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6 November 2019

Ministry of Business, Innovation and Employment

Attention Financial Markets Policy - Building, Resources and Markets

By email insurancereview@mbie.govt.nz

Financial Markets Conduct (Regulated Financial Advice Disclosure) Amendment Regulations 2019 – Submission of AIA NZ (defined below)

This submission is made on behalf of AIA International Limited, New Zealand branch; AIA New Zealand Limited and Financial Services Network Limited (together referred to in this submission as **AIA NZ**), in response to MBIE's exposure draft regulations published in October 2019 (the **Exposure Draft**) and the accompanying discussion document.

About AIA NZ

AIA NZ is part of the AIA Group, the largest life insurer in the world by market capitalisation. AIA Group is headquartered in Hong Kong and listed on the Hong Kong Stock Exchange. AIA Group is solely focused on the Asia Pacific market and currently has a presence in 18 countries.

AIA NZ currently comprises two licensed insurers. The AIA International Limited, New Zealand branch was established in 1981, and is the AIA Group's original New Zealand business. AIA New Zealand Limited was acquired by the AIA Group in July 2018. It has been in business for over 30 years, previously operating under the Sovereign brand.

Financial Services Network Limited is a financial advisory business which focuses on insurance-related financial advice. It is part of the wider AIA Group.

AIA NZ offers a range of life and health insurance products. It is New Zealand's largest life insurer, helping to protect the lives of around 650,000 New Zealanders. AIA NZ is committed to an operating philosophy of *doing the right thing, in the right way, with the right people*.

About this submission

AIA NZ supports the efficient and effective operation of the insurance and advice markets in New Zealand and welcomes the opportunity to submit on the Exposure Draft.

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In particular, AIA NZ supports the Government's policy intent sitting behind and embodied within the Exposure Draft. We interpret the policy intent as a commitment to ensuring that consumers receive the right information at the right time, during the course of the financial advice process, to enable them to make informed decisions about which adviser to engage, and the advice they receive.

AIA NZ strongly believes there is an under-insurance issue in New Zealand. In our opinion, it is incumbent on the industry, working in partnership with the Government, to continue to make insurance more accessible to New Zealanders. Access to high quality financial advice is a key part of this. Therefore, we believe that it is important for MBIE to consider, as part of the drafting process, any unintended consequences of the proposed regulations.

We set out our views on the specific questions asked in the discussion document in the attached schedule and look forward to continued opportunities to engage with MBIE as these reforms progress.

Please contact us if you have any questions about our submission or would like to discuss any aspect further.

Yours sincerely

Kristy Redfern
General Counsel
AIA New Zealand

Responses to discussion document questions

Question 1
Will the proposed record-keeping requirement be workable in practice?

AIA NZ generally supports the proposed record keeping requirement and believes that it is workable.

It will be important to ensure consistency between the final regulations and standard licensing conditions. Different record keeping standards should not apply to different components of the regime and we are pleased that MBIE will engage with the FMA to ensure that consistency is achieved.

AIA NZ notes that proposed regulation 192A, as drafted, does not expressly provide for records to be kept by authorised bodies (as compared to the primary financial service provider licensee). We submit that regulation 192A should be updated to provide for this.

Question 2
Do you have any comments on the drafting of the Regulations that will require information to be made publicly available?

AIA NZ notes the requirement in proposed regulation 229C(4)(b) for "publicly available" information to be "easily readable".

While it may seem obvious, it would be helpful to expressly state that this requirement does not necessitate documents being provided in any language other than English. At times financial advice providers (including AIA NZ) provide documents to some clients in other languages, where doing so is practicable and will enhance customer outcomes. However, there are challenges associated with this being legally mandated.

Question 3
Do you have any comments on the drafting of the Regulations that will require the disclosure of information when the nature and scope of the advice is known?

AIA NZ has the following comments:

Materiality

We note the proposed requirements in clauses 5(2)(e) and (f) of schedule 21A that people giving financial advice must disclose conflicts of interest, commissions or other incentives (together **Conflicts**). As drafted, a materiality threshold is not applied to the disclosure of Conflicts.

AIA NZ strongly believes that a materiality threshold should be applied to the disclosure of Conflicts. We suggest an appropriate materially threshold would be the disclosure of Conflicts that a reasonable consumer would perceive as materially influencing the financial advice.

