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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SIA Introductory comments

Thank you for the opportunity provided to complete a submission. SIA responses to the set questions follow below.

The SIA notes that there were a number of items covered in the Issues Paper consultation or in SIA submission responses to that Issues Paper that do not appear to have been covered nor commented upon in this options paper consultation, including:

- Separating support functions for the Code Committee and Disciplinary Committee away from the FMA (assuming that both survive the review).
- Extension of the regime to cover other "products" such as spot FX, commodities, collectibles and (some would say) real property, where "investment" or "investment value" is part of the pitch.
- Whether Adviser Business Statements should be required to be maintained.
- Advisers exercising some degree of discretion.
- Anti-Money laundering – For example, the SIA suggestion that consideration again be given to making AFAs "trusted referees".
- SIA submission on Section 77P(1A), the FMA exemption granted and the SIA view that this should be covered in the Act and not require an exemption.

Accepting that some of these matters may be at a level of detail that resulted in exclusion from the Options Paper, we request that these issues be reviewed again to ensure that they are not lost sight of as the review continues. We would welcome receiving confirmation direct from the Ministry that these matters are still being considered as part of the review.

Chapter 3 – Barriers to achieving the outcomes

1. Do you agree with the barriers outlined in the Options Paper? If not, why not?
   We agree.

2. Is there evidence of other major barriers not captured in the Options Paper? If so, please explain.
   In the SIA submission response to the Ministry consultation on the Issues paper and to the recent consultation by the Code Committee on the Authorised Financial Adviser Code of Professional Conduct, the SIA stated that it believes that accessibility to advice is being

adversely impacted by the FMA interpretation of Code Standard 8, with the FMA interpretation being outlined in the FMA guidance note issued on providing limited personalised advice. We believe that this FMA guidance has made financial advisers reluctant to rely upon the relief clearly intended by Code Standard 8(b). Although this issue is currently being looked at by the Code Committee, this highlights the risk of potential barriers arising through the development of prescriptive guidance.

The SIA submits that regulation, including application of that regulation, should always be crafted in a way that permits recognition of individual consumer capability, preferences and limitations, such as the ability or willingness to pay for such a service.

Chapter 4 – Discrete elements

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

Broadly speaking, the options outlined in the paper represent a move away from the current 'category/status' approach to regulation of advice, where advice is separated into categories according to degree of personalisation, product complexity and client sophistication, and only advisers with a particular status can provide advice in a particular category. As outlined in the options paper, this approach has been confusing for consumers as they do not understand the distinctions between the various categories and statuses, and has also resulted in certain types of advice not being available in practice, limiting access to advice. 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.

We therefore support a move away from this approach to a 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.

We summarise our views on the effectiveness of the individual options proposed in Appendix A, and provide our views on possible combinations of options in our response to Question 35. However, by way of overview, we generally support ethical and competency obligations for all who provide advice and also the removal of limitations on the provision of advice.

Appropriate disclosure is key in the regulation of advice, particularly so under a principles-based approach. One issue that is not canvassed in the options paper is the extent to which certain role titles should be restricted to certain types of adviser. We believe that role titles can play a key part of the disclosure framework. For example, we believe that the title "financial adviser" should be restricted to those providing advice on a range of products, and that another title such as "sales adviser" should apply where advice is provided in a sales context. Similarly, the title "financial adviser" could also be restricted to those who provide advice on more complex products. As well as signalling to consumers the broad nature of the scope of the advice on offer, title differentiation has the potential to create a specialisation within the ranks of advisers generally that supports the continuing growth of a profession. We expand on these points below.

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

The benefits to consumers, advisers and businesses are outlined in our response to question 3.

Costs will vary dependent upon the extent of change that selected options require to

implement and whether the options eventually selected increase or reduce obligations. The calculations of the cost impact across the complete matrix of possible options are such that we consider it to be impractical to prepare or provide useful information in this submission. However, in principle we do not believe that associated compliance costs need be excessive, given that the changes envisaged are designed to promote, rather than reduce, flexibility in the provision of advice to consumers.

5. Are there any other viable options? If so, please provide details.
Referring first to Chapter 4, we consider that the Options paper has canvassed a reasonable range of options and we do not propose any other viable options for consideration.

We think that the most effective package option lies in a different mix of the discrete elements that make up the package options. Our suggested alternative is contained in answer to Question 35.

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 removing the distinction between class and personalised advice would remove a significant barrier to accessibility. At present, the class/personalised advice boundary is blurred, as are the documentation standards for personalised advice. As a result we understand many advisers are operating only at the extreme ends of the advice spectrum; providing only generic class advice or comprehensive personalised advice, as this is where the regulation guidance is clearest. The result is that many consumers who want or need only a limited form of personalised advice cannot access this advice.

