IBANZ
INSURANCE BROKERS
ASSOCIATION OF NEW ZEALAND INC

# Submission

to

# Ministry of Business, Innovation & Employment

on

# Exposure Draft:

# Financial Markets Conduct (Regulated Financial Advice Disclosure) Amendment Regulations 2019

8th November 2019

# Submission on discussion document: *Exposure draft: Financial Markets Conduct (Regulated Financial Advice Disclosure) Amendment Regulations 2019*

## Your name and organisation

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| **Name** | Gary Young, Chief Executive |
| **Organisation** | Insurance Brokers Association of New Zealand Inc. (*IBANZ*) |

## Introduction

**IBANZ, its members and financial advice in the general insurance sector**

IBANZ has over 150 member firms operating in the general (non-life) insurance market. IBANZ members employ approximately 5,000 staff of which approximately 2,500 staff are currently RFAs. IBANZ members place general insurance cover equating to approximately 60% of all general insurance premium ($4 billion) for approximately 1 million New Zealand customers and for approximately 14 of the 30 general insurers operating in New Zealand. The total New Zealand gross written general insurance premium in the 12 months to 30 September 2018 was more than $6.3 billion.[1]

Our members provide financial advice services to clients who will predominantly be "retail clients" for the purposes of the new financial advice regime (estimated to be approximately 85% of clients served by IBANZ members).

Disclosure will need to be provided to these clients in accordance with the requirements of the Financial Markets Conduct Regulations 2014 (*FMC Regulations*), as amended by the Financial Markets Conduct (Regulated Financial Advice Disclosure) Amendment Regulations 2019 (*Disclosure Regulations*).

As stated in IBANZ's submission on the "Discussion Document: Disclosure requirements in the new financial advice regime" (*IBANZ Discussion Document Submissions*), the advice process in the general insurance sector may differ from that in other financial services sectors.

Our members have high volume transactional businesses, with multiple advice conversations taking place on a daily basis, and frequent cover placement. As general insurance policies are ordinarily renewed annually, our members will provide "regulated financial advice" under the new regime to their clients at least once a year. For IBANZ members on average, 90% of advice is given to existing clients, and 10% of advice is given to new clients.

In the general insurance broking sector, up to 20% of clients may change insurers (i.e. replace their financial product) each year. This is a standard general insurance practice, and is undertaken to ensure the client receives the benefit of improved policy terms, coverage, conditions or pricing.

[1] Insurance Council of New Zealand Market Data. An additional approximately $400 million of cover was placed through Lloyds.

In addition, within the general insurance sector, there are different processes depending on whether financial advice is given to new clients or to existing clients and whether the advice relates to placement of new insurance cover, renewal of insurance cover or changes to existing insurance cover.

## Key points

We make the following key points, which are all explained in more detail in the body of our submission.

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| **Record Keeping** | | |
| **Disclosure record keeping should not be required when regulated financial advice is not given** | For general insurance brokers, it is common to field many enquiries where the obligation for initial disclosure would be almost immediate. That would require establishing a record for each enquiry, rather than for clients to whom regulated financial advice is given. | **Consumers will find it more time consuming to make simple insurance enquiries. They may also avoid getting advice if the process requires them to give out personal information before they even have a relationship with the adviser.** |
| **Disclosure of initial information and additional information** | | |
| **Combining "initial information" disclosures and "additional information" disclosures should be expressly permitted to avoid repetition and simplify the client experience** | In general insurance broking, "nature and scope" and advice conversations often happen at the same time. The 'one size fits all' approach in respect of disclosure does not fit the general insurance broking industry and its type of client engagement, where the advice and its nature and scope are often combined in a single conversation.<br><br>Disclosure needs to be streamlined, particularly for verbal disclosure, with an ability to cross refer to publicly available information on a FAP's website. | **A streamlined disclosure regime is required to avoid frustrating consumers who are trying to get advice. If the process is too onerous it will drive consumers to non-advised products.** |
| **The Disclosure Regulations as currently drafted will result in lengthy, repetitive** | Required disclosure should be simple, clear, concise, material and meaningful for clients. | **Lengthy, overly detailed, repetitive disclosure would not provide clients with the key information they need in a way that is accessible for clients** |

