SIFA
Supporting NZ Financial Advisers

3 March 2016

FAA Review

MBIE

By email:

Thank you for the opportunity to make a submission.

We have an over-riding concern that the discussion is not well-grounded because there is no clear definition of what the problem to be solved is.

The Options paper leaves AFAs largely unchanged. They are already subject to occupational licensing, which is the strongest form of regulation according to Government's policy statement on the regulation of occupations as set out in CO (99) 6. We note that this policy says occupational licensing should be reserved only to cases where safety or health are involved. We scarcely think those issues actually apply in the case of financial advisers, but the Financial Advisers Act 2008 is current law.

The thrust of the Options Paper is that registered but not authorised financial advisers (financial advisers in the Category 2 space) should be subject to at least similar, if not the same form of regulation.

We remain concerned that officials have not been able to articulate a coherent statement of the problem. When we have pressed them, which we have done often, the responses have been very non-specific such as

- "we don't want to be the ambulance at the bottom of the cliff" without any substance as to what was the cause of the accident
- Something might be occurring, without any individual examples let alone articulation of a widespread problem.

We have a second concern in that only some aspects of financial advice are actually regulated. There are two aspects to this

1. Financial advice only applies to investments and financial products defined in the statutory definitions of category 1 and category 2 products. This does not include a major area for NZ retail investors investments – rental property
2. There are wide gaps of exclusion, the obvious ones to us being accountants, lawyers, real estae agents and journalists writing advice columns (as compared with journalists reporting).

We thank officials for their willingness to discuss issues with us both privately and through forums such as the Stakeholder meetings. We remain completely willing to discuss our submission at any time.

Chapter 3 – Barriers to achieving the outcomes

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

Barrier 1. It is hard for consumers to know where to seek financial advice

Does this mean that all the money spent by manufacturers, advisers, FMA and the Commission for Financial Capability has been wasted?

We do not accept that consumers don't know where to seek financial advice. We believe the bigger issues are that a lot of consumers either do not want advice or if they do, they don't want to pay for it. The consumer response to the brochure is both limited in numbers and hardly unbiased opinion. Perhaps if a postponement was called to the review and a million dollars spent on proper consumer research, before changes likely to cost the industry in the order of tens of millions were implemented, the solution would better fit the actual problem.

However, we agree that the unclear, complex and confusing terminology in the FA Act and regulations acts as a barrier to those seeking financial advice. Distinguishing between advice and sales is considered an important step - as is the removal of the existing range of acronyms and categories.

Barrier 2. Certain types of advice aren't being provided.

In a free market, firms cannot be obligated to provide all possible services to all consumers.

If there were decisions to clearly define what advice is, and make all people providing advice subject to the same rules, maybe these problems would disappear.

The current regulatory regime that comprises legislation, Code of Professional Conduct, and FMA is driving consumers to seek advice from their family friends and neighbours, at least some of whom will have zilch competence and skill. Is that an intended consequence?

While several examples exist, the drafting of the Code and FMA guidance led AFAs to understand they could not provide focused advice sought by clients (e.g. Kiwisaver) without undertaking a costly full investigation of their situation. A more cohesive approach to the regulatory environment is required to mitigate the risk of unclear and confusing requirements preventing the provision of appropriate advice to consumers.

Within investment advice, the legislative/regulatory concentration on financial market products and the paperwork required has encouraged a lot of investors to stick with rental property, an area which is by-and-large unregulated (and not subject yet to AMLCFT).

Internationally, the big players in the robo-service area are typically owned by, or are themselves, fund management entities. We submit there is a need to distinguish between robo-sales and robo-advice. We think most current robo service providers are robo-sales businesses but note the recent development of robo facilities using artificial intelligence to produce financial advice.

Barrier 3. Consumers may be receiving advice from people (in the industry) without adequate knowledge skills and competence levels.

We would ask; "where is the evidence?"

The FAA targeted investment advisers. Did the 2008 Act leave some holes? With respect to other than investment advisers, we would refer to our submission on the fourth barrier below and ask "What is the actual problem you think needs to be fixed?"

Raising the regulatory bar for investment advisers has had some perverse outcomes. Making it harder (more paperwork; more costs to the customer) for genuine advisers to provide advice, has led to many potential investors turning to their family, friends, neighbours, tip sheets or their lawyer and accountant for advice. Perhaps all these people should be brought into the

regulatory net as well?