We also believe that consumer access would be further enhanced if better guidance, (including appropriate safe harbours) was provided to advisers on the level of documentation required for different levels of 'scaled' personalised advice. This would allow for advice to be provided within whatever constraints a consumer requires, such as limitations on financial cost, information provided, time available or products considered.

We note the objectives of the Review to allow 'robo' style advice. This may well essentially be a limited form of advice, given it will often involve a short-form online discovery process and basic analysis and recommendations, with no human involvement. The same principle of scalability of advice to suit the consumer should be available to all advisers. However, the vital element of scalability is clear guidance for advisers on documentation requirements.

Any safe harbour provision should include a condition that the entity or adviser outlines to the consumer the limited nature of the service and the risks arising from the service being limited. The responsibility is thereby left with the consumer to ensure that the (advice, product, service) is suitable and that it meets the consumer's objectives and needs.

7. Should high-risk services be restricted to certain advisers? Why or why not?
There are two different rationales for a rule restricting the provision of certain financial adviser services to certain advisers.

The first is ensuring adviser competence in the provision of those services. In this regard, we support option 2, that the category 1 and 2 distinctions for products are removed and replaced with an obligation that advisers be subject to a broad obligation to only provide advice within

their areas of competence – in a similar way to the legal requirement that lawyers only provide services they are competent to provide. We do not support the option to add further complexity to the regulations by restricting the provision of certain complex investments to certain advisers. The overriding goal of this review should be to reduce complexity; creating additional classes of adviser would appear to us to run counter to this goal.

However, a second rationale for such a rule would be to create two 'tiers' or categories of financial adviser that signal to consumers the restrictions on the services that the adviser can provide. For example, if anyone who provides financial advice is to be called a financial adviser, then the title of "financial adviser" will not provide any useful information to consumers as to the scope of what the adviser can advise on. We note that other professions take this approach; for example the medical profession which differentiates between general practitioners and specialists. One option would be to restrict the title "financial adviser" to those providing advice on both complex and non-complex products within their sphere of competency. This approach would provide more information to consumers and would be relatively simple to implement.

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?

The opt-in requirement would provide additional safeguards to consumers and should therefore be considered on this basis. We cannot identify any major negative implications for advisers dealing with retail investors. However, it could create further administrative barriers for advisers dealing only with institutional investors. We recommend any opt-in would need to be a simple process for eligible clients or it could impact New Zealand's competitive advantage when dealing with foreign institutional investors.

An alternative solution could be to modify the definition of wholesale in the Act to have two levels; a lower level (perhaps use the current test) which requires an 'opt-in', thereby protecting retail investors who meet the current definition of wholesale only because their net assets are above the definition in the Act. This could be combined with a much higher second test, perhaps raising the current financial bright line test (by at least a factor of 10). Investors who meet this much higher hurdle would only require an 'opt-out'. This should alleviate any issues with additional compliance for genuine institutional wholesale investors.

4.2 Advice through technological channels

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

We support option 1. The same standards should apply to financial service providers delivering advice through a 'robo' platform to one providing advice with a team of advisers. A regulatory barrier would be removed, allowing for innovation in financial advice and increasing access to financial advice for those currently unserved by the regime

Requiring a provider to give consumers the option to speak to a person as stated under option 2. seems overly prescriptive. We would expect there would be enough competitive pressure that companies offering a robo service would be obliged to offer the ability to talk to an adviser, without the need for a regulatory response.

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

We cannot see the need for a requirement to differentiate between traditional or online advice. The key issue we see will be defining when a robo service is advice or sales (see below).

11. Are the options suggested in this chapter sufficient to enable innovation in the adviser

industry? What other changes might need to be made?

Yes, the changes, to allow advice to be provided by an entity, rather than just a natural person, will be sufficient, in our view.

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?

We agree with option 1 to extend the ethical obligation to put the consumer's interest first to all advisers. In our view, any person or entity identified as an 'adviser' should be accountable to a Code of Professional Conduct including this provision.

With respect to option 2, which suggests having a clear distinction between sales and advice, and allowing salespeople to provide advice but not be required to put the client's interest first, we appreciate the challenges underlying this question; that is, to balance the need to reduce barriers to advice, while protecting consumers from poor and/or conflicted advice.

We also recognise this is a key question in the Options Paper.

We are concerned, however, that there are risks involved in allowing financial advice to be provided outside any ethical framework, and query whether there would in fact be any consumer demand for such advice. We suggest that a solution could be based on a slightly different approach; that is, allowing salespeople to provide advice as proposed, but also requiring these salespeople to be advisers in all but name.

If we define a salesperson as an adviser who can only offer a restricted range of products, often only their employer's products, they should still be able to provide advice – as they generally will anyway through the sales process.

