



We see your money differently

The three stylised people signify that through our Members, their members and the community working together cooperatively, we all grow.

31 March 2017

Financial Markets Policy
Building, Resources and Markets
Ministry of Business, Innovation & Employment
Wellington
faareview@mbie.govt.nz

RE: New Financial Adviser Regime

About Co-op Money NZ

Thank you for the opportunity to comment on the Financial Services Legislation Amendment Bill. We make this submission as Co-op Money NZ, the industry association for credit unions and mutual building societies. We exist to represent, promote and support our 15 Member credit unions and mutual building societies, and to provide cost effective business services and products.

Credit unions and mutual building societies are co-operatively owned financial service providers, providing their members with a similar range of services to a retail bank. Credit unions and mutual building societies are all independently owned and operated by their members for their members, and any profits are returned to their members/owners in a combination of ways i.e. fairer fees, interest rates and community involvement.

Co-op Money NZ's Members employ over 550 staff, represent around 195,000 members, with around 80 branches, assets of over \$1.5 billion and collectively are the sixth largest financial transactor by volume in New Zealand. Co-op Money NZ also wholly owns Co-op Insurance NZ (www.coopinsurancenz.co.nz), a fully licensed insurance provider, under the Insurance (Prudential Supervision) Act 2010, with over 100,000 lives covered. Additionally, we also have a national spread of nearly 100 ATMs, besides providing switching services for over 900 ATMs country-wide, making ours one of the largest ATM network in the country.

Co-op Money NZ is a member of global trade association, (the World Council of Credit Unions), which represents over 223 million people in 109 countries across the globe. This international network operates under the vision: "Improving people's lives through credit unions" and promotes the sustainable development of credit unions and other financial co-operatives around the world.

Co-op Money NZ is also a member of Cooperative Business New Zealand (www.nz.coop), the industry body whose mission is "bringing together the country's cooperative and mutual businesses to promote, encourage and support the co-operative and mutual business model, and act as the advocate for those engaged in co-operatives and mutuals."

Collectively the wider customer-owned banking sector represents around 10% of the economically active population in New Zealand and represents more than \$600 million in

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revenue per year. A number of these organisations are represented on 2015 Cooperative Business New Zealand's Top 30 co-operative and mutual businesses (by revenue). Co-op Money NZ is ranked number 30 on the list.

General Support

Co-op Money NZ is generally supportive of the new financial adviser regime. However, the regulatory environment is becoming increasingly complex for Co-op Money NZ Members. The cost of compliance has increased disproportionately for our Members' size. Examples of increased compliance costs include; the financial adviser regime; the commercial trustee supervisory model; the anti-money laundering and countering financing of terrorism requirements and; the introduction of the Financial Markets Conduct Act 2013.

The current financial adviser regime has detrimentally impacted Co-op Money NZ Members' ability to provide any level of financial advice which means some members have moved away from their core business ethos being, "people helping people". Therefore, Co-op Money NZ fully supports the policy intention of the draft Bill but our initial view of the Bill is that it does not reveal the specifics of the new financial adviser regime. We are keenly aware that the detail is yet to come in the Code of Conduct and regulations and will cover off the following key concerns for our Members:

- Cost of compliance;
- Time and effort required to be compliant; and
- Removal of barriers to ensure customers can obtain financial advice for simple and non-complex financial products.

Co-op Money NZ spent considerable time and effort over a number of years to get our Member credit union and building society products correctly categorised as category 2 products. Understandably, neither Co-op Money NZ nor our Members want to see a repeat of that process in the development of the new regime. Our historical challenges are front of mind in our responses throughout this consultation.

Unintended Consequence – Product Disclosure Statements (PDS)

Currently member credit union and building society call shares are defined as category 2 products. Therefore, under section 22 of the Financial Markets Conduct (FMC) Regulations 2014, they allow completion of a simplified PDS with the information specified in Schedule 7.

