Submission on the Conduct of Financial Institutions Options Paper.

Introduction.

This is a submission by Mint Asset Management Limited (Mint). Mint have already signed up to and confirmed support for the submission provided by Nikko Asset Management New Zealand Ltd. This submission covers only matters of interest to Mint that were not covered in this joint submission.

We are grateful for the opportunity to comment but our commentary only covers matters relevant to Mint's business model as a pure manufacturer of retail and wholesale funds and MIS licence holder, which specifically excludes the provision of advice to clients. We are not commenting on what is appropriate for the Banking and Insurance sectors post the Royal Commission in Australia and subsequent commentary from the FMA.

Overall Commentary

We do not believe there is evidence of harm or potential harm to consumers to justify extending an overarching conduct regime to market participants with a similar business model to Mint. We already have conduct obligations under the FMCA and we believe these current obligations are well understood by these licensed participants and the cost/benefit of additional regulation is not justified.

Globally, financial regulation recognizes the segregation of responsibilities between those manufacturing product and those that provide financial advice to retail clients. Mint clearly discloses that it does not provide financial advice to our retail clients and advises them to seek independent financial advice, as our products may not be suitable for their needs. There is a real danger in the proposals with making product providers responsible for customer outcomes as if we were a vertically integrated business. The Royal Commission in Australia had significant concerns with this business model. We do not know our customers age, risk profile or even (where adviser platforms are concerned) their identity. We cannot be held accountable for "good outcomes" under these circumstances.

In our view, good customer outcomes require independent advice. Vertically integrated business models already dominate New Zealand, in some circumstances the client may not understand the relationship between the advice they are being given and the product sold to them. Regulation should focus on this issue. If option 5 is pursued, there is a real risk of unintended consequences as it could reduce the provision of independent advice even further. There are already dwindling numbers of a advisers independent of a tied or aligned arrangement and this could reduce this further .Unfortunately non-aligned advisers in New Zealand is synonymous with smaller adviser businesses as we have no large entities championing access to independent advice.

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Commentary on the Package of Options

Overarching Duties

Some of the overarching duties prescribed are already covered in the product disclosure statement for MIS Licensees. For example, paragraph 143 talks about the visibility of the complaints process and it being accessible and understandable.

Response to Question 2 on page 36.

"Do you think the overarching duty for managing conflicts of interest should be general ….or focus on conflicts of interest that arise through remuneration? What are some examples of conflicts of interest that arise outside of conflicted remuneration and incentives?

The fact of the existence of a vertically integrated model with a tied sales force that can only sell in house products when others in the market may be more suitable for the client's needs is far more concerning than pure remuneration models.

3.3 Options to improve product design.

We support Option 1. Give the power to the regulator to ban or stop the distribution of certain products.

In the wealth space, this could cover products that are inappropriate for retail customers from a risk /reward perspective.

Option 3.

Requirement for manufacturers to identify intended audience for products and a requirement for distributors to have regard to the intended audience when placing product.

For MIS providers this information is already contained in the PDS.This covers intended investment time horizon, significant risks and the investment objective of the product.

The last point under the cons of this proposal is the real concern with this approach. Manufacturers, who do not provide financial advice, do not know the specifics about their customers risk profile will be forced into the financial advice realm. For Mint's part, this is not the business model we have chosen. We want to stay independent of the advice process and recommend our clients seek out independent advice that suits their needs.

3.4 Option 5.

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Paragraph 174 in our opinion muddies the waters between advice and an execution only service. As a manufacturer of retail product that distributes through AFA's we already have an Adviser Agreement in place which requires us to monitor the Advisers use of our marketing materials , the provision of reasonable insurance cover for the Advisers business and that the Adviser has the necessary regulatory approval to distribute our products. As mentioned above we do not know the Adviser's clients and have no knowledge of the suitability of the funds sold to these clients. Therefore, it is not possible for us to monitor good customer outcomes.

The main con against this approach is another blow to the independent advice sector. The outcome would in our view lead to the prevalence of tied advice so that the manufacturer controls the client outcome. Our view is that this is the principal cause of poor customer outcomes in the first place given the dominance of the banks in the integrated financial model in New Zealand.

We want a healthy and growing independent advice sector not a reduction in access to independent advice. Unfortunately, we do not have any large businesses in New Zealand providing independent advice and consequently the impact is felt in smaller businesses with one to five AFA's.

3.6 Options for tools to ensure compliance.

Option 1: Empower and resource the FMA.

We believe that FMA is the appropriate regulator for conduct. However, we do not support an overarching conduct regime for those that already have an appropriate level of conduct monitoring through the FMCA. The harm caused by these participants does not justify the extra compliance burden in terms of cost and the complexity of oversight through both product and entity.

The other issue is the skills and capability gap that the FMA is likely to have in terms of fulfilling this role. Staff with understanding of the different business models operating in New Zealand would be needed as well as an understanding of markets as well as the law.

Option 2: Entity Licensing.

Any solution that involves a significant increase in cost such as individual entity licensing, will inevitably flow back to clients. New Zealand currently lacks scale in financial services and all entities are striving to limit the costs borne by customers given the scrutiny on fees. Therefore, this approach seems counterintuitive. As already mentioned FMCA licensees already have conduct obligations as part of the current regime.

Option 3: Broad range of regulatory tools.

We prefer this approach alone as opposed to licensing and this option combined.

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Option 4: Strong penalties for non -compliance

We agree with this approach.

Option 5: Executive Accountability

As mentioned in the text this already applies to product disclosure statements. We believe this provides a strong incentive to drive cultural change in an organization.

Option 6: Require whistleblowing procedures to be in place.

We do not believe this is working effectively currently so see little point in extending this approach.

Option 7: Require regular reporting about the industry.

Licensed market participants already have to supply reports to the FMA. It is not clear how the regulator uses this information. There is a significant cost in supplying this data and we would not favour this approach.

Option 8: Greater role for industry bodies.

New Zealand lacks strong industry bodies who would be capable of acting as self-regulating organizations. Historically they have been focused on lobbying on behalf of certain segments of the financial markets. For the above reasons we do not see this as an option.

Part 4: Who should the conduct regulation apply to?

We believe option 1 is the most appropriate option as it targets the additional regulation at where harm has actually occurred.

In relation to clause 218, we believe the wholesale investor/wholesale client definition should be more than purely an asset test. As in other jurisdictions, it would be helpful to have a recent history of investing in sophisticated products (habitual investor) demonstrating experience with investing as evidence of meeting the standard of being considered wholesale.

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Option 2: Apply preferred package of options to all those financial services providers that offer similar services to banks and insurers.

As mentioned in the text, many entities offer similar services to banks and insurers. However, most of these activities are covered by existing FMCA licenses.

In our view, the issues are not to do with particular products or even particular institutions (banks and insurance companies). The focus should be on the vertically integrated business model and so if a distinction is to be made about who to include in any new regime it should focus on vertical integration.

Share brokers and a number of fund managers fall into this category. The regime should not be applied to pure product manufacturers who do not provide advice on their products. The behavior around the selling of these tied products is in our view the main problem. This results both from financial incentives and the lack of client understanding about why a particular product is being offered to them. They are not sufficiently aware that this may not be the best product for them taking account of their financial circumstances.

Dual Licensing

Option 1 is preferable to option 2 to provide a consistent regulatory approach for all conduct.

Entity versus product-level regulation.

This approach has a philosophical appeal. It makes for a consistent approach by the regulator and improves the regulators understanding of the range of business models being operated and potentially a greater understanding of where risks lie.

The problem is the FMCA is product not entity focused and the overall approach and current resourcing of the regulator is structured along these lines.

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