Given they provide advice, these salespeople should be required to meet all the regulatory obligations of any other adviser. This means they would have the same educational and CPD requirements and would also be subject to the Act and a Code. This would help prevent consumers receiving poor advice from salespeople, which we understand is, and agree should be, a key objective of this review.

But to ensure consumers can clearly see the advice they are receiving from a salesperson is 'restricted', these salespeople should not be permitted to call themselves advisers. They should also be required to provide a clear warning verbally and in writing to consumers that their advice solutions are restricted to a limited product range, often only their employer's products. This warning essentially qualifies these salespeoples' obligations under code standard 1 to put the client's interests first, insofar as their advice is limited to the products they can offer.

However, as a backstop against extremely poor or conflicted advice under a sales process, salespeople should still have an overriding obligation to recommend to a client not to proceed if their solution on offer would be materially detrimental to the client's interests. In other words, to prevent the worst behaviours such as 'churning' or being sold replacement products when it is clearly not in the consumer's best interests, a salesperson should not be completely exempt from code standard 1 to put the client's interests first.

Turning to access to advice, in the short-term this proposal risks creating a barrier to advice for consumers as some current salespeople would potentially no longer be "authorised" (or whatever the term and qualifications will be for advisers after the changes to the Act). We believe though that would be quickly overcome, provided appropriate transitional

arrangements were put in place to allow salespeople to move to upskill. In our view, the risk of some minor short-term disruption to accessibility is worth it given the significant uplift in the standard of advice consumers will receive under this change.

We discuss these issues further in our response to Q13. Essentially, we propose that anyone providing advice must be a 'qualified' adviser and subject to the same ethical and regulatory obligations. However, advisers that are salespeople should be required to make this clear in their title, i.e. by using terms such as 'sales adviser', 'product specialist' etc. They should not be permitted to use the term financial adviser.

An obvious challenge is how to distinguish sales from advice. We suggest a solution in our answer to Q13.

In respect to option 3 which requires a suitability assessment for sales of financial products, under our suggestion the suitability assessment requirement that already exists under the Code would automatically apply to salespeople. As noted above, they would though be able to limit their advice by disclosure to the consumer that suitability is limited to the products they can offer.

We supplement this comment with the view that the requirement for advisers to conduct a suitability assessment under the code of conduct must be able to be overridden by client request. A consumer must retain the right to proceed as they see fit.

For completeness, we note that the approach outlined does not preclude an adviser, as defined, from offering a limited product range where appropriate to particular client circumstances, albeit the adviser would continue to be subject to all of the requirements of the Code, as applicable and proportionate to the particular service provided.

The monitoring and enforcement of general ethical obligations could be managed through the entity licensing model discussed at Q17 below.

We do not agree with option 4, to ban or restrict conflicted remuneration, as noted below in Q14.

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

The instinctive difference between 'sales' and 'advice' can be argued to be the degree of freedom to recommend a range of products. A salesperson will usually be 'tied' or 'restricted' in what products they can recommend – most often this will be just their employer's products. They may work through a discovery process as an adviser would, but the solution recommended will be limited to products issued by their company. This is in effect a form of limited scope advice.

An adviser conversely, will typically have a broad suite of products they recommend and will have no restriction on what products they may choose to research and offer to clients. An adviser may also have in-house product which sits alongside other products. Advisers in this position would need to disclose this potential conflict of interest and demonstrate to clients why they have recommended an in-house product to a consumer over others.

This 'restriction' in product offering then could become the distinguishing feature of advice relative to sales. Salespeople should be obliged to clearly disclose this restriction while advisers, as noted above, should continue to be required to disclose any conflicts of interest that potentially impinge on their recommendations.

Salespeople should be required to meet the same standards as an adviser given they will be providing financial advice through the sales process.

If any amendments to the Act will allow sales as distinct from advice, we recommend the Act treat these salespeople as advisers. They will be providing advice through the sales process, with the only difference being that their product suite will be much more limited than an adviser.

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

We believe a ban or restriction on conflicted remuneration would be difficult to define and implement, and would lead to less access to advice for consumers. We believe candid disclosure will greatly mitigate the inherent risk conflicted remuneration presents to consumers.

We provided more commentary on this topic in our submission to the Issues Paper and refer readers to that. In summary, at a general level, we do not support a restriction or ban on commissions in financial advice or service delivered on any financial products. In many cases, such commission is simply a pre-payment for the advice or other service delivered to the consumer that the consumer is otherwise either unable (due to limited resources) or unwilling to pay for.

Further, we suggest that the payment of commission is not in itself a problem. Rather, it is the behaviour or the conduct of the entity or individual receiving the commission that matters and that the focus of regulation, as it currently is, should remain clearly focused on conduct, not on commission, or other conflicts. Provided the conduct is appropriate, the basis of the payment of remuneration becomes irrelevant.