Under the FMC Act 2013, the classification of products (category 1 and 2) refers back to the definitions in the Financial Advisers Act. In the draft Bill the definition of category 2 products is to be repealed.

If the categories are discarded it is imperative that the definition of credit union and building society call shares be included in the FMC Act by an alternative means to ensure the simplified PDS remains applicable to credit unions and building societies. It is not clear how this will be ensured under the Bill as the PDS schedules are in the FMC Regulations. It is vital that we know what changes, if any, are intended by MBIE in relation to the simplified PDS.

As already mentioned Co-op Money NZ spent considerable time and effort over a number of years to get our Member credit unions and building society products correctly categorised as category 2 products. Therefore we are highly concerned to ensure the preservation of our Members' right to use the simplified PDS (i.e. schedule 7 of the FMC Regulations). Low risk and simple products need to continue to be acknowledged in the Bill and subsequent amended regulations.

Co-op Money NZ's Response to Submission Questions

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

1. If an offer is through a financial advice provider, should it be allowed to be made in the course of, or because of, an unsolicited meeting with a potential client? Why or why not?

Co-op Money NZ has no comment to make.

2. If the exception allowing financial advice providers to use unsolicited meetings to make offers is retained, should there be further restrictions placed upon it? If so, what should they be?

Co-op Money NZ has no comment to make.

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

Co-op Money NZ has no comment to make.

Part 2 of the Bill sets out licensing requirements

4. Do you have any feedback on the drafting of Part 2 of the Bill?

Co-op Money NZ Member credit unions and building societies have been through an extensive process under the current financial adviser regime to make it better "fit for purpose". For example, the categorisation of credit union call shares to category 2 products. Therefore the proposed licensing approach to replicate the efficiencies of the current QFE model which means obligations are at an entity level rather than an individual level, and apply it to all advisers, raises questions as to how the approach to licensing and reporting will be "fit for purpose"?

We anticipate the Code of Conduct and subsequent regulations will address this but Co-op Money NZ would like to take this opportunity to re-emphasise that the size and nature of firms and the simple, non-complex nature of products are appropriately accounted for when it comes to the licensing process, compliance requirements and fees set in the financial adviser regime.

Part 3 of the Bill sets out additional regulation of financial advice

5. Do you agree that the duty to put the client's interest first should apply both in giving the advice and doing anything in relation to the giving of advice? Does this make it clear that the duty does not only apply in the moment of giving advice?

The duty to put the client's interest first is very expansive. Our understanding is that, in some cases, advisers could be compelled to give advice. For example, if a financial product provider decides the cost of compliance under the new regime cannot be justified and continues to provide no financial advice on their products it appears that it can be construed they are not putting the client's best interest first. Co-op Money NZ recommends there is a safe harbour or clear guidance for financial product providers who provide product information only.

6. Do you have any comments on the proposed wording of the duty that a provider must not give a representative any kind of inappropriate payment or incentive? What impacts (both positive and negative) could this duty have?

Co-op Money NZ believes the duty to not give a representative any kind of inappropriate payment or incentive is grey. What is or is not an inappropriate incentive will be difficult for a financial advice provider to determine. A financial adviser representative is essentially a sales person and a financial advice provider is in the business of product sales to ensure economic viability. Rewards for sales persons or teams are common practice and vary greatly, from a team morning tea to an

individual financial bonus. This duty needs further clarification so that the regime avoids repeating the inclusion of grey areas.

7. Do you support extending the client-first duty to providers who do not provide a retail service (i.e. those who only advise wholesale clients)? Why or why not?

Co-op Money NZ does not support extending the client-first duty and disclosure to providers who only advise wholesale clients. Wholesale clients are sufficiently sophisticated to understand risks associated with wholesale financial products. This is an unnecessary requirement and additional layer of compliance for wholesale product providers. Co-op Money NZ does not recall any flags being raised around wholesale product providers throughout the review process of the financial adviser regime and therefore believe this to be an unnecessary and burdensome duty.

