Southern Cross
Health Society

Southern Cross Medical Care Society
Level 1, Ernst & Young Building
2 Takutai Square, Auckland 1010
Private Bag 99934, Newmarket, Auckland 1149
Phone **0800 800 181**
www.southerncross.co.nz/society

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Financial Markets Policy
Building, Resources and Markets
The Ministry of Business, Innovation and Employment
PO Box 1473
Wellington 6140

By email to: FinancialConduct@mbie.govt.nz

Dear Sir/Madam,

Re: Submission on the Options Paper, Conduct of Financial Institutions, April 2019.

Thank you for providing an opportunity to submit on the options paper.

Southern Cross Medical Care Society (**Southern Cross**) is New Zealand's leading health insurance business, with more than 870,000 insured members and 62% of the health insurance market. In the financial year June 2018, Southern Cross paid $906 million of private healthcare claims, representing 74 per cent of all health insurance claims. As a not for profit, friendly society that exists for its members, for every dollar collected in premiums, Southern Cross paid 92 cents in claims back to members.

Collectively the wider Southern Cross group is also New Zealand's largest non-public funder and provider of elective healthcare services, and helped look after the health and wellbeing of more than one million New Zealanders last year.

Southern Cross welcomes the wider discussion on conduct and culture in the financial sector the Minister has initiated. Southern Cross agrees that it is essential for New Zealanders to have high levels of trust and confidence in financial services and markets, as they are critical to the wellbeing of our society and economy, and good conduct and culture are central to achieving this. Southern Cross also agrees that good customer outcomes should be at the heart of doing business in the financial sector.

However, we do have serious concerns with the timing of the consultation and indicative implementation process and detail provided so far on the proposed options. We consider that the inter-relationship with existing and pending laws and regulations is not well understood from the options paper. We know from discussions and industry forums there is anxiety over this potential uncertainty. This arises partly as various options were presented in separate sections, independent of each other and not as 'packages', but also because of the limited detail and guidance provided.

Having expressed this concern, we appreciate there is a required level of change and uplift needed in the sector generally in terms of conduct. As noted we fully support this direction. However, major changes made quickly that are not fully understood by the sector and all relevant stakeholders are unlikely to be successful or enduring. In our view, the industry must

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first better understand the systemic framework it is being asked to move to, and not just the additional regulatory options potentially on offer.

We request MBIE further consider and consult on how additional conduct regulation will interface with existing regulation, in particular the Financial Markets Conduct Act 2013 (**FMCA)** and the changes underway from the Financial Services Legislation Amendment Act 2019 (**FSLLA**).

We also request that MBIE put forward potential 'option packages' with a greater level of detail to facilitate a deeper debate and ensure the issues are fully considered.

We note in both Australia and the UK, changes in conduct and culture regulation emerged from much deeper reviews into widespread misconduct and a "failing" regulatory framework. Southern Cross agrees with the Minister that circumstances in New Zealand are different and are not, for example, as acute as in Australia. In our view, this further supports the fact that more guidance, input and consultation is needed from all quarters for balanced, effective and enduring conduct regulation to result.

We have provided feedback on the specific questions raised in the Options Paper below.

Yours faithfully,

Mark Flaherty
Group General Counsel

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1. **Which overarching duties should and should not be included in the regime? Are there other duties that should be considered? Do you agree with the pros and cons of each duty? Do you have any estimates of the size of the costs and benefits of these options? Are there other impacts that are not identified?**

Summary:

We support a principles-based approach to financial services regulation that is supplemented by appropriately detailed guidance. This approach will require careful consideration of the (i) principles to be adopted; (ii) the content of specific guidance; and (iii) their interrelationship with each other and to existing regulation. None of these matters can be considered in isolation.

We consider that three high level, over-arching principles that expand on Options 1 and 2 coupled with a more detailed conduct handbook that incorporates aspects of Options 3-6 and other conduct matters represents a more complete, workable and logical framework.

The three over-arching duties could be:

1. *A duty to act with integrity;*
2. *A duty to act with due skill, care and diligence;*
3. *A duty to have regard for customers interests.*

We submit that Options 3 to 6 are not over-arching principles, but rules more suitable for inclusion in a more detailed, binding 'conduct rules handbook' developed through further consultation with the industry and ultimately regulation. Furthermore, as options 3 to 6 are not framed in overarching terms, we consider they are more likely to conflict with and duplicate the other overarching duties that have been proposed.