The poorest reason for raising the regulatory bar for non-investment financial advisers is because they are now regulated differently from investment advisers. Surely you should be demonstrating problems and harm before even starting to consider regulation. [See Cabinet Circular CO (99) 6]

Barrier 4. Conflicts of interest may be leading to sub-optimal outcomes for consumers.

While this might be the case, where is the evidence? There can be a world of difference between things that might happen and what actually happens. Surely regulation should respond to what is actually happening rather than what might happen.

One oft-mentioned possibility is that there may be insurance mis-selling. Is there any evidence that mis-selling is occurring, and if so what is that evidence? How many instances are you aware of where an insured person who has been switched from one carrier to another has subsequently had a claim rejected by their new carrier when their existing/replaced policy would have paid a claim? Anyway, in those cases, surely the aggrieved client has recourse through an EDRS or the Courts?

A second possibility is that New Zealanders are underinsured. If so, is that caused by life agents underinsuring their clients who actually take out policies, or is it caused by the non-insured not wanting to buy insurance? The policy response, if any, would surely differ by cause.

A third possibility is that life agents might be advising the wrong covers. If that was the case, then surely there would be a body of cases either complaints, EDRS or the Courts. We are not aware that that body of evidence exists.

A fourth possibility is the mortgage advisers are somehow advising their clients to enter into the wrong type of mortgage. Again, if this is an actual problem, where are the complaints, EDRS cases and legal suits?

Our general point is that surely you need to demonstrate that these things are happening and that harm is being caused. We would point you to your text on the exemptions for accountants and lawyers in the Options paper where you take exactly this approach. Why would you treat similar issues differently?

Barrier 5 Consumers don't always understand the limitations of different types of advice

The complexity of the current regulation that we set out in our answer to Q3 is confusing to the advisory industry itself who are daily participants in the game. That being the case, what hope does the consumer have of understanding?

The key things that the consumer doesn't understand are

1. a QFE adviser is not putting the client's interest first
2. a sales person is not providing advice

We note that in many instances, these problems are interlinked or associated.

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

Yes.

The consumer does not want to pay for advice.

Clients mistakenly believe that salespeople are actually advising them.

Consumers do not understand how a financial adviser can help them. If they do understand that, then sometimes consumers do not understand the limits of what the adviser can do for them. For a lot of the population, financial issues don't automatically lead to the seeking of professional advice in the same way that if they have an accident or illness, or they pull a muscle or have toothache, or they need to do a property transaction, or someone has died and probate is required, they automatically know they need to get advice and go and get it i.e. financial illiteracy is rife. More regulation won't solve this problem – the answer is elsewhere.

Chapter 4 – Discrete elements

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

(1) Removing the distinctions between Category 1 and Category 2 Products, the ill-defined distinction between complex and simple, and between personalised and class advice will remove a lot of confusion for both advisers and customers.

Under the current regime, and using a 3 dimensional model of 1. Type of adviser 2. Category of product and 3. Type of advice, we can distinguish 12 separate advice situations. There are three (3) adviser types (AFA, QFE adviser and rbnafa), two (2) product categories (Category 1 and 2) and two (2) advice types (personalised and class).

Removing the distinction between categories 1 and 2 and abolishing the distinction between class and personalised advice will reduce the number of separate advice situations to only three.

Treating QFE advisors and AFA advisors the same reduces that number of situations to only one.

Then the only outstanding issue would be whether to decide to make insurance, mortgage and other rbnafas up skill in which case their requirements would probably merge with AFAs. Otherwise, they could actually be defined to be outside of the FAA.

If reducing the possible situations from 12 to only one, two, or three did not reduce confusion in the market, then we do not know what would.

(2) Removing the misleading term RFA or registered adviser will reduce confusion all round.

(3) If the advice vs sales model is adopted then PROVIDED that there is a clear and robust definition of what is advice, and the boundary is actually enforced in practice, there should be benefits. However we should not kid ourselves that the big brands will not be advantaged because we believe the ordinary consumer mistakenly thinks that their chosen brand will always look after them properly.

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

We have made no attempt to calculate these. We would generally note that simplicity reduces costs, whereas complexity increases them.