8. Do you have any other feedback on the drafting in Part 3 of the Bill?

Co-op Money NZ believes the proposed new terms do not adequately remedy the current confusing terms (AFA, QFE, RFA). We prefer that "financial advice providers" be referred to as "financial advice firms" as this clearly indicates this is an entity and not an individual. Additionally, the differences in accountability and competency standard between a "financial adviser" and a financial advice representative" are not likely to be appreciated by clients. The terms are too similar. If financial advisers are in effect AFAs and are therefore more qualified to advise on more complex products, we believe their title should reflect this better, for example, a "qualified financial adviser".

Part 4 of the Bill sets out brokers' disclosure and conduct obligations

9. What would be the implications of removing the 'offering' concept from the definition of a broker?

Co-op Money NZ has no comment to make.

10. Do you have any other feedback on the drafting of Part 4 of the Bill, for example any suggestions on how the drafting of broker provisions could be simplified or clarified?

Co-op Money NZ has no comment to make.

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

11. 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?

Co-op Money NZ has no comment to make.

12. 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?

Co-op Money NZ has no comment to make..

13. Is the designation power for what constitutes financial advice appropriate? Are there any additional/different procedural requirements you would suggest for the exercise of this power?

Co-op Money NZ has no comment to make.

14. Do you have any feedback on applying the concept of a 'retail service' to financial advice services? Is it workable in practice?

Co-op Money NZ supports applying the concept of a provider required to be licenced if they provide any financial advice services to retail clients. However, if a provider has retail and wholesale clients we do not support the new requirement for all duties related to retail services to be imposed on wholesale services. As already mentioned

we believe wholesale clients are more sophisticated with regards to their product knowledge and comprehension and do not require the same level of disclosure and as retail clients.

15. Do you have any other feedback on the drafting of Part 5 of the Bill?
Co-op Money NZ has no comment to make.

Part 6 of the Bill amends the FSP Act

16. Does the proposed territorial application of the Act set out above help address misuse of the FSPR? Are there any unintended consequences? How soon after the passing of the Bill should the new territorial application take effect?

Co-op Money NZ supports the territorial application of the Act to address the misuse of the FSPR.

17. Do you support requiring further information (such as a provider's AML/CFT supervisor) to be contained on the FSPR to help address misuse?

Co-op Money NZ supports further information to be contained in relation to any regulatory supervision but cautions that it should be made clear what requires an entity to be regulated. For example, if an entity is supervised by an AML/CFT supervisor it should be clear what the supervisor is monitoring in respect to AML/CFT. A member of the public is not familiar with AML/CFT regime and what it means for a regulated entity.

18. Do you consider that other measures are required to promote access to redress against registered providers?

Co-op Money NZ does not have any comments to make.

19. Do you have any comments on the proposed categories of financial services? If you're a financial service provider, is it clear to you which categories you should register in under the proposed list?

Co-op Money NZ supports the proposed categories of financial services. In general the current format is confusing and has resulted in inconsistent listing of financial services by similar entity types. We welcome this improvement.

20. Do you support clarifying that schemes must provide information to the FMA if they believe that a provider may be involved in conduct that constitutes breach of relevant financial markets legislation?

Co-op Money NZ does not have any comments to make.

21. Do you have any other feedback on the drafting of Part 6 of the Bill?
Co-op Money NZ does not have any comments to make.

Schedule 1 of the Bill sets out transitional provisions relating to DIMS and the code of conduct

22. When should an FMC Act DIMS licence granted to AFAs who provide personalised DIMS expire? For example, should it expire on the date on which the AFA's current authorisation to provide DIMS expires?

Co-op Money NZ does not have any comments to make.

23. Do you have any other feedback on the drafting of Schedule 1 of the Bill?
Co-op Money NZ does not have any comments to make.