Any duty-based regime that relies on principles requires a detailed code or rules handbook underpinning it, similar to handbooks and guidelines developed overseas. Without it a new regime will not be understood and applied consistently (even allowing for different products and settings)

Finally, duties should also be subject to tests and defences of reasonableness or taking reasonable steps. These aspects together with regulator and regulatory guidance could form part of the more detailed conduct rules handbook. In our view this type of clarity in advance is a far better outcome for businesses and consumers, than waiting for adverse events to take place or judicial interpretation after the fact.

General observations:

We understand and support using 'principles' for duties as a pragmatic way of regulating conduct and culture (noting it is relatively common globally). However, the proposed duties are potentially far-reaching and could apply to almost every individual within a financial institution (many of whom will be unfamiliar with any form of financial regulation). Without detailed context and clear forward guidance, regulatory expectations will remain unclear to consumers and businesses in many practical situations. Businesses need to understand the intended scope and applicability of their regulatory obligations, (e.g. where they may apply, to whom, when and how) and what the conduct enforcement approach is in order to appropriately direct their business and compliance resources and activities. Without clarity on the meaning and applicability of the duties many businesses may:

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- become overly risk adverse or place emphasis in irrelevant areas; and/or
- operate largely on untested assumptions, including when duties should or should not apply in relevant, important circumstances.

As a general principle it is difficult to develop a workable and coherent regulatory framework in the abstract and we consider that, in their current form, the duties proposed at Options 1 to 6 lack sufficient definition and detail to facilitate effective regulation.

The lack of detail also makes it difficult to conduct any considered analysis of costs and benefits. However, we would welcome further detail and consultation on preferred overall option packages, so an assessment of relevancy, context and cost-benefit impact can be undertaken.

We submit there is also potential conflict and overlap within the proposed options and against the nine duties recently released in the Code of Conduct (for Advisers), which is also conduct focused. Our concern is that New Zealand consumers and business may end up with a patchwork of different but similar rules, that appear ad-hoc, overlapping and difficult or inefficient to administer or apply.

As set out above, we support a principles-based approach to regulation of the financial services industry. The key will be to determine the best way to structure the relevant framework. For the reasons set out above, we submit that the most appropriate framework would be one based on three high level, over-arching principles that expand on Options 1 and 2, coupled with a more detailed conduct handbook that incorporates aspects of Options 3 to 6.

Other impacts or issues:

Reasonableness: All duties should be clearly stated to be subject to tests of reasonableness (or defences of having taken reasonable steps). Further, as noted, it is critical if the new conduct regulation is to work as intended that clear, detailed forward guidance about what constitutes reasonable steps in relation to a matter to meet any duties is also provided.

Timing and certainty: many financial services businesses are already working hard to ensure compliance with the new Code of Conduct, financial advice licensing and other changes brought about by FSLAA. In our view a clear explanation and direction on the resulting framework and timing on the new reforms needs to be communicated. It is becoming increasingly difficult to continually plan and redesign training, business processes, customer facing channels, systems, communications, policies, controls, frameworks and reporting regimes, when there is considerable uncertainty from current changes that are already mid-way in implementation, with potentially further new regulation that will impact the current changes but in a way not yet known.

Enforcement approach: Without any clarity on the enforcement approach that will be adopted by the responsible regulator(s) in relation to these duties, it is difficult to understand how the duties may be interpreted and applied, which makes it difficult to comment on the substance in this area. However, there should be corresponding safeguards built in to ensure any action taken in respect of any duties adopted is proportionate and is applied *fairly and consistently* by the regulator(s). For example, the publication of detailed guidance and examples, their decisions and findings, and the

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principles and process they will follow. It should also be clearly stated that the duties will be actionable only by the relevant regulator(s).

Costs: We expect there will be significant costs for this type of change imposed on insurers as the reforms will require at a minimum a detailed review of most systems and business processes to ensure the standards expected by the new principles are being met. However, without detail and guidance, and a reasonable level of time and resource, it is not possible to carry out a meaningful cost – benefit analysis at this stage.

Option 1:

Unless used in a specific context, words like 'prioritise' conflict with many existing company laws, director duties and prudential regulation. Those words also potentially create a duty that is fiduciary in substance. While this may be appropriate for certain specific relationships and contexts (e.g. between adviser and client) applying it at an entity wide level is not, in our view, a workable or reasonable approach. We suggest this duty should use better understood, more settled legal concepts like: 'take into account' or 'have regard for'.

We submit Option 1 should be revised to: *"A duty to have regard for customers interests.*

Option 2:

We support this duty.