5. Are there any other viable options? If so, please provide details.
   Repeal the Financial Advisers Act 2008, undertake a proper study that answers for the first time "What is the problem that might need to be fixed" and take it from there.

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 support the removal of the distinction between class and personalised advice.
   We think that in the first instance, this removal might actually reduce access to advice because some of the people who are currently hiding behind the class advice definition to create a sale would be removed from the advice market.

7. Should high-risk services be restricted to certain advisers? Why or why not?
   We do not think that such services (if as a practical matter a way could be found to define them), should be restricted by the Regulator. Rather, advisers should self restrict i.e. they should only advise in areas where they consider they are competent. A corollary is that advisers have to take the consequences if they are ex post found not to have been competent.

   The design of the FAA distinguishes between Category 1 and Category 2 products as a way of separating complexity and simplicity. Does anyone think that this has been successful? We certainly do not think so. The simple/complex determination is probably more accurately made by each prospective client based upon their individual experience and knowledge.

8. Would requiring a client to 'opt-in' to being a wholesale investor have negative implications on advisers? If so, how could this be mitigated?
   We are opposed to the notion that wholesale investors would be required to opt-in to the wholesale regime because it would add further complexity and cost to both advisers and clients. We support the current regime where a wholesale investor is a wholesale investor unless they opt out.

   We believe that the definition of wholesale should be made consistent across all relevant legislation.

4.2 Advice through technological channels

9. What ethical and other entry requirements should apply to advice platforms?
   We strongly believe that advisers who are providing the same sort of advice, irrespective of the channel chosen, should be subject to the same ethical requirements.
   We suggest that you need to differentiate between robo-advice and robo-sales, as all robo services are not homogeneous. Where the robo is providing advice, then the robo service should be regulated in the same manner as an AFA providing the same service is regulated. If the robo is making sales, then it should be regulated in the same way as a human salesperson.

10. How, if at all, should requirements differ between traditional and online financial advice?
    There should be no difference in the requirements for different channels providing the same advice or services, including the explicit warnings as we have recommended for sales activities.

11. Are the options suggested in this chapter sufficient to enable innovation in the adviser industry? What other changes might need to be made?
    We have no comment

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 support the principle that anyone providing advice (whoever and through whatever channel) should have the same obligation – i.e. they are required to place the interests of the consumer first.

If there is a sales distinction, then we think a prerequisite is that the salesperson is not allowed to provide any advice i.e. that there is a clear boundary between what is and isn't advice. There is in our opinion no place for "advice-lite" or her sister "sales plus" to have different obligations to 100% advice.

Salespeople should be required to give a written warning that they are not permitted to give advice and that therefore they are not giving the consumer any advice.

The only ethical obligation we believe should apply in the sales situation is that the salesperson should be required to assess that the consumer has sufficient knowledge and experience to understand the product that they are being sold. [The UK calls this "appropriateness"] Where they assess that the consumer does not have the requisite knowledge and experience, then the salesperson should be required to advise the customer in writing that they do not believe that the customer has sufficient knowledge and experience, and warn the customer that they should take advice before purchasing the product. The customer must acknowledge in writing that they have received that warning. However the customer should not be prevented from continuing with the transaction if they so wish having received that warning – the "emptor" would have been sufficiently "caveated". The salesperson should have to lodge the customer's acknowledgement of the warning with the application paperwork sent to the supplier.

We are aware of the problems of implementing these warnings when the sale is made over the phone.

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

Salespeople should have an obligation

* not to mislead or misrepresent the product/service they are selling;
* not to provide advice;
* to make very clear to the consumer in writing that they are not providing advice; and
* to advise the client in writing that they were not putting the interests of the customer first

Salespeople should not have any obligation to assess the suitability of the product/service for the particular consumer – otherwise they would be advising. However, where a sale will replace an existing product (e.g. Kiwisaver, insurance products, etc), an explicit warning that no attempt has been made to identify what benefits might be lost as a result of the replacement should be issued to the client. It is recommended that a 'cooling off' period be provided for the client to cancel at no cost any such sale and that this period is prominently featured in the warning.

Rather salespeople should have an obligation to assess the "appropriateness" [see above), i.e. the consumer has sufficient knowledge and experience to understand the product/service as we set out in our answer to question 12. An alternative name for this idea is perhaps "customer capacity to understand".

