. Confirm that the adviser is competent in the areas that they are licenced.
- b. Confirm that they have completed the required CPD for each category that they are licenced in.
- c. If they are independent, confirm this.
- d. Confirm that they have provide primary and secondary disclosures to all clients.
- e. Confirm how many complaints registered against them with their disputes provider, or with FMA.
Any other vital information that it is agreed should be declared each year.

10. Replace the annual AFA return to the FMA with a tailored return every five years focusing on particular issues that it is agreed need to be tracked.

Have a different return with specific tailored questions for each person licenced in each area. So in year one, the return might be for Insurance (personal), Year two – KiwiSaver, Year three – Mortgages.

Therefore, if an adviser was licenced in each area, there would be an extended return each year.

The problem with the AFA returns completed **so far is that because AFA's can work across different areas, the answers could be talking about commission relating to insurance, but they are interpreted as relating to investments, leading to erroneous conclusions.**

11. Code of Conduct to apply to ALL market participants

We believe that the independent Code Committee be retained, and that the full code should apply to all financial advisers. It would have to be updated to reflect the changes to the FAA. **If 'Sales' are carved out, the Code of Conduct should apply to them as well.**

12. Role of Professional Bodies

We believe that professional bodies have a role to play in educating their **members and providing training and 'gaps' assistance. However, we understand that there are 8 different professional bodies, as compared to the one professional body for Chartered Accountants, one for Lawyers, one for Certified Professional Engineers.**

Unless there is one coherent professional body for all advisers, we do not see a further role for them in this regime.

13. Licencing a Business or an Individual – Responsibility and Liability Questions

We can see the value in licencing a business, as it would reduce the workload on the FMA and requirement for them to have increased resources. However, the big issue that this generates is:

'Where would the responsibility and liability lie?'

Our understanding is that at present, AFA's are licenced as a natural person and do not have the ability to utilise the corporate veil protection of a limited liability company, (we aren't sure what happens when they are part of a QFE).

Therefore, if the business is licenced and responsible for ensuring compliance of employees, what does this mean for the consumers protection, for responsibility and liability.

C. Responses to other questions in the Options paper not covered in replies A and B above:

QUESTION		RESPONES	
6	What implications would removing the distinction between class and personalised advice have on access to advice?	6	This should make advice more accessible, but would still require a disclaimer by the adviser that all the clients situation and goals aren't taken into account, but should make things easier.
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?	8	It would require some education for those clients about the difference. I imagine that for advisers who have built their businesses around wholesale investors to avoid compliance that it would require extra work. I don't see that this would need to be mitigated.
9	What ethical and other entry requirements should apply to advice platforms?	9	It would be difficult for a Robo platform to have a competency requirement, and it could be difficult for a robo platform to put clients interests first and acting with integrity. Also, as the proposal is for these platforms to be run by 'businesses', this changes the accountability and redress for consumers away from the current 'natural person' to a 'limited liability' entity with a corporate veil. If Robo advice platforms are permitted to change the legal liability, then other advisers should be permitted to as well.
10	How, if at all, should requirements differ between traditional and online financial advice?	10	The requirements should be as consistent as possible.
11	Are the options suggested sufficient to enable innovation in the adviser industry? What other changes might need to be made?	11	Our understanding is that many 'robo advice' platforms internationally have a 'personal' contact option. Given the lack of qualified advisers in NZ for the population, robo advice could be a good option for consumers with smaller savings and accumulation abilities. However, the evidence from the USA indicates that the massive scale required for a profitable operation may not be feasible in NZ
18	What suggestions do you have for the roles of different industry and regulatory bodies?	18	We think it is important to note that the financial advice industry is different to legal, engineering, medical, dentistry and other occupations that are from time to time compared to it. Those occupations tend to have a formal tertiary qualification as an entry point for practice, and then one industry association.

24	Should professional indemnity insurance apply to all financial service providers?	24	No. There is a common misunderstanding that investment advisers PI insurance protects for loss of value of an investment, which has lead to 'claims' against advisers. Therefore, the role of the PI insurance in reality should be less than that of the disputes resolution schemes and are likely to be of more use in the situation of error, theft etc.
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)?	25	Government, through the Financial Capability organisation. Through advertising, media releases, communication. Expanding the FSPR (option one) for more information would be valuable. Because we have fragmented professional bodies, we don't see that there would be value in them providing this service as the consumer wouldn't know which one to look at.
27	Do you have any comments on the proposal to retain the current definitions of financial adviser and financial adviser services?	27	We believe that lawyers and accountants should not be exempt from these requirements when they are providing financial advice (just like we would not be allowed to provide legal advice or accountancy advice without being qualified and acting under the relevant legislation.)
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.	28	Yes, there are a number of examples where the courts have found that accountants and lawyers have perpetuated fraudulent activities. We understand that these have been highlighted in other submissions.

Yours sincerely

Redacted

Carey Church
Director and Financial Planner
AFA, CFP^{CM}, CLU, FFin

Peter Church
Financial Planner
AFA CFP^{CM}, PostGradDipPFP

Redacted

Paul Swarbrick
Registered Financial Adviser, Client Relationship Manager
RFA



Appendix One – suggested standard disclosure document for ALL advisers

My Name is John Keith Smith
My Address is 19 Smith Street, P O Box 85, Timbuktu, 4433, New Zealand.
You can contact me at John @makingmoney.co.nz, Ph 0800 342 691, www.makingmoney.co.nz
My employer/business names is Making Money NZ Ltd
My Designations and Qualifications are: BSc (Auckland), PGDipPFP (Massey), CFP, CLU
I am licenced to work in the following areas: <ol style="list-style-type: none"> 1. Insurance (Personal) 2. KiwiSaver 3. Mortgages 4. Investments
I am an independent adviser and have no formal alignments or quotas with any providers.
How am I paid from working with you? (Delete all that aren't applicable)
I earn a salary from my employer
I am paid a bonus from my employer if I reach certain targets for new sales.
I/my team/business unit have sales targets I have to meet to earn that salary. These targets are: 5 new KiwiSaver clients a month/5 new insurance clients a month with a premium of \$1000 a year each.
You pay me/my employer a direct fee which is a maximum of \$1000 Plan Fee, \$1000 Membership Fee, \$500 an hour (add all other relevant)
You pay me/my employer a direct fee which is a maximum of 1.5% of the funds you have invested through us.
I/my employer earns commissions from an insurance company when you put in place your insurance which is a maximum of 200% of your first years premiums and 10% of your renewal premiums.
I/my employer earns commissions from a KiwiSaver provider when you put in place your KiwiSaver which is a maximum of 0.25% of the funds that you have invested. I/my employer may also be paid a one off fee of \$50 when you join KiwiSaver
I/my employer earns commissions from a mortgage provider when you put in place your mortgage which is a maximum of 1% of the value of your mortgage or a 'trail commission' of 0.25% pa of the value of your mortgage.
I/my employer earns commissions from a Investment provider when you put in place your investments which is a maximum of 0.25% of the funds that you have invested. I/my employer may also be paid a one off fee of \$50 when you join KiwiSaver
I will provide you with a secondary disclosure document stating what income is generated to me/my employer form the business that you place with us.
I have a potential conflict of interest because I
My disputes resolution provider is the Insurance Financial Services Ombudsman.