Option 3:

We consider this duty is unnecessary and covered by Options 1 and 2. In addition, it is unclear whether this option is addressing 'potential need' and design issues or is more concerned with specific needs where known or reasonably ascertainable.

We are concerned that, at present the duty tries to oversimplify complex issues, noting guidance on scope in this area might allay these fears, such guidance could be part of complying with the duty under Option 1. In any case this subject matter is more appropriate for a more detailed conduct rules/guidance handbook.

In our view, Option 3 is a clear example of an inconsistency in the framework proposed in the options paper. While Options 1 and 2 are very high-level, Option 3 addresses a very specific point. This inconsistency demonstrates how a more appropriate framework would be to adopt a limited number of high-level duties, with more specific incidents of those broad duties being detailed in accompanying guidance.

We further submit that instead, a third and final over-arching duty could be created in its place: *"A duty to act with integrity".*

Option 4:

We support the theme that encourages or requires 'design', 'control' and 'systems'. However, we do not consider that the duty is appropriately characterised as an over-arching principle or that, as drafted, it meets the outcome it seeks to achieve.

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We submit that design and compliance matters raised by Option 4 should be set out in more detail in a conduct rules/guidance handbook, noting that for banks and insurers this may overlap with prudential risk management rules and guidance. Care should therefore be taken to eliminate overlap or complexity.

It is not clear what standard a firm's systems and controls would need to meet in order to be compliant. In particular, it is not sufficiently clear what "supporting" or "addressing" conduct requires.

We also do not consider systems and controls "address poor conduct". Systems and controls aid, support, detect and prevent poor conduct, but people "address poor conduct" (as well as substantially contribute to the other matters mentioned).

Options 5 and 6:

We consider that under the framework we have proposed, with revised Options 1 – 3 as overarching duties set out above, Options 5 and 6 are superfluous. We therefore do not support their inclusion and believe the subject matter again more properly belongs a level down in a conduct rules/guidance handbook.

We also submit that words like "transparent" are vague and uncertain in law. For example, it is unclear whether "transparent" would override legal privilege, confidentiality obligations and privacy rights.

2. ***Do you think the overarching duty for managing conflicts of interest should be general (as it is currently worded) 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?***

For the reasons set out above we submit that an overarching conflict duty (whether specific to incentives or not) is already covered at the over-arching level by our suggested Options 1 to 3 and including it as a duty will result in multiple duties for essentially similar issues. (This would also require a multifaceted control and process response from businesses that is likely to be very costly and inefficient).

Noting there are already remuneration-related disclosure regimes for advisers selling products due to come in to force dealing with aspects of remuneration-related issues, in our view, further regulation on conflicts and or remuneration should form part of clear and detailed guidance that deals with, amongst other things, other regimes, materiality and due process.

3. ***Is a code of practice required to provide greater certainty about what each overarching duty means in practice?***

As noted, we strongly support, and consider it essential, that alongside any duties, a detailed rules / guidance handbook is published, consulted on and developed with the industry and other relevant stakeholders.

We also do not consider the duties can be developed properly in isolation from each other and the detailed handbook together with the 'potential packages' of options is first needed to help provide guidance about what each overarching duty means. This will be critical if

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businesses are to adapt within short timeframes, implement change efficiently and have certainty.

4. ***Which options for improving product design do you prefer and why? Do you agree with the pros and cons of the options? Are there other impacts that are not identified? Are there other options that should be considered? Do you have any estimates of the size of the costs and benefits of the options?***

We do not support the banning powers outlined in Options 1 and 2. In our view, they are too broad and have the potential to be applied too arbitrarily.

We support the underlying theme of Option 3, but do not support it in its current form, as clear guidance on when and how to apply this in practice is needed. It is also difficult to see how this option could feasibly apply generically across all insurance products. Health insurance products are not typically designed with an 'intended audience' as such, as this implies segmentation of some sort e.g. age, health, other socio-economic factors etc.

Instead, key differentiators for products such as these are driven by cost versus the level or type of benefits or cover. In turn this depends on a customer's budget and the level of peace of mind or risk they are prepared to accept. For example, a customer may be willing to spend more on premiums because this will give him or her a higher level of cover.

The question of relying on target or intended audience as a means of regulation is also problematic in health insurance as, for example, a customer who is more pre-disposed to develop a certain illness, for a policy which provides cover for such illness may have that cover underwritten and excluded precisely because of that strong pre-disposition.