The reasons for our submission are as follows:

- Transparency in relation to the disclosure of Conflicts is very important. The absence of a materiality threshold could lead to irrelevant information being provided to clients, detracting from key information about Conflicts that clients need to understand. For example, a casual lunch between an adviser and a representative of an insurer, paid for by the insurer, could (without a materiality threshold) be construed as a Conflict which needs to be disclosed. We do not believe that it is the Government's intention to capture this type of scenario.

- The inclusion of a materiality threshold was contemplated by paragraph 30 of the Cabinet Economic Development Committee paper submitted by the Office of the Minister of Commerce and Consumer Affairs (the **Cabinet Paper**). That paragraph states that "this disclosure will be limited to commissions and incentives that a client might perceive as having potential to materially influence the financial advice they receive" (our emphasis).

- There are clear links between this proposed disclosure requirement and the duty to give priority to the client's interests set out in new section 431K of Financial Markets Conduct Act 2013. Section 431K only relates to material influences, so the inclusion of a materiality threshold as part of this disclosure requirement would be consistent with section 431K.

In addition, we note that based on our recent discussions with officials it is our understanding that MBIE's intention had been that only material information would be disclosed.

Conflicts

AIA NZ notes that the proposed regulations require disclosure of a "brief explanation" as to how conflicts are managed (proposed schedule 21A, clauses 5(2)(e)(ii) and (f)(iv)), without further detail as to what a brief explanation might look like.

We submit that an example of a "brief explanation" should be included within the regulations to ensure a consistent approach is taken to disclosures of this kind by those providing financial advice. We anticipate this could be in a similar format to other examples in the regulations (for example, in proposed schedule 21A, clause 4(2)).

Fees

AIA NZ notes the requirement to disclose the amount payable (if known) by a client connected with the giving of advice, or an explanation of how the amount will be determined and, if practicable, an estimate of the amount. No detail is included as to when it will be "practicable" to include an estimate.

This is a significant issue for financial advice providers. For AIA NZ, significant system investments will be required to provide estimates. While AIA NZ anticipates making this investment, we are concerned that other providers may choose not to do so, and instead elect not to provide estimates on the basis that it is not practicable to do so. This is an undesirable outcome for consumers which we consider could be avoided by better articulating the circumstances when providers may elect not to provide estimates.

Disclosure covering multiple advisers

Proposed clause 5(3) of schedule 21A provides that, where advice is likely to be given by a person 'other than A', the disclosures are to relate to that other person. In the context of AIA NZ's business, there are situations where more than one person might provide advice (for example, where a less experienced adviser is working with an experienced adviser).

AIA NZ submits that there should be an express ability to include more than one person in a disclosure. While this would increase the length of the individual disclosure, it would reduce the overall amount of information disclosed. We also consider it would be more convenient and useful for clients.

Question 4
Do you have any comments on the drafting of the Regulations that will require the disclosure of information when the financial advice is given?

AIA NZ refers to its comments on question 3 in relation to “Materiality” and “Conflicts” which also apply to these regulations.

In addition, under proposed clause 6(1)(d) of schedule 21A fee information only needs to be given if it has not already been given in the previous disclosure stage. This makes sense. However, this proviso does not apply to disclosure of Conflicts, meaning that clients may receive disclosure of the same matter at two different stages. This has the potential to add complexity and to detract from new, key information for clients at this stage of disclosure.

We submit that the proviso relating to fee information (referred to above) should also apply to the disclosure of Conflicts, as detailed in clauses 6(1)(e) and (f) of schedule 21A. This appears to be contemplated by paragraph 16.3 of the Cabinet Paper, which provides for the disclosure of "new or additional information" at the time advice is given, rather than disclosure of information previously provided to the client.

Proposed clauses 6(2)(f)(i) and (iv) of schedule 21A are similar and would appear to require the disclosure of largely the same information. This may be a drafting error, as there is no equivalent to clause 6(2)(f)(iv) in clause 5(2)(f).

Question 5
Do you have any comments on the draft Regulations that will require the disclosure of a provider's complaints handling and dispute resolution processes when a complaint is received?

AIA NZ does not have any comments on this question.