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?

We concur with option 1 which requires a minimum entry requirement for all advisers. The current situation where RFAs are outside this requirement creates the potential for significant harm to consumers in our view.

We strongly agree with option 2, creating stepped pathway for advisers to allow them to commence work under supervision while studying.

In respect to option 3, we agree that all advisers should be required to do a minimum number of CPD hours each year. This ensures they keep up to date with regulatory and industry changes, and the latest best practice standards in advice and portfolio management. We believe the current CPD requirements outlined in the Code of Conduct for AFAs works well and should be applied to all advisers. The term ‘structured’ CPD is somewhat superfluous now given what constitutes CPD is defined in the Code of Conduct.

We do not agree with option 4. We believe it will result in more consistency if the CPD requirements are set in the Code of Conduct, not by individual businesses. There is flexibility under the current CPD guidelines in the code for businesses to develop CPD that is relevant for their advisers.

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?

We believe all advisers should be subject to the minimum standards.

We take the point made by other submitters to the Issues Paper (such as Massey University) that the Level 5 certificate is a reasonably low-level qualification for such an important industry. Proposals to lift the minimum qualification to a Level 7 Diploma or even a bachelor degree warrant consideration. The same approach that was used with the introduction of the AFA regime could be used where current advisers could 'prove competence' under whatever standards the Code Committee determine, with those unable to meet this standard having a transitional timeframe to gain competence at the level of the required qualification. Any higher qualification standard could be phased in over time. We do not believe a higher qualification standard will stop people joining the industry – in fact by raising the credibility of financial advice as a career it may actually attract more people.

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 consider option 1, which requires entity licensing, is the most effective option, given it makes entities responsible and accountable for their employees and agents. The only caveat we would attach to this view is that the licensing requirements should not be excessively onerous to avoid creating a barrier to entities entering the industry and also to avoid making it unmanageable for smaller entities.

In respect to option 1B which suggests a greater role for industry bodies, we consider the only way industry bodies could satisfy the 'most effective' test would be if there was one statutorily established industry body that all advisers must belong to where that body has the power to set standards and impose discipline. We consider that the current Code Committee and Disciplinary or similar structures can and will satisfactorily fulfil these roles.

Option 2 proposes that individual advisers are also licenced. We understand this to be essentially a continuation of the current approach with AFAs and RFAs, extended to include QFEAs. We believe having dual licencing is a prudent approach. It would provide consumers with the confidence that not only is the entity licenced, but also that the adviser they are dealing with has met a required standard of competence and ethical standards. Specific obligations for individual advisers should start with meeting the requirements of the Code of Conduct, as amended by the Code Committee as appropriate for the increased range of advisers and potential services provided.

We strongly disagree with the proposal under option 3 to weaken licencing for individuals to be a simpler registration process. This would water down quality standards in advice and could result in the same problems for consumers that have been identified with RFAs and QFEAs.

The proposal under option 4 to align regulatory powers with those in the FMC Act appears to offer a more flexible and proportionate enforcement approach. We support this proposal in principle, subject to understanding the final detail.

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

bodies?

As outlined above, any significant lift in the role for industry bodies in our view would require a consolidation of the various bodies representing advisers into a statutorily established single body that represents all advisers. This body could act like industry bodies in other industries, such as law – providing support, some regulation and discipline.

Without this step-change, we would support a continuation of the current situation.

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?

A combination of all three methods needs to be available as different methods may suit different clients' needs. Clearly, more online disclosure is probable over time.

In this vein, we support option 3 to make more information available on the Financial Service Providers Register. While requiring some capital investment, it would provide a much higher level of information for consumers and allow them to source additional information that may not be included in disclosure statements

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

Yes we believe a common disclosure document for all advisers would work in practice. It would allow easier comparisons across advisers by consumers. Differences in adviser's services, fee structures, etc., can be better assessed by consumers if shown on a form that shows all the other options, rates and services advisers offer.

Consequently, we support options 1 and 2 that propose that all advisers have the same disclosure requirements and that the information disclosed should be reviewed to ensure it is more meaningful for consumers. These options would ensure the information disclosed is relevant for consumers (which may make them more likely to read and absorb it). As well, this option would likely streamline disclosure documents, resulting in decreased costs of disclosure over time.

Given the diversity of advisers, products and services that exist, developing such a disclosure that can meet the "most effective" test is clearly challenging. The risk is that either the disclosure becomes so brief that it does not provide consumers what they need to know or so detailed that it is overwhelming to consumers.