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

It seems to us that there are only two options – a total ban or no restriction.

In our opinion, there should be no ban or restriction on conflicted remuneration. The requirement should be that the conflicts have been properly disclosed.

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 believe that before any additional formal competency requirements are introduced, there needs to be a proper assessment of the harm that is actually caused by there being no current requirement.

We estimate that the cost to the investment advisory industry to date of the regulations introduced by the FAA is well over $100 million, and it is apparent that the benefits have been nowhere near that level.

We are not opposed to establishment of "aspirational" educational goals , so that those participants who wish to do further formal study are not discouraged from doing so, but until actual harm is shown, we do not support all advisers being required to meet increased competency.

We note than in the UK, Government now provides funding to the employer for each paraplanner accepted into an adviser apprenticeship scheme – this is a way of helping new advisers into the profession and to develop their competency skills.

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?
If minimum entry requirements are introduced for more advisers, then we believe that the same process as was followed for investment advisers would be appropriate. A suitable body (our current choice would be the Financial Adviser Code Committee with an expanded mandate) should set that standard, and should set out a list of Competency Alternatives that will apply for say the first 5 or so years to give existing participants time to transition or exit.

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?
As with all professions, the conduct, education, ethical and competency obligations are personal to the individual professional. The Law Society oversees the conduct of individual lawyers , not law firms and the Dental Council oversees individual dentists, not dental practices and so on.

In Australia you should be aware that most of the mis-advice and mis-selling scandals have involved the financial planning arms of large institutions.

Where an adviser operates in a corporate structure, the entity is already responsible for a number of statutory obligations – AMLCFT, Fair Trading Act, and Consumer Guarantees Act – and the entity is likely to be liable to a client for contract and tortious breaches.

There would be no licensing change to current QFEs who are already licensed on an entity basis.

We think a change to entity licensing universally would have a disproportionate cost to smaller adviser practices – small adviser practices are not General Electric. We believe entity licensing would hasten the exit from the industry of many small adviser practices plus older advisers, and would hasten the migration of younger advisers into institutional homes, further reducing the consumers' ability to get unbiased advice.

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

Unless there is a major change in direction, the State via the FMA is the regulatory body for financial advisers. You might recall the original FA Bill provided for co-regulation of the industry by the Securities Commission and Approved Professional Bodies. This was completely changed during the Select Committee process.

Now that we have had a single regulatory body for 5 years, there would have to be a substantial reason for changing that. We do not know what that reason would be.

Industry bodies will of course continue to represent the interests of their own members – different bodies will have different service offerings and each body will survive or fail based on their ability to provide things that their members want.

We do not support regulation either that forces all financial advisers to join a new/merged pan industry professional body, or that compels every financial adviser to belong to a Professional body at all.

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?

At the very least, there needs to be a single, universal formal written disclosure. The adviser should get the customer to sign a receipt that they have received the disclosure (irrespective of whether they have chosen to read it, and if yes, whether they understood it). This will protect the adviser against an ex post claim by the customer that "my adviser never disclosed that".

It should then be up to the adviser and customer to determine such additional means of disclosure as they think is necessary. The current cumbersome, templated and repetitive disclosure documents (e.g. Primary and possible multiple Secondary disclosures, Client Agreement and Statement of Advice) is costly and frequently frustrates clients to the extent that they are less likely to read them.

We do not think that regulation should assume that (or worse require that) every consumer is au fait with current technology (note IRD and share registries are hell-bent on everyone receiving and sending communication by internet).

We recognise there will be difficulties when advice is provided by phone especially to a new client. However that does not mean that there should be different rules. There are already examples where a sales or transaction process needs to be confirmed before the final steps can be taken – e.g. in internet banking, a confirmation code might be texted to the customer that they have to enter to confirm the transaction before it is executed. If a client has email, a disclosure statement could be emailed to the client with the client being required to confirm receipt by return email before proceeding. If the client does not have email, it might just have to be that phone advice to a new client just can't be achieved, and there will have to be a delay until disclosure and acknowledgement is sent through post or a face-to-face meeting can be arranged.

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

We are not sure, but it is more likely to work if and when sales and advice are separated and

the advice has only one category (e.g. financial adviser). However, while features such as adviser and trading entity name, contact details, types of remuneration and EDRS details could be reflected in the manner currently required in a primary disclosure, each adviser will need to display his or her own applicable competencies, conflicts of interest and remuneration details.