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| **disclosure without an obvious benefit to clients** | | **(two of the objectives in the Cabinet Disclosure Paper).** |
| **Repetition of disclosures every 12 months is too often for the general insurance sector (where policies are renewed annually), and will detract from the client experience** | Clients can have a very long relationship with their general insurance broker, and receiving the same or very similar disclosure each time they renew their general insurance policies is impractical, dualistic and ineffective. | **As mentioned above, repetition of disclosure will dilute the effectiveness of the regime. It will also impose unnecessary compliance costs on the general insurance sector.** |
| **The meaning of "conflict of interest" is too broad, and should be amended to avoid unnecessary, lengthy disclosures** | "Materiality" should be included in the definition of conflict of interest. | **A lack of materiality will lengthen disclosures and will dilute the effectiveness of the regime.** |
| **Transitional period required** | | |
| **A transitional period is required to implement the initial and additional disclosure requirements** | A transitional period is required in relation to the requirement to comply with the initial and additional disclosure obligations, to allow for the necessary systems to be developed, particularly for the larger or mass-market providers. A transitional period will also allow for FAPs to provide the training/upskilling of financial advisers in the new systems and required disclosures. | **Time to transition will help ensure greater compliance with the new regime, as opposed to a rushed implementation.** |

## Responses to discussion document questions

| 1 | Will the proposed record-keeping requirement be workable in practice? |
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**Record keeping condition in Regulation 192A dualistic and unnecessary**

The proposed standard conditions of transitional licensing (which IBANZ understands are expected to also be imposed on full licences) already include a suitable record keeping condition in relation to a FAP's financial advice service.

The standard record keeping condition gives the FMA the ability to monitor compliance with the financial advice obligations under the Financial Markets Conduct Act 2013 (*FMCA*).

Imposing a second record keeping condition specific to disclosure in the Disclosure Regulations is dualistic and unnecessary. Reconciling the two requirements would in practice be challenging for FAPs, and IBANZ recommends they are combined or duplication is otherwise removed.

**Disclosure record keeping should not be required for general insurance brokers when regulated financial advice is not given**

Regulation 192A as currently drafted provides that a FAP must keep a record of each disclosure under regulation 229D, 229E or 229F that is given by the FAP or by any person engaged by the FAP to give advice to the FAP's clients on its behalf.

For general insurance brokers, it is common to field many enquiries where the nature and scope of the advice sought is immediately obvious. In practice, it would be unnecessary and burdensome to have to keep records of disclosures for 7 years when regulated financial advice is not ultimately given to the client. That would require establishing a record for each enquiry, rather than for clients to whom regulated financial advice is given.

As mentioned above, general insurance brokers receive a high volume of enquiries from potential clients (a lot of which are by telephone); many of which do not proceed beyond a preliminary conversation. Consumers tend to 'shop around' in respect of general insurance. For example, prospective clients will often ring several general insurance brokers to get cost indications for car insurance.

In those cases, the "general nature and scope of advice" sought would be known early on during an enquiry (e.g. new car insurance is being sought), and the adviser may have reasonable grounds for concluding that advice may be given to the client (which triggers the need for initial information to be provided under Regulation 229D).

There seems no purpose in keeping a record of disclosures when no advice eventuates. However, to create a record that would be meaningful (i.e. one that the FAP could track back to the person making the enquiry for later reference) the FAP would need to collect the personal information of the person making the enquiry. In IBANZ's experience, asking for such details at a preliminary stage would be very off putting. Some may refuse to give such details, and thus may not get access to advice. IBANZ also notes that the collection of personal information attracts another set of disclosures under the Privacy Act.

Accordingly, if the record keeping condition in Regulation 192A is retained, IBANZ submits that the requirement to keep records in Regulation 192A be limited to only circumstances where regulated financial advice is given to a client by a FAP, or a person acting on its behalf.

IBANZ therefore submits that the drafting of Regulation 192A(1) be amended to read as follows:

(1) A market services licence for a provider of a financial advice service is subject to a condition that the financial advice provider (**P**) must, in the event advice is given to the client, keep a record of each disclosure under regulation 229D, 229E, or 229F that is given by P or by any person engaged by P to give advice to P's clients on P's behalf.

**Record keeping drives need for written disclosure, and practically limits flexibility**

In paragraph 6 of the Cabinet Paper titled "*Regulation of Financial Advice: Disclosure and Multiple Providers*" (*Disclosure Cabinet Paper*), the Minister states that "*I also propose that the regulations provide some flexibility in terms of precisely how this disclosure is provided*."