Schedule 2 of the Bill creates a new schedule to the FMC Act with detail about the regulation of financial advice

24. Should the FMC Act definition of 'wholesale' be adopted as the definition of wholesale client for the purposes of financial advice? Why or why not?

Co-op Money NZ supports the use of a consistent definition and is comfortable with the FMC Act definition of 'wholesale' to be adopted

25. We understand that some lenders consider that they may be subject to the financial adviser regime because their interactions with customers during execution-only transactions could be seen to include financial advice. Does the proposed clarification in relation to execution-only services help to address this issue?

Co-op Money NZ agrees the issue of execution-only transactions is clearer.

26. Are there any unintended consequences resulting from the minor amendments to the exclusions from regulated financial advice, as detailed above?

There are no unintended consequences to our knowledge.

27. Do any of the membership criteria or proceedings for the code committee require further clarification? If so, what?

We wish to emphasise that membership must include a broad cross section of experience and should therefore have representatives of small financial advice providers with simple products.

28. Does the drafting of the impact analysis requirement provide enough direction to the code committee without being overly prescriptive?

Co-op Money NZ agrees with the drafting of the impact analysis requirement to provide direction for the code committee.

29. Does the wording of the required minimum standards of competence knowledge and skill which 'apply in respect of different types of advice, financial advice products or other circumstances' adequately capture the circumstances in which additional and different standards may be required?

Co-op Money NZ welcomes the requirement for the code to acknowledge and apply different minimum standards of competence, knowledge and skills for different product advice. However, we still believe there is a risk that competency requirements could be over engineered for the very simple and non-complex products our Members provide to their customers. The code committee must keep in mind the challenges with the existing Act which is restricting the most basic financial advice on simple financial products, such as a savings account. As noted in question 27 the code committee should include small financial advice providers to ensure competency standards are not excessive in relation to the simple nature of some financial products.

30. Should the Financial Advisers Disciplinary Committee consider complaints against financial advice providers as well as complaints against financial advisers? Why or why not?

Co-op Money NZ have no comment to make.

31. If the jurisdiction of the Financial Advisers Disciplinary Committee is extended to cover financial advice providers, what should be the maximum fine it can impose on financial advice providers?

Co-op Money NZ have no comment to make.

32. Do you have any other feedback on the drafting of Schedule 2 of the Bill?

Co-op Money NZ have no comment to make.

About transitional arrangements

33. Are there any other objectives we should be seeking to achieve in the design of transitional arrangements?

Co-op Money NZ agrees with the objectives to be achieved through the transitional arrangements.

Proposed transitional arrangements

34. Do you support the idea of a staged transition? Why or why not?

Co-op Money NZ does not have any comments to make.

35. Is six months from the approval of the Code of Conduct sufficient time to enable existing industry participants to shift to a transitional licence?

As we are not fully aware of what it will require from an entity or individual to apply for a transitional licence we are not able to comment on whether six months is long enough to shift. It will depend on the compliance criteria revealed in the Code of Conduct and/or Regulations.

36. Do you perceive any issues or risks with the safe harbour proposal?

Co-op Money NZ does not have any comments to make.

37. Do you think there are any elements of the new regime that should or shouldn't take effect with transitional licences? What are these and why?

Co-op Money NZ does not have any comments to make.

38. Is two and a half years from approval of the Code of Conduct sufficient time to enable industry participants to become fully licensed and to meet any new competency standards?

Refer to question 35 – we do not have enough information to know if this time frame is sufficient with no knowledge of what is required to become fully licensed.

Co-op Money NZ has no further comments to make on questions 39-48 (Relating to AFA's and the phased approach to licensing).

Conclusion

Thank you for the opportunity to provide a submission on this draft Bill. If you have any questions regarding our comments please feel free to contact me on **Withheld**

This submission does not contain confidential information.

Yours sincerely,

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Chief Financial Officer

Cc: Henry Lynch – Chief Executive
Steve Friis – Manager Risk and Compliance