21. How could remuneration details be disclosed in a way that would be meaningful to consumers yet relatively simple for advisers to produce?
    Disclosure should be any and all remuneration and/or other benefit that the adviser and their employer would receive from parties other than the customer. For example, in its pure form, where a bank adviser recommends a bank product, that remuneration should include all income that the adviser and/or employer will earn on the bank product including product margins. Similarly, any bonus scheme (including share issues/options and buyer-of-last-resort facilities) that provides incentives linked to the placement of funds and/or promotion of a product should be disclosed.

    We believe that advisers know in advance what commission/fees they will earn from third parties if business is conducted on normal terms, and any discount or rebate that they intend to offer for that particular client. So we do not see why they can't disclose that. If because of subsequent policy loadings or change in cover, the actual remuneration turns out to be higher, then they would need to do a supplementary disclosure of that additional remuneration.
    We do not support disclosure to be able to be done in wide ranges – e.g. commission will be 5% to 100% of the annual premium. In our opinion, that would defeat the purpose of disclosure.

4.7 Dispute resolution

22. Is there any evidence that the existence of multiple schemes is leading to poor outcomes for consumers?
    No

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?
    The only thing that should be required to be consistent is the maximum monetary limit. In practice, that has occurred because a low outlier was likely going to face negative comparative advertising or critical comment from the others.

    Because advisers are constrained from challenging EDRS decisions, whereas clients are free to accept an EDRS or take it to the Courts, we believe consideration should be given to a regulated maximum monetary limit lower than the District Court limit.

24. Should professional indemnity insurance apply to all financial service providers?
    Regulators must understand the limitations of professional indemnity cover. Investment advisers actually can't obtain material coverage for the thing that the consumer would expect the adviser to have. While financial adviser policies will meet claims where the adviser or his staff have stolen the client's funds, or where the adviser has failed to carry out a legal instruction from the customer and the customer has suffered loss as a result, except in very limited circumstance an insurer will not respond (e.g. where the loss has been caused by the fall in value of investments even if the adviser has been held in a Court to have provided negligent advice).

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)?
In most markets, the participants are responsible themselves for getting their offerings to the market. What is different about financial advice – compared with legal advice, medical advice, dental advice, home decorating advice?

We think the answer starts within the Education Curriculum. Basic financial life-skills need to be covered in the core curriculum.

The second answer is that financial education for the general population is a legitimate and worthwhile function for Government. It has already established a Commission for Financial Capability, and it should be appropriately resourced. Perhaps there could be a specific annual levy on insurance companies (based on in force premium) and managed fund management companies (not the funds themselves) based on FUM.

Market participants will educate their existing clients, and will do a certain amount to attract new prospects. But it is difficult for any individual to do a lot because of externalities – they cannot capture the full benefits themselves. There are too many free-riders.

26. What terminology do you think would be more meaningful to consumers?
We are not well-positioned to answer this. You should ask a wide range of current and potential consumers. The issue isn't what we think the consumer wants, it's what the consumer him or herself wants.

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 cannot answer that question until the scope of the final recommended changes is known. We think some proposals might require a reworking of those definitions. Concerns about promotors of "get rich quick" schemes, leveraged property, and options plus share trading software raises a question as to whether these should be captured if evidence exists as to the harm they pose.

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.
Although there are anecdotal whisperings that some lawyers and accountants are breaching the limits of their current exemption, we think the influence of the Law Society and the Accountants' bodies is so strong that we would be wasting our time responding to this question. We understand that lawyers and accountants providing financial advice within their exemption are not required to belong to an EDRS providing free consumer access to the same resolution facilities required for financial advisers

We think the same analysis should be applied to the issue of including insurance advisers and mortgage brokers in wider regulation – "what evidence exists that the current regime for insurance agents and mortgage brokers is posing undue risk to consumers?"

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?
    We have no comment to make.

30. How can we better facilitate the export of New Zealand financial advice?
    We have no comment to make.

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?
    It is unfortunate that the term "broker" in New Zealand is normally used in the context of something quite different to the definition in FAA. Normal usage includes sharebroker – one who enables you to buy and sell listed securities, and insurance broker –an insurance adviser or salesperson who deals with multiple underwriters. Existing broker regulations are confusing, especially around the definition of client money and property handling.