However, the length of the required disclosures and the requirement for record keeping of all the disclosed information in Regulation 192A practically limits the flexibility intended to be provided by Regulation 229G(4).

The proposed record keeping condition (along with the length) makes verbal disclosure impractical, as a record available for inspection by the FMA at all times of the disclosed information must be kept. Unless call recording can be implemented (which will not be practical for all general insurance brokers, and may not result in a good client experience), this drives the need for written disclosure statements to be provided to the client (in person, by email or by post) to ensure the FAP has evidence disclosure has been made.

It would be helpful if it is clarified that a summary of the disclosures is permissible, and that records of conversations need not be transcripts. Confirmations that the key points have been disclosed would also be useful.

Please refer also to IBANZ's submission in response to Question 10 below in relation to the need for a transitional period to allow for the development of record keeping systems.

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

**The "availability of information disclosure" statement is unnecessary when information is made publicly available on a website**

IBANZ submits that clause 4(1)(n), Schedule 21A should be deleted from the Disclosure Regulations.

If the information is available on a website or in hard copy, clients already have access to a written copy (they are reading it on the website and can print off a hard copy if they wish to or actually have it in hard copy). Making certain information available on a website already achieves the Minister's objective stated in paragraph 14.3 of the Disclosure Cabinet Paper to "*provide information in a way that is accessible to clients*."

It makes no sense to include a statement proposed by clause 4(1)(n), Schedule 21A on the website, and to introduce a request process for information already in the public domain, and easily accessible by clients.

IBANZ submits that all disclosure information should be concise and fulfil a need for client information. The inclusion of this statement on a FAP's website is unnecessary and unjustified.

**"Brief" should be used consistently in clause 4, Schedule 21A in respect of fees, conflicts and commission disclosure**

IBANZ submits that this could be achieved by amending the Disclosure Regulations to add the word "*brief*" in front of the words "*description*" or "*explanation*" (as applicable) in clauses 4(1)(h), (i)(i) and (j)(i), Schedule 21A.

There is otherwise a discrepancy in these clauses of the Disclosure Regulations where "brief" is used in some cases, but not others, leaving open an interpretation that more than a brief explanation/description needs to be provided in some cases, but not others.

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

**<u>Combining "initial information" disclosures and "additional information" disclosures should be expressly permitted to avoid repetition and simplify the client experience</u>**

In general insurance broking, "nature and scope" and advice conversations often happen at once or within close proximity. There are not always initial meetings at which information is gathered, and then follow-up meetings at which the advice is given (as may be the case more commonly when advice is given in relation to life insurance or more complex investment products). Advisers do not often get the opportunity to pause before an advice conversation, and may give a quote and have the opportunity to bind cover immediately after the nature and scope of the advice is known, e.g. motor vehicle insurance being placed over the phone. Stopping to give detailed disclosure as part of such a conversation is not always practical and could detract from the customer experience.

The 'one size fits all' approach in respect of disclosure does not necessarily fit the general insurance broking industry and its type of client engagement.

IBANZ submits that it will not result in good client outcomes or provide clients with effective disclosure if advisers to have to artificially interrupt advice conversations to disclose "initial information" and "additional information" on separate occasions. Disclosure of initial and additional information therefore needs to be streamlined.

In IBANZ's member's experience, such behaviour can irritate clients and they can hang up the phone if the advice process is perceived as being too arduous. This may also drive people to non-advised products as the process is seen as being simpler, or to no insurance at all. This is not necessarily a good client outcome, as non-advised products can result in incorrect or insufficient cover being written, or cover may be more costly for clients (e.g. a higher premium may be payable).

The "*as soon as practicable*" drafting in Regulation 229D(5) does not solve this issue because Regulation 229D(6) requires "*In any event, the initial information must be given before the advice is given*".

**Example**

Bill is buying a new car and wishes to insure it. He wants to 'shop around' to try and get the best price for his cover.

He calls a number of general insurance brokers saying "Hello, this is Bill calling, I want to get a quote for insuring my new car". At this point the nature and scope of advice is known by the financial adviser, and there are reasonable grounds for concluding that advice may be given to Bill. The requirement to provide disclosure of initial information as soon as practicable (but in any event before the advice is given) is triggered.

