

Redacted

Private and Confidential

28th March 2017

Financial Markets Policy
Building, Resources and Markets
Ministry of Business, Innovation & Employment
PO BOX 1473
Wellington 6140
New Zealand

By email: faareview@mbie.gov.nz

**Re: Submission on the draft Financial Services Legislation Amendment Bill
and proposed transitional arrangements**

Redacted welcomes the opportunity to
comment on the draft Financial Services Legislation Amendment Bill (**Draft Bill**).

About Redacted
Redacted

General comments on the Draft Bill

Redacted strongly supports improving access to quality financial advice for consumers by establishing a level playing field for financial advisers and removing unnecessary regulation. A smooth transition into the regime proposed by the Draft Bill is critical to the continued success of Redacted and its delivery of exceptional customer service via its adviser network.

Set out in the Appendix to this letter are our responses to some of the specific questions raised in the Consultation Paper which touch on some key issues for Redacted and the financial adviser industry generally. Redacted

If you have any queries regarding the matters we have raised or wish to discuss them in further detail, please contact myself by email at Redacted or by phone on Redacted.

Yours sincerely,

Redacted

Chief Executive Officer

Redacted

Appendix

Part 1 of the Bill amends the definitions in the FMC Act

1. Do you have any other feedback on the drafting of Part 1 of the Bill?

While we support creating a level playing field for all financial advisers, we feel the term 'Financial Advice Representative' is likely to cause confusion among consumers. Consumers are unlikely to understand the difference between a 'Financial Adviser' and a 'Financial Advice Representative', particularly in relation to their level of accountability and the different standards of competence, knowledge and skill which attach themselves to different types of financial advice and products.

For example, a consumer may view a junior sales person at a bank (a Financial Advice Representative under the new regime) as having the same level of competence, knowledge and skill as a mortgage broker with 20 years' experience (a Financial Adviser under the new regime). This is likely to cause confusion in the financial advice market and could result in unsatisfactory financial outcomes for consumers.

In order to improve access to quality financial advice, we feel it is critical that the new categories of financial advisers act as accurate signposts for consumers as to where to find the right advice.

We would strongly support amending the term 'Financial Advice Representative' to 'Salesperson' or 'Agent' to achieve this.

Part 5 of the Bill makes miscellaneous amendments to the FMC Act

2. Should financial advisers have direct civil liability for breaches of their obligations, if the financial advice provider has met its obligations to support its advisers? Why or why not?

Yes. Financial Advisers (FAs) and Financial Advice Representatives (FARs) have limited accountability under the Draft Bill while Financial Advice Providers (FAPs) may have civil liability for the conduct of individual FAs and FARs even where they have robust processes in place to ensure their advisers comply with their obligations.

This asks FAPs to accept an unnecessary level of risk and is likely to increase the costs of ensuring compliance. In some instances, this would mean FAPs would need to restrict the level of discretion available to its advisers when providing advice and we are concerned that this could result in unsatisfactory financial outcomes for consumers and limit the availability of innovative financial advice and solutions.

We also feel that a lack of accountability on the part of individual advisers does not provide sufficient incentive for advisers to meet their obligations. This may erode consumer confidence in the financial advice industry and may not be enough to deter individual advisers from putting commissions ahead of consumers' interests. Given FAPs will be primarily responsible for oversight and

compliance under the new regime, we do not consider that extending civil liability to individual advisers will increase their own compliance costs.

We strongly support extending civil liability to individual FAs for breaches of their obligations where the FAP has met its obligations to support its advisers. However, we do acknowledge that it may not be appropriate to subject FARs to civil liability given they are intended to give advice on behalf of a FAP and will likely be employed directly by a FAP.

3. Should the regime allow financial advice providers to run a defence that they met their obligations to have in place processes, and provide resources to enable their advisers to comply with their duties?

Yes. The Draft Bill is imbalanced if a FAP is expected to have civil liability for the conduct of individual advisers without recourse to any defence, particularly where it has adequate processes in place to ensure its advisers comply with their obligations.

The absence of any defence in the Draft Bill will further perpetuate FAPs' operational and legal risk and the compliance costs associated with managing those risks. We feel a defence of this nature is critical to achieving a fair and balanced regime that holds all who provide financial advice accountable for their actions.

We would support the inclusion of an explicit defence available to FAPs against their own liability if they can demonstrate that they took all reasonable steps to ensure its advisers complied with their obligations.