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

As an initial disclosure, stating both the percentage level of any fees and the inferred dollar value based on a nominated dollar value, such as $10,000 or $100,000, could be a way of expressing fees in dollar terms, which consumers appear to find easier to understand and quantify. All advisers would need to use the same methodology and dollar values. More specific fees could be provided to a client in a secondary disclosure.

Our comments here are in respect to investment advice. Different dollar values may be required for other forms of advice, such as derivatives, mortgages and insurance, to ensure the disclosed figures are meaningful.

4.7 Dispute resolution

22. Is there any evidence that the existence of multiple schemes is leading to poor outcomes for consumers?
    Not to our knowledge.

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 perceive consumer benefits to there being consistency between dispute resolution scheme rules and processes but do not have a view to submit on which particular elements should be consistent.

24. Should professional indemnity insurance apply to all financial service providers?
    The answer depends upon the financial resources available to an entity to meet all claims that may fall due, for example, for restitution awarded via dispute resolution. To the extent that an entity is unable to meet a claim that would be able to be met from insurance, a requirement for mandatory insurance may be justified. Otherwise it is questionable what the benefit of imposing a mandatory insurance requirement would be.

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)?
    Referencing our answer to question 5 above, it is clear from consumer responses that consumer groups, industry groups and individual industry provider entities have not been successful in providing adequate or sufficient information to consumers more generally on how to identify or find advisers.

    To the extent that consumer inability to find relevant information is identified as a barrier to government meeting its policy objectives, it then becomes incumbent on government to develop a solution, albeit in consultation with industry and consumer groups. While we have suggested in our answer to question 5 that we consider government has a role in establishing a central register, there are alternative approaches that may also be worth exploring further, such as a central register or website established by a government agency (e.g. the Ministry, the Commission for Financial Capability "Sorted" website, the FMA, or a combination thereof) that might also contain links to relevant industry or consumer bodies' material containing more relevant detail.

26. What terminology do you think would be more meaningful to consumers?
    Thinking particularly about a searchable register, words and phrases that consumers use every day when thinking about financial matters are more relevant. Examples include terms as simple as "Buying a house," "Getting a loan," "Saving," "Retirement," "KiwiSaver" and "Investment" to list a few.

    We support review of the use of the term "broker" and suggest a term such as "custodian" may be more appropriate.

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'?
    We generally support the retention of these terms and definitions subject to our comments in response to Q12 regarding the definition of sales people.

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.
    We consider that those that are exempt or that fall outside of the regime (but, for example, purport investment value in such things as diverse as real estate, gold, art and spot FX trading) do pose risks to consumers. However, the SIA has not collected evidence that we can readily supply with this submission in support of this view but we suggest that evidence can be accessed by the Ministry via the disciplinary bodies, where they exist, for the relevant organisations. In the absence of such disciplinary records, evidence lies with warnings issued by the FMA, relevant court processes or, more distantly, in the losses reported publicly from time to time via media articles.

    Perhaps of more relevance is the potential absence of a simple and readily accessible dispute resolution service for consumers that have been disadvantaged by the actions of such exempt entities, meaning that the consumer can have difficulty in obtaining restitution, if at all. Consideration might therefore be given to providing access to consumers to dispute resolution where the services provided by an exempt entity would otherwise fall under the regime were it not for the exemption.

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?
    There will always be limitations on the ability of New Zealand legislation to capture international financial advice provided to New Zealanders and to deliver appropriate and effective consumer protection.

    The obvious limitation that compromises consumer protection is the inability to take effective enforcement action, even when it is clear that the activity conducted from overseas is captured under and breaches New Zealand law.

    We consider that there are two opportunities available by which consumer protection can be enhanced.

    First, to the fullest extent possible, regulation of local financial advice provision should be set at a level that remains proportionate and cost effective to reduce the prospect that New Zealand consumers, by virtue of the barriers placed in front of accessing local services, see little choice but to seek service from offshore that is perceived to be cheaper or even just simpler to access.

    The second opportunity available is for government and industry to work together to heighten consumer knowledge and understanding of the benefits of using a local (or overseas) provider that is fully and effectively accountable under the New Zealand legislative regulatory structure versus the potential difficulties of seeking redress and/or restitution from an overseas provider

that cannot effectively be held accountable for its actions by a New Zealand consumer or even by a New Zealand regulator.

Finally, having a New Zealand adviser regime mutually recognized as part of one of the Asian Funds Passports would be useful and Free Trade Agreements could potentially be more explicit in dealing with advice services offered cross-border.

30. **How can we better facilitate the export of New Zealand financial advice?**
First, we simply reiterate that the regime should be set at a level that is proportionate and cost effective. Then, to the extent that it is practical and cost effective, government pursuing mutual recognition regimes can be useful. We then consider that it is a matter for those entities seeking to export financial advice to market the advantages that the New Zealand regime delivers to overseas consumers versus using their own local suppliers.