Question 6
Do you have any comments on the draft Regulations that set the manner in which information must be disclosed?

AIA NZ does not have any comments on this question.

Question 7
Are there instances in your business when regulation 229D might apply to someone who is not the one to give advice to the client? Please give examples and provide any comments on how the draft Regulations apply in such scenarios?

Within the AIA NZ business, regulation 229D is likely to apply to someone who is not the one to give advice to the client. For example:

- A client may call AIA NZ and speak to a nominated representative who is able to identify the need for advice (and the likely nature and scope), but will not provide that advice themselves because it is outside of their role or is best provided by another person.

- An AIA NZ financial adviser / nominated representative may receive an initial request for advice and identify the nature and scope of the advice, but hand the client on to another person to provide the actual advice.

It is AIA NZ's view that in these scenarios, the initial person is obliged to provide disclosure of the information set out in proposed clause 5 of schedule 21A even when they are not the person who will

give advice to the client. The person who will give the advice may or may not be known at this stage, making it difficult to provide all of the information required by proposed clause 5 of schedule 21A.

AIA NZ submits that this is an undesirable outcome and that regulation 229D should be amended accordingly. The best option would seem to be to defer disclosure of matters specific to the particular person who will give advice until the identity of that person is known.

Question 8
Do you have any further comments on new regulation 229A to 229H of the draft Regulations?

The proposed four stage disclosure approach is best suited to a "full" advice process, or an ongoing adviser / client relationship. AIA NZ is concerned that the disclosure process has the potential to be "clunky" and unwieldly for simple advice arrangements, such as brief one-off engagements or advice that would be class advice under current law.

In our response to question 9 we have suggested an ability to cross-refer to publicly available information, as an alternative to re-disclosing complete information. We consider this will be one effective way to reduce the volume of information disclosed so that clients can focus on the key information at the relevant stage. In addition, AIA NZ considers there will be times when it is possible – and appropriate – to combine the "nature and scope" and "time of advice" stages of disclosure into a single disclosure. This is not currently provided for in the regulations, and we submit that it should be.

AIA NZ notes that proposed new regulation 229B(2) defines a client as including "a person who may receive advice", with the effect that disclosure must be given to that person. This is a broad definition and when read literally would apply where, for example, a person receives advice from a financial advice provider and then passes it onto a third party. Accordingly, AIA NZ submits that the definition should be limited to a person who may receive advice directly from a financial advice provider or from someone providing advice on the provider's behalf.

AIA NZ submits that the definition of "additional information" in proposed new regulation 229B(2) should cross-refer to regulation 229E(6).

Question 9
Do you have any further comments on new Schedule 21A in the draft Regulations?

AIA NZ notes that the proposed regulations duplicate disclosure items in the three key areas of disclosure – publicly available information, nature and scope of advice, and time of advice.

Two examples of duplication have been referred to above, which are fee information and Conflicts. In addition, some other examples are complaints information and dispute resolution process (see proposed section 229F and clause 4 and 6 of schedule 21A).

We support re-disclosure where there has been a material change to information previously disclosed but consider that where information has not materially changed there should not be an obligation to re-disclose that information. In our opinion, re-disclosure could lead to clients being overloaded with information which could in turn could lead to clients withdrawing from the financial advice process. In addition, the inclusion of unnecessary information as part of disclosure could draw the client's attention away from the information which is key to that disclosure stage.

In light of the potential consequences of duplication, identified above, we submit that the regulations should be reviewed by MBIE to ensure that duplication is minimised to the extent possible. One option that we believe should be actively considered is permitting cross-references to specific disclosures that are in publicly available information, as an alternative to re-disclosing the complete information.

To the extent that MBIE considers it is unable to reduce duplication by reason of the Cabinet decisions already made, we consider a watching brief should be maintained so that adjustments can be made in the future, if required.

Question 10
What (if any) transitional provisions should be included in the regulations?

AIA NZ supports a transitional period for these regulations which expires on 31 December 2020. We are concerned that there may only be a short period of time between the regulations being finalised and the regime commencing on 29 June 2020. AIA NZ is committed to the new financial advice regime and anticipates being in a position to comply with these regulations from day one. However, this additional time would mean we can ensure that our processes have been adequately embedded and are working in an effective matter.