We accept there may be instances of product design unsuitable for anyone in the market and those products should not make it to market. However, the issue of targets and intended audiences in health insurance and many other insurance products is or should be driven by the quality of the marketing and information provided by way of disclosure (being clear about what a product does and does not cover) and the financial advice provided to consumers. Both aspects are already subject to extensive, consumer-focused regulation.

As such, in health insurance product lines, this option would seem to be further unnecessary regulation and additional cost that will also be difficult to apply in a way that provides any tangible consumer benefit.

5. ***If a design and distribution requirement like option 3 were chosen, are there particular products for which this is more necessary than others? If so, please explain what and why.***

As noted, we do not consider it relevant to health insurance and similar product lines.

6. ***Which options to improve product distribution do you prefer and why? Do you agree with the pros and cons of the options? Are there other impacts that are not identified – such as unintended consequences or impacts on particular business models? Are there other options that should be considered? Do you have any estimates of the size of the costs and benefits of the options?***

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We understand the theme in Option 1; to set standards and general principles to design remuneration and incentives appropriately. However, we do not consider 'promoting good customer outcomes' is an appropriate or workable entity-wide standard to apply. It is providing a perspective which is too narrow. Instead, we consider the relevant substance of this option would be adequately covered by the overarching duties we have suggested.

Entity wide regulation in this area would need careful consideration not only to balance multiple competing priorities like financial sustainability, but also to maintain an entity's competitiveness.

As such, while we support the approach that entities should have proper regard to customer interests, this issue is suitably covered by the overarching duties we have suggested. We also consider that an entity wide focus on remuneration and incentives could lead to perverse incentives being developed unintentionally within sectors in the industry, unless the duty was accompanied by very prescriptive rules that fully closedown unintended outcomes. We consider this would be highly undesirable and very prescriptive rules are unlikely to be workable or realistically achievable across all of banking and insurance. Therefore, we do not support inclusion of an entity-wide duty.

We do however, understand and support the need to strongly discourage or remove certain types of excessive or inappropriate targets and incentives linked to sales, but an outright ban of incentives or types, other than opaque or soft commissions, will be too restrictive and difficult to implement fairly in practice. Again, a ban approach will lead to perverse incentives or outcomes if not very carefully designed, e.g. a loss of access to advice or the true cost of advice added more opaquely to the product cost.

We consider there is some merit to a version of Option 4 that seeks: '*to remove excessive or inappropriate sales incentives'* as a concept, rather than rely on specific 'parameters'. However, even what is "excessive" or "inappropriate" is likely to be both contestable and difficult to achieve across all sectors. It may also suffer from the same 'cons' as Option 4 set out in the options paper.

Option 5 is in our view an inferior principle to option 1

Further, guidance regarding non-sales advice and examples of good customer outcomes would also be needed if any principles based approach is used. This would help businesses understand any demarcation between the Adviser Code of Conduct and any specific further product distribution conduct rules and implement both in a coherent manner.

In summary:

1. the proposed over-arching duties, combined with the new Adviser Code of Conduct and in conjunction with empowering the FMA with a broader range of tools, should deliver the good conduct and culture outcomes in this area, without further additional duties or change at an entity level;

2. The principal of "removing excessive sales incentives" could be taken further, within the Adviser Code, e.g. at a sales level, but very clear forward guidance and regulatory settings would be needed on a definition of excessive.

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8. ***What is your feedback on imposing a duty to ensure claims handling is fair, timely and transparent? Do you agree with the pros and cons? Are there other impacts that are not identified? Are there other options that should be considered? Do you have any estimates of the size of the costs and benefits of this option?***

While there have been well-reported issues with claims handling as a result of the earthquakes in Christchurch, affecting the ability of EQC and general insurers to deal efficiently with all claims, those issues arose from an unprecedented series of events in New Zealand's recent history, and are not the norm for the industry. Health and other personal lines of insurance have not had the same problems and are not likely to suffer from such an event in the future. We would urge MBIE to reflect carefully before imposing any broad-based rules, (entailing significant compliance costs and potentially significant legal costs) on all insurers as a result of this specific issue. Resulting increases in compliance and legal costs may ultimately be borne by consumers.

We also submit that the insurance contract law reform already in progress under the separate options paper is a better vehicle for dealing with any residual issues relating to claims handling.

9. ***If this option were to be adopted, should an attempt be made to clarify what fair, timely and transparent mean? Why? What are the benefits and costs of doing so?***

Please see our submission at 8 above.