Before the financial adviser can provide a quote/recommendation for car insurance cover to Bill, the adviser will need to pause the conversation, ask Bill for his personal information (full name, email address or postal address) and provide Bill with disclosure of the initial information as prescribed by reading out a script, playing a voice recording or asking Bill to wait for the information to be sent (and received at) Bill's email address so written disclosure can be provided. Bill will be subjected to this for every adviser he contacts.

For Bill, what used to be a few quick calls in order to get some quotes on insurance, turns into a lengthy exercise with a number of similar sounding and lengthy disclosures. Bill

could very well be put off from shopping around in the future.

IBANZ submits that the Regulations should be amended to allow for the disclosure of initial information (as required by Regulation 229D) and the disclosure of additional information (as required by Regulation 229E) to be combined in a single, concise disclosure to address situations where it is not practical for the initial information to be given to the client separately, before the advice is given (e.g. where there are not separate meetings). Practically, this would allow general insurance brokers to communicate the "nature and scope" of their advice as part of the advice conversation, but before the recommendations are given (so they can still comply with the duty in section 431K, FMCA to ensure the client understands the nature and scope of the advice).

This amendment could continue to be subject to an obligation for initial information to be disclosed to the client sooner if the client requests the information.

**Ability to cross refer to information made publicly available on a FAP's website**

IBANZ also submits that cross referring to the FAP's website should be sufficient where information which forms part of the initial disclosure information (required by clause 5, Schedule 21A) is the same as information that is already publicly available on the website (required by clause 4, Schedule 21A), particularly when advice is sought verbally.

This will assist to shorten the length of the initial disclosure information which must be provided, and make the disclosure provided more clear, concise and effective, focusing on the key matters of most relevance to the client. By way of example, IBANZ is aware of the equivalent of initial information disclosure documents of one of its members in Australia extending to 18 pages.

This amendment could continue to be subject to an obligation for initial information to be disclosed to the client in full if the client requests the information.

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

**The Disclosure Regulations as currently drafted will result in lengthy, repetitive disclosure without an obvious benefit to clients**

The additional information required to be disclosed by Regulation 229E at the time advice is given (which is set out in clause 6, Schedule 21A) is highly repetitive of the information required to be disclosed by Regulation 229C or Regulation 229D (as applicable) in relation to identifying information, fees or expenses, conflicts of interest, commissions and incentives, availability of information and complaints handling and dispute resolution.

Clients receiving lengthy, overly detailed, repetitive disclosure (in some cases with very limited or no gap between initial information disclosure and additional information disclosure) would not provide clients with the key information they need in a way that is accessible for clients (two of the objectives in the Cabinet Disclosure Paper).

In many cases in the general insurance broking sector, the only new information provided to a client as part of the additional information would be the duties information (which, as IBANZ submits in response to Question 9 below, should be disclosed only in the publicly available information and standardised, rather than being disclosed as part of the additional information, in the interests of brevity).

There is no need to give clients the same information twice, particularly when the disclosure trigger points are likely to be proximate, which is commonly the case in the general insurance broker industry.

In our view, the Disclosure Regulations need to align with practically what the client outcome should be. As stated in the FAA Review: Consumer Testing Final Report dated June 2017 published by MBIE and Colmar Brunton (*Consumer Testing Report*) – it needs to be asked "In what ways can disclosure information be made more useful and meaningful for consumers?" The longer the disclosure is, the less likely it is that the client will read and understand it. This may result in poor client outcomes through disruption of the advice process, and client confusion (as discussed in more detail throughout this submission).

As noted in the recent joint report from ASIC and AFM titled "*Disclosure: Why it shouldn't be the default*", there is a need to rethink the appropriate balance between consumers and industry for affecting good client outcomes, and avoiding poor ones.

IBANZ submits that, to be effective, the required disclosures (particularly when given verbally) should be reduced to a few key short sentences and cross reference to publicly available information, rather than the lengthy, repetitive and unnecessary content currently proposed.

