Submission: Consultation Paper – New Financial Advice Regime

To: Ministry of Business, Innovation and Employment

Submitter Details:

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Select Wealth Management Limited (Select Wealth) offers a 'wrap' administration service designed to provide retail investors with access to a range of fund managers and investment options which have been thoroughly researched. This includes a range of model portfolios covered under our DIMs licence. We provide portfolio administration services under a consolidated reporting platform. This service is distributed through a network of 150 independent authorised financial advisers who provide personalised financial advice. Select Wealth does not provide investment advice. A wholly owned subsidiary of JMIS, Select Wealth has approximately $650m funds under management for over 5300 clients. Our submission is reflective of the conversations held with our advisers.

Select Wealth are generally supportive of the intent of the Financial Services Legislation Amendment Bill. We thank the Ministry of Business, Innovation and Employment for the opportunity to provide our submission on these legislative changes which are important to our industry.

General Comments:

- One significant area we believe is potentially misleading is the stated “Duty to put client interests first”. Our understanding is that in doing this a FA or FAR only needs to consider the product suite of their tied provider and then provide some disclosure. It is hard to reconcile how a FA or FAR can possibly be putting “client interests first” if tied to a single product manufacturer. In a practical sense buying financial service is very different from buying most other products which are clearly branded (for example a consumer going onto a Ford car yard will expect to be sold a Ford, whereas someone seeking financial advice from a FAR will probably not understand that the only option considered behind the scenes in “putting clients interests first” will be a Ford). Disclosure will not help as this will get lost in the documentation. Only independent advisors should be able to claim that they “have put client interests first”. FAR’s in particular should never be able to make this claim as they are simply tied sales agents.

- FAs who contravene a conduct obligation will be subject only to disciplinary action. FARs will escape even that. FAPs on the other hand, may be civilly liable for FAs and FARs who act on their behalf. We would argue that FAs and FARs should have increased accountability. Additionally, FAPs should have a defence if it can show it took all reasonable steps to ensure its FAs/FARs complied with their legislative obligations.

- Wholesale providers should not be subject to the duty to place client interests first – MBIE currently proposes that the duty to place client interests first duty will extend to advice provided to wholesale clients. We would argue that they do not need this protection, which is not provided in Australia. Overlaying this statutory duty on top of a wholesale client's contractual protections is of concern.

Below we also provide our views on 2 selected questions:

Q3. Do you have any other feedback on the drafting of Part 1 of the Bill?

1. Defined Terms

In Part One of the Bill the defined terms “Financial Adviser” and “Financial Advice Representative” are misleading. The term “Financial Advice Representative” should be changed. At a minimum, the word “Advice” should be removed so that the term becomes either “Financial Representative” or more accurately “Financial Product Salesperson”.

We believe strongly that quality financial advice is very important and that Financial Advisors should be a respected profession. The terms used will confuse consumers and undermine the Advice profession.

Page 7 of the Consultation Paper identifies an issue with the existing regime as “unnecessary complexity is preventing adequate consumer confidence and understanding.” The current AFA and RFA designations fall into this category of creating complexity. Unfortunately, the new “Financial Adviser” and “Financial Advice Representative” terms are even more confusing.

With the AFA / RFA designations clients can identify there is a difference between the terms but are most likely puzzled as to what they mean. With the suggested new designations clients are unlikely to notice the subtle difference – not noticing the distinction is worse than the current situation.

The confusion is illustrated by wording within the Consultation Paper describing the two designations. For example, it is hard to make sense of the following statements:

- *Consultation Paper page 13*: “A financial advice representative means an individual who is engaged by a financial advice provider to give financial advice; and is not a financial adviser.” This description is simply confusing.
- *Consultation Paper page 18*: “Financial Advice Representative: Individual engaged by a licensed financial adviser provider to give financial advice. Not a financial adviser. Financial adviser: Individual… engaged by a licensed financial advice provider to give financial advice.” To a consumer these definitions sound nearly identical.

Q5. 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?

(1) yes, this duty should apply at all times (2) the words in 431H achieve this (3) language around conflicts of interest need to be tidied up

Yes, “client’s interest first” should apply not only at the time of delivering advice, but also at all times through the preparation of that advice. How can advice be appropriately prepared if during the preparation there is no duty on the adviser to put client interests at the forefront? We believe that the words in 431H (“…in giving the advice or doing anything in relation to the giving of the advice…”) achieve this result.

As an aside we note that the extent of possible conflicts (the advisers “own interests or the interests of any other person”) are extraordinarily broad. This should be limited to the adviser and related parties – it is difficult to construct scenarios where the interests of unrelated third parties should be considered. An obvious third party to consider as captured by this drafting is product manufacturers who are not “related” to the adviser business but are “aligned” by contract as a preferred product provider – yet it is not clear why an adviser should be considering possible conflicts of the client and that aligned (but unrelated) product provider.