Chapter 5 – Potential packages of options

32. What are the costs and benefits of the packages of options described in this chapter?
    If the costs to registered but not authorised advisers to become authorised were only half of the level that IFA estimated the cost was for AFAs, and that cost applied to 5,000 advisers, then that cost alone would be $50 million.

    We have not seen any substantive explanation of what the perceived problem is, let alone any estimate of the benefits of solving such problem.

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33. How effective is each package in addressing the barriers described in Chapter 3?
    The Table below sets out our view of the effectiveness of the three proposed packages to address the barriers identified

Barrier	Package 1	Package2	Package 3
1	Very Limited * does nothing to raise consumer knowledge	Limited * Reduces some complexity * Authorises more FA * BUT does nothing to raise consumer knowledge	Limited * Reduces complexity * Authorises more FA *BUT does nothing to raise consumer knowledge
2	Very Limited * Doesn't address the problem of "less than comprehensive" advice	Very Limited * Doesn't address the problem of "less than comprehensive" advice	Very Limited * Doesn't address the problem of "less than comprehensive" advice
3.	No benefit * No evidence that rbnafas are without adequate knowledge skills and competence levels	No benefit * No evidence that rbnafas are without adequate knowledge skills and competence levels	No benefit * No evidence that rbnafas are without adequate knowledge skills and competence levels
	NOTE rbnafa = registered but not authorised financial adviser		
4.	No benefit * Paper has not established that current outcomes are sub-optimal	No benefit * Paper has not established that current outcomes are sub-optimal	No benefit * Paper has not established that current outcomes are sub-optimal

5.	Reasonable * all advisers "client's interests first"	Reasonable * all advisers "client's interests first"	Strong * all advisers "client's interests first" * clear warnings salespeople are not providing advice

34. What changes could be made to any of the packages to improve how its elements work together?

Package 2: we do not support the introduction of Expert Financial Advisers. The looks to us too much like a renaming of AFAs and rbnafas under present regulation as EFAs and FAs

Package 3 we do not think a salesperson whould be restricted to the products of only one manufacturer.

Packages 2 and 3: we believe individual FA licensing should be retained/introduced for all regulated financial advisers

35. Can you suggest any alternative packages of options that might work more effectively?

We don't really like any of the three packages as they stand.

Of the three packages, our preference if all registered but not authorised financial advisers are to face increased regulation would be Package 3. However we would amend it at the very least as follows:

1. retain the Code Committee, separate it completely from the FMA, and have it [Code Committee] publish Guidance Notes itself (and not FMA as happens now) so that there can be no misunderstanding between the Guidance and the intention of the Code Committee. We believe the FMA has sometimes published guidance at variance with what we understand the Code Committee intended.

2. retain the Financial Adviser Disciplinary Committee, to have jurisdiction over all financial advisers (including those currently described as QFE advisers.) The FADC should be made completely independent of the FMA – we see a huge conflict of interest with the FMA both providing support to the Committee and having the enforcement/prosecutorial role when an adviser is before the Committee.

3. license all advisers individually. Ethical and competence requirements all apply to the individual adviser.

4. require salespeople to provide warnings to customer both that they are not providing advice and that they are not putting the client's interests first

5. allow salespeople to sell more than one manufacturer's products.

6. not associate the term "suitability" with salespeople, and substitute a name like "appropriateness" To prevent confusion, the term suitability should be restricted to application in respect of advice, with the financial adviser providing advice being required to make recommendation suitable for the client in terms of the client's resources, objectives and attitude to risk. To reiterate the point we have made above, there should be no advice explicit or implicit in the sales process – otherwise it is not sales.

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?
    We have no comment to make

37. What option or combination of options do you prefer and why? What are the costs and benefits?
    We have no comment to make

38. What are the potential risks and unintended consequences of the options above? How could these be mitigated?
    We have no comment to make

39. Would limiting public access to parts of the FSPR help reduce misuse?
    We have no comment to make

Demographics

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3. Are you providing this submission:

   Y On behalf of an organisation

   We are a professional body of approximately 50 advisers (mainly AFAs) who are generally owners and senior staff of owner-operated practices.

4. *Please select if your submission contains confidential information:*

   Our submission is not confidential