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?**

The use of the term 'broker' is confusing in this context. Could 'settlement' and 'custodial' be better terms to use? The current regulation of custodial services appears adequate in our view.

Chapter 5 – Potential packages of options

32. **What are the costs and benefits of the packages of options described in this chapter?**
We consider that the benefits have, to large extent, already been outlined in the paper.

Costs will vary dependent upon the extent of change that selected options require to implement and whether the options eventually selected increase or reduce obligations. The calculations of the cost impact across the complete matrix of possible options are such that we consider it to be impractical to prepare or provide useful information in this submission. However, in principle we do not believe that associated compliance costs need be excessive, given that the changes envisaged are designed to promote, rather than reduce, flexibility in the provision of advice to consumers.

33. **How effective is each package in addressing the barriers described in Chapter 3?**
The SIA has formed the view that none of the three packages will satisfy the "most effective" test and that there is a different package of options that will better meet that test (see question 35 below).

34. **What changes could be made to any of the packages to improve how its elements work together?**
Our preference is to consider an alternative package of options rather than to amend the three options provided (see question 35 below).

35. **Can you suggest any alternative packages of options that might work more effectively?**
Key elements that we believe should be included in an alternative options package are as follows:

Supported option	Comment
No distinction between class/personalized advice and category 1/2 products	Virtually all of the current complex categorisations that currently have little meaning to consumers or simply lead to confusion can be removed, including categorisations of different products (Category 1 or

	2) and advisers (AFA, RFA, QFEA), entities (QFE, Registered, Licensed).
Competency, ethical and suitability obligations for all advisers	Anyone providing advice should be subject to the same competency, ethical and suitability obligations. The content of the obligation (that is, what is required to fulfil it) would depend on the scope of the advice offered.
Standardised disclosure for all advisers	Anyone providing an "advice" service should be required clearly to disclose the scope of that service and the limitations and risks associated with a consumer receiving the particular advice service. This approach would assist consumers to understand the risks where the service provided may be limited in some way. Anyone providing advice to a consumer in a "sales" context should be required clearly to disclose the limited product range on which advice is being provided and the limitations and risks associated with a consumer receiving such a service. Role titles are an important part of disclosure. The title "financial adviser" should be restricted to those providing advice on a range of products, and that another title such as "sales adviser" should apply where advice is provided in a sales context. Similarly, the title "financial adviser" could also be restricted to those who provide advice on more complex products. This would assist in the furtherance of a "profession" of specialised advisers.
Entity licensing	Entities should be responsible and accountable for the actions of employees and agents via registration or a licensing structure that, while maintaining appropriate levels of consumer protection, is designed to be proportionate to the size and scope of an entity's business to avoid the development of inappropriate barriers to an entity entering the industry. Entity licensing would also be a pathway to allowing robo-advice.
Individual licensing	Individual advisers should be responsible or accountable via registration or a licensing structure, be required to meet minimum requirements at entry to the industry appropriate to the products and services that the adviser intends to offer, and allow for stepped development under appropriate supervision.
Adviser standards	Adviser standards and discipline should be developed and delivered via a structure the same as or similar to the existing AFA Code Committee and a Financial Advisers Disciplinary Committee applicable to all advisers but standards and discipline to be developed proportionate to the various products and services being delivered, such standards and discipline being the same for all advisers delivering the same products and services.

It is appropriate to include some rationale in support of the key elements outlined above for inclusion in an amended options package. These include:

- Evidence in Australia (entity licensing with little individual adviser accountability) and in New Zealand (individual registration or authorisation with little entity accountability, other than that taken on voluntarily by QFE's generally removing individual adviser accountability) have both failed to deliver to the "most effective" test. We consider that the "most effective" test will have only been met when both entities and individual advisers are responsible and accountable.

- Having already established the Code Committee, Financial Advisers Disciplinary Committee and Dispute Resolution structures, we consider that these are the "most effective" mechanisms to develop standards applicable to all advisers covering all types of products and services. The ability for industry and consumers to have direct input into such standards via the Code Committee is, we believe, particularly powerful in delivering an appropriate and proportionate outcome for advisers and consumers. Further, such structures deliver flexibility allowing for rapid change when needed, as already demonstrated via the recent Code Committee consultation proposing Code changes. In our view, the alternatives, with all standards either being set via legislation or regulation, including regulation developed by a regulator such as the

FMA, or via one or more industry bodies, will not be as effective.

The suggested requirement that disclosure of scope of service (sales or advice) including disclosure of any resulting limitations and risks be mandatory is, we believe, the "most effective" way of alerting a consumer to the different nature of particular services without imposing additional suitability tests or other requirements at extra cost on to the consumer. We should recognise that the consumer may simply want to go ahead regardless and no regulation should preclude a consumer from doing so where appropriate warnings have been provided. The consumer must assume an appropriate level of responsibility for taking a personal decision whether to proceed or not, after taking account of relevant limitations and risks.