10. ***What is your feedback on requiring the settlement of claims within a set time? Are there other impacts that are not identified? How do you think that exceptions should be designed? Should there be different time requirements for different types of insurance? Do you have any estimates of the size of the costs and benefits of this option?***

Noting again that this is more appropriate to be dealt with as a package of insurance contract law reform, we support the concept that claims should be settled without undue delay. However, if an arbitrary time limit on the settlement of claims were set, clarity on the definition of what is a "claim" and what constitutes "settlement" of such claim may be necessary.

For example, historic claims that have been declined, part settled or not pursued are frequently raised or re-litigated by customers, when discussing subsequent claims many years later and as such the historic "claim" may well fall outside a 2-year period. This is an issue affecting many long-term insurance contracts such as health or critical event type policies.

Additionally, a specific requirement to address claims within a specific time limit is inconsistent with an otherwise principles-based approach to claims handling and conduct generally.

11. ***Do you agree with this option to empower and resource the FMA to monitor and enforce compliance? Do you agree with the pros and cons? Are there other impacts that are not identified? Are there other options that should be considered? Do you have any estimates of the size of the costs and benefits of the options?***

We support the FMA being appropriately resourced and empowered to monitor and enforce compliance with any conduct regime. We strongly agree with MBIE's position in

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the options paper that the FMA would be the most appropriate regulator to supervise a conduct regime, especially if a principles-based approach is adopted.

12. ***What is your feedback on the option to require banks and insurers to obtain a conduct licence? Do you agree with the pros and cons? Are there other impacts that are not identified? Are there other options that should be considered? Do you have any estimates of the size of the costs and benefits of the options?***

We do not support multiple conduct licensing with the same conduct regulator. We note that banks and insurers are already subject to their respective prudential Reserve Bank registration / licensing regimes, and we consider two licences overall is sufficient.

Having three licences, and two in the conduct area, would create significant additional cost and duplication. This is not just confined to the process of applying for a licence. The ongoing obligations associated with maintenance of the licence would also present a significant additional burden. We conservatively estimate that the more obvious, direct costs alone (e.g. FTE/staff resource) of obtaining a single licence for an entity of our size to be in the order of $1.5-2.0m, with at least a similar annual amount required to maintain each licence. (This estimate excludes indirect costs and impacts).

Given the recent FMA and RBNZ review of the life insurance industry, legislative changes under FSLAA, the new Adviser Code of Conduct and the proposed conduct and culture changes, a single conduct licence should be sufficient. It may be that full licensing (either under FSLAA regulation or later amendments to it), could accommodate any additional requirements that are deemed appropriate at the conclusion of the current consultation process. We submit that in the unlikely event there are still isolated conduct issues in the industry following the implementation of the above, these would best be dealt with on an individual entity or issue basis.

We also agree that any requirement for additional conduct licences will be a significant barrier to entry for new, smaller firms and damage competition and innovation.

13. ***What is your feedback on this broad range of regulatory tools? Do you agree with the pros and cons? Are there other impacts that are not identified? Are there other options that should be considered? Do you have any estimates of the size of the costs and the benefits of the options?***

We agree in principle with the FMA having a broad range of regulatory tools at its disposal for enforcement action.

14. ***Do you think that the maximum penalties available for breaches of any conduct duties should be the same as the existing FMC Act penalties? Is there a case for making the penalties higher?***

The current level of penalties under the FMCA may be appropriate. However, any penalties for breach of conduct requirements ought to be matters enforced by the FMA alone. Given their jurisdiction and continuing oversight role in this area we consider this appropriate and fair and more likely to lead to improved outcomes, consumer protection and uplifts in standards. This will occur if businesses see a consistent approach to conduct and enforcement, but will be undermined if they are routinely faced with nebulous and lengthy civil lability claims.

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15. ***What is your feedback on the option of executive accountability?***

While we appreciate the need to uplift conduct in the industry generally, and can understand the need for practical steps to achieve this, we are uncomfortable with introducing a complex executive accountability regime as part of this reform (particularly given the urgency applied to the changes). Creating an executive accountability regime is a complex exercise in its own right. It requires highly specialised risk input. It is not well suited to being an "add on" to a broader regulatory overhaul.

In our view, it requires a best practice approach which draws on applicable lessons from similar regimes overseas. Such regimes (such as Banking Executive Accountability Regime (**BEAR**) in Australia and the Senior Managers Regime in the UK (**SMR**)) have been the product of extensive consultation and industry input, and have been introduced as an overlay after regulatory schemes have been established. They have also required considerable regulator and industry resources to establish and maintain.