The rationale supporting the scrapping of all of the confusing designations is inherent in the survey results obtained by the Ministry ahead of this consultation.

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?
    SIA Submission completed on 29 January 2016.

37. What option or combination of options do you prefer and why? What are the costs and benefits?
    SIA Submission completed on 29 January 2016.

38. What are the potential risks and unintended consequences of the options above? How could these be mitigated?
    SIA Submission completed on 29 January 2016.

39. Would limiting public access to parts of the FSPR help reduce misuse?
    SIA Submission completed on 29 January 2016.

Demographics

1. Name:
   Jayshree Das, Chair & Rob Dowler, Secretary
   Securities Industry Association (SIA)

1. Contact details:
   Jayshree Das e-mail Redacted
   Rob Dowler e-mail: Redacted

2. Are you providing this submission:
   ☐As an individual
   ☒On behalf of an organisation

   The Securities Industry Association is an unincorporated body established to represent the New Zealand Sharebroking Industry and provides a forum for discussing important industry issues and developments, managing industry change, and to represent the broking industry in respect of legislative management, operational and regulatory issues that impact the industry as a whole.

The Securities Industry Association members employ circa 400 Authorised Financial Advisers and deal with a combined 300,000 New Zealand retail investors with total investment assets exceeding $60 billion. They also deal with virtually all global institutions with the ability to invest in New Zealand.

3. Please select if your submission contains confidential information:

☐I would like my submission (or specified parts of my submission) to be kept confidential, and attach my reasons for this for consideration by MBIE.

Reason:

The SIA does not require any part of its submission to be kept confidential.

Appendix A – Detailed response to Q3

Section	SIA comment
4.1 Restrictions on who can provide certain advice	
Option 1: Remove the distinction between class and personalised advice	Supported. Most effective for the reasons outlined in the Options paper as follows: - This option would remove a layer of complexity and consumer confusion. - This option would help to decrease compliance costs for those who are currently providing personalised advice, by clarifying that advice need not always take into account all elements of a consumer's situation. - This option would help to overcome the current advice gap for personalised advice. We add that adoption of this option would also assist in reducing the regulatory risk of penalty, complaint and restitution that advisers currently face, which in themselves are significant barriers to the provision of service by advisers. That is, the SIA believes there is an inappropriate balance between the potential risks and rewards of providing such service. These risks were highlighted in SIA submissions to the Financial Markets Authority during FMA consultation on the development of the FMA guidance note on "limited personalised advice".
Option 2: Remove any distinction based on product category	Supported Most effective for the reasons outlined in the Options paper as follows: - This option would remove a layer of complexity and consumer confusion.
Option 3: Restrict the provision of certain complex or high-risk services to certain advisers	Not supported, as it adds to complexity and is inconsistent with a principles-based approach to adviser regulation. We note, however, the potential value of titles that signal to consumers the restrictions on the services that the adviser can provide.
Option 4: Require a client to opt-in before being considered a wholesale client	Potentially supported, provided the opt-in process is simple and does not apply to institutional or other professional investors.
4.2 Advice through technological channels	
Option 1: Allow financial advice to be provided online by a licensed entity	Supported While noting and strongly agreeing with the caveat in the paper regarding the licensing requirements not being too onerous, we consider this option to be most effective for the reasons outlined in the Options paper as follows: - This option would provide clarity over the legal status of online financial advice platforms. - A regulatory barrier would be removed, allowing for innovation in financial advice and increasing access to financial advice for those currently unserved by the regime.
Option 2: Adopt a 'hybrid' regulatory model for financial advice through non-traditional means	Not supported. Not only would this option increase costs relative to Option 1, but would create a potentially insurmountable barrier to service provision by requiring a robo-advice provider to always have available and offer the option of a qualified person to speak to.

Section	SIA comment
4.3 Ethical and client-care obligations	
Option 1: Extend ethical requirements to all financial advice	Supported. Most effective for the reasons outlined in the Options paper as follows: - This option would provide assurance to consumers that their adviser is acting in their interest.
Option 2: Clearly distinguish between sales and advice	Supported, but by way of disclosure rather than limiting the ethical obligations of salespersons as suggested in the options paper...
- Option 3: Suitability requirement for sales of financial products	Supported. A suitability assessment should be required for anyone providing advice, whether through a sales process or otherwise, unless the client does not require this assessment.
Option 4: Ban or restrict conflicted remuneration	Not supported.
4.4 Competency obligations	
Option 1: Minimum entry requirements	Supported. Most effective for the reasons outlined as follows: - Financial advisers would demonstrate that they have met a minimum competency standard before providing financial advice services.
Option 2: Create a stepped pathway to adviser roles	Supported. Most effective for the reasons outlined in the Options paper as follows: - Could help manage the impact of an increase in minimum entry requirements. - Could incentivise more people to join the industry. We add that it could incentivise entities to support more people to join the industry.
Option 3: Require mandatory and structured CPD	Supported. Most effective for the reasons outlined as follows: - Advisers maintain competence, gain new knowledge and skills, and keep up to date with relevant developments (while noting that it should be sufficient to require mandatory CPD to maintain competence, with the concept of "structured" CPD being, in our view, an artificial and unnecessary construct.
Option 4: Competency standards set through licensing process	Not supported. While acknowledging that entities can and should be responsible and accountable for employees and agents (see the next submission section), the SIA does not see the concept of the regulator establishing relevant standards for each and every entity and its employees and agents as satisfying the "most effective" test. Our view is that the Code Committee or similar body representing both industry and consumer interests and retaining that core standards setting role will better satisfy the "most effective" test.
4.5 Tools for ensuring compliance with the ethical and competency requirements	
Option 1: Entity licensing	Supported. Subject to the caveat that the licensing requirements not be too onerous to avoid creating a barrier to entities entering the industry, we consider this option to be most effective, assuming that it makes entities responsible and accountable for the actions of

Section	SIA comment
	employees and agents.
Option 1B: Greater role for industry bodies	Not supported. We consider that the only way in which industry bodies could satisfy the "most effective" test is if there was one statutorily established industry body that all advisers must belong to where that body has the power to set standards and impose discipline. We consider that the current Code Committee and Disciplinary or similar structures can and will satisfactorily fulfil these roles in a "most effective" manner.
Option 2: Individual licensing	Supported. Most effective for the first reason outlined in the Options paper as follows: - This option would provide greatest consumer confidence that the adviser they are dealing with has met the required standards. Again, SIA support is subject to a caveat about the extent of licensing requirements and the risk that an inappropriate barrier to individuals entering the industry that might inadvertently be created.
Option 2B: Code, Code Committee and Disciplinary Committee in support of individual licensing	Supported. Most effective for the reasons outlined in the Options paper as follows: - This option would provide a relatively flexible means to prescribe minimum standards that advisers must meet (relative to prescribing standards in legislation). - This option would provide increased certainty to industry about how to comply. - If the Code Committee included industry representatives, this option would be more likely to have industry buy-in to the minimum standards.
Option 3: Registration	Not supported – albeit this might be supported if it was simply "licensing" by another name, whereby certain minimum standards had to be met before being able to be registered
Option 4: Align regulatory powers with those in the FMC Act	Supported. Subject to a potentially significant caveat about the final detail, where the devil may reside, we consider that this option will likely satisfy the "most effective" test.
4.6 Disclosure	
Option 1: All advisers have the same disclosure requirements	Supported. A common approach to disclosure will allow easier comparisons by consumers. We also note that role titles can be a key part of disclosure to consumers.
Option 2: Review the information disclosed and form of disclosure to make it more meaningful for consumers	Supported. Most effective for the reasons outlined in the Options paper as follows: - This option would ensure the information disclosed is relevant for consumers (which may make them more likely to read and absorb it). - This option would likely streamline disclosure documents, resulting in decreased costs of disclosure over time.
Option 3: Make further information available on the Financial Service Providers Register or other portal/	Supported. Most effective for the reasons outlined in the Options paper as follows: - This option would allow consumers to search a publicly available website to source further information outside of the standard

Section	SIA comment
website	disclosure document, should they want to access it. Whether or not the remaining disclosure option (see Option 1 below) outlined in the paper is supported by the SIA depends upon whether such disclosure can be developed to satisfy the "most effective" test. Recognising the diversity of advisers, products and services that exist, developing such a disclosure that can meet the "most effective" test is clearly challenging. The risk is that either the disclosure becomes so brief in covering only matters common to all advisers as to be pointless or so detailed to capture all pertinent matters for all types of advisers, products and services as to be overwhelming.
4.7 Dispute resolution	
Option 1: Changes to improve the transparency and consistency of dispute resolution schemes, and promote greater access for consumers	Supported. Most effective for the reasons outlined in the Options paper.
4.8 Finding an adviser	
Option 1: Establish a portal with information for consumers on financial advisers	Supported. Most effective for the reasons outlined in the Options paper as follows: - This option would create a 'one stop shop' for consumers, increasing consumers' access to and understanding of financial advice.
Option 2: Work with consumers and advisers to identify useful terminology	Supported. Most effective as the terminology migrates to language that consumers are familiar with and relate to when seeking advice, products or services.