In our view, it is questionable whether there is a demonstrable need for the immediate implementation of an executive accountability regime. We consider that a regime of that nature is a "second-order" issue to be addressed once the content of any new conduct regime has been determined. It is important that any executive accountability regime is developed through careful planning and consultation and is informed by actual experience, to ensure it responds to actual, rather than theoretical concerns.

We suggest that the overarching, principles based duties regime as discussed above could be implemented first, with a subsequent review of their effectiveness and re-consideration of whether any further regulation is required. This is consistent with development of executive accountability regimes in other jurisdictions. These regimes have been designed as an additional layer on top of an existing and relatively mature conduct regulation regime. An approach such as this would also assist to address issues of how the regime would interlock with other existing (director) liability regimes - a key consideration for officers and directors.

In any event, it is difficult to provide more detailed feedback at this stage, as particular senior manager conduct rules or duties have not been proposed in the options paper. This suggests that executive accountability is an issue best considered once the underlying conduct regime is more settled. Even on the limited detail provided as part of the options paper, there are already significant questions as to how the scheme would operate, which require detailed input from the industry and other stakeholders. For example:

- We note there is a suggestion of expanding the scope of current FMCA provisions broadening the regulatory breaches in which executive liability can arise. However, these are relatively simple legal duty-offence based provisions rather than a specifically focused executive accountability framework as seen in BEAR or the SMR.

- A key question is whether it is intended that there will be a level of materiality and reasonableness type test involved in the satisfaction of the duties and defences (as there is in similar jurisdictions). We submit that this type of test should be included in any future executive accountability regime that is developed.

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16. ***What is your feedback on the whistleblowing option? Do you agree with the pros and cons? Are there other impacts that are not identified? Are there other*** **options that should be considered? Do you have any estimates of the size of the costs and benefits of the options?**

    We support a requirement for financial institutions (including insurers) to put in place whistleblowing procedures. However, such whistleblowing requirements could be covered under more general legislation like the Protected Disclosures Act 2000.

17. ***What is your feedback on the option of regular reporting on the industry? Do you agree with the pros and cons? Are there other impacts that are not identified? Are there other options that should be considered? Do you have any estimates of the size of the costs and benefits of the options?***

    We do not support additional reporting without understanding the need and benefits. Regular reporting obligations that already exist, together with the regulator's ability to request additional reporting where it feels this is necessary, should be sufficient. We do not believe applying a broad-brush approach to additional reporting across the industry is necessary or helpful and could be costly.

    We also further query how useful industry reporting would be for consumers as it would likely be complex and, therefore, difficult for the layperson to understand.

18. ***What is your feedback on the role of industry bodies? Do you agree with the pros and cons? Are there other impacts that are not identified? Are there other options that should be considered? Do you have any estimates of the size of the costs and benefits of the options?***

    We consider industry bodies have an important role to play. However, we agree there is no need for a greater role than they currently have in this area.

19. ***What is your feedback on the options regarding who the conduct regime should apply to? In particular: Do you agree with the pros and cons of the options? Are there other impacts that are not identified e.g. do the proposed overarching duties conflict with existing regulation that applies to other financial institutions? Are there other options that should be considered? Do you have any estimates of the size of the costs and benefits of these options? Which options do you prefer and why?***

    In respect of application, we prefer Option 2 (the preferred package of options being applied to all those financial service providers that offer similar services to banks and insurers) as this would create a level playing field.

    In terms of overlap with existing regulation, as noted at the beginning of this submission, we would like further clarity and detail on how conduct changes will interlock with the existing financial services principal legislative and regulatory framework, i.e. the FMCA, FSLAA, the Code of Conduct and the Insurance Prudential (Supervision) Act 2010, and the destination or future state of this environment. Regulation must be straightforward to understand and apply to be effective and this is particularly so where multiple pieces of regulation apply across an entity.

    Of the options proposed to address overlap with existing regulation, we consider that carving-out overlapping regulatory requirements from existing regulation, as proposed by

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Option 2, would create significant complexity at both an entity and product level and be very difficult to understand and navigate for both consumer, regulator and entity.

Option 1, in our view, is a more viable practical option for change of this magnitude. However, we propose that the best approach would be to first develop the proposed framework to a more advanced state. That could, in turn, inform a more tangible debate over exactly how the proposed framework would interact with existing legislation. That would enable the new framework to be designed to *interlock* with existing legislation, rather than *overlap* it. This would create the most clarity for the industry and for consumers.

END.

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