This could be achieved through the following changes to the Disclosure Regulations:

- Specifically allowing the detailed information to be disclosed on the FAP's website or as part of initial information disclosure (as applicable), particularly where there has not been a material change to information previously provided to the client as part of these disclosures. Disclosure should be limited to a single sound-bite (particularly when disclosed verbally) such as "the conditions to my licence are available on my website" or "no material changes have occurred since your last discussions". As discussed in response to Question 3, being able to cross refer to the FAP's website (or, in this case, initial information disclosure) would be beneficial in reducing disclosure length, and ensuring consumers are provided with the key information they need in a way that is accessible to them; and
- Amending clause 6(1), Schedule 21A to read as follows:

  (1) To the extent not already given to a client under clause 4(1)(k) to (m) or clause 5(2)(a) to (g), a person who gives advice (**A**) must give the following information to a client of a financial advice provider (**P**) in accordance with **regulation 229E** (which provides that additional information must be given to a client at the time the advice is given):

  If this amendment is made, the words "*to the extent not already given under **clause 5(2)(d),**"* should be deleted from clause 6(1)(d), Schedule 21A.

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| 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? |

**<u>There is a need to clarify what a "complaint" is</u>**

Advisers sometimes record feedback from clients, even constructive criticisms, as complaints out of an abundance of caution when a client does not want them too, e.g. the client has expressed some dissatisfaction, but does not want to take it further.

The current drafting of Regulation 229F could be interpreted as requiring complaints disclosure to be given to a client in this scenario, when client doesn't necessarily wish to make a complaint. This could be confusing for the client.

IBANZ submits that the Disclosure Regulations clarify what the nature of a "complaint" is which would trigger the need for disclosure under Regulation 229F, so that the process

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| | applies only if the client wishes to make a 'formal' complaint to another person, to ensure the threshold for the required disclosures is aligned with the client's intentions. This could be achieved if the financial adviser is required to clarify whether the customer would like to make a complaint to another person, and to proceed with the disclosure only upon receiving an affirmative response.<br><br>In addition, IBANZ submits that a cross reference to complaint process details on a website should be sufficient disclosure in this context. |
| 6 | Do you have any comments on the draft Regulations that set the manner in which information must be disclosed? |
| | IBANZ submits that the proposed Disclosure Regulations require repetition and excessive and unnecessary details in disclosures, which will detract from the customer experience and impose unnecessary compliance costs on the industry. As mentioned, the prescriptions prevent cross-referencing, tailoring of disclosures for circumstances or the client's knowledge.<br><br>IBANZ is aware of certain of its members which operate internationally exiting the consumer general insurance advice market (i.e. house, contents, car, pleasure craft and travel insurance) in overseas jurisdictions due to the overburden of regulation. Excessive, prescriptive disclosure requirements, which cannot be easily systemised, could contribute to the burden driving departures from the industry, particularly in the personal lines sector where margins are tight.<br><br>IBANZ also refers to its submissions in response to Question 1 in relation to the impact of the proposed record keeping condition on the flexibility of disclosure. |
| 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. |
| | In the general insurance advice sector, it would be possible for Regulation 229D to apply to multiple financial advisers who have direct engagement with clients, e.g. call centres or a financial adviser providing cover for another financial adviser's clients while they are on holiday. Disclosure design should streamline the disclosures needed when a new adviser is introduced so there is no repetition. |
| 8 | Do you have any further comments on new regulation 229A to 229H of the draft Regulations? |
| | **<u>12 months under Regulations 229D(7) and 229E(5) is too often for the general insurance sector, and will detract from the client experience</u>**<br><br>In paragraph 40 of the Cabinet Disclosure Paper, the Minister recognises "*that many financial advisers have an ongoing relationship with their clients and that providing repetitive disclosure could add unnecessary compliance costs for them, particularly if the service provided remains the same.*"<br><br>As discussed in the Introduction above, as general insurance policies are renewed annually, our members are providing what will be known under the new regime as "regulated financial advice" to their existing clients at least every year (although in many cases the proposed 12 month period may be exceeded, meaning if the Disclosure Regulations as currently drafted were to apply, full disclosure would need to be provided to the client again).<br><br>Clients can have a very long relationship with their general insurance broker, and receiving the same or very similar disclosure (where the disclosure information has not materially |

changed) each time they renew their general insurance policies is impractical, dualistic, does not provide the client with effective disclosure and imposes unnecessary compliance costs on the general insurance advice sector.

IBANZ submits that the words "*in the preceding 12 months*" should therefore be deleted from Regulation 229D(7) and 229E(5).

This amendment does not remove the requirement for clients to be advised of material changes to any information provided, or impact the requirement for information to be provided again if the client requests it. However, it does remove the need for repetitive disclosure of the same information to be provided by general insurance brokers to their existing clients every year. In our view, reduced disclosure for existing clients would be beneficial.

If there is seen to be a need from a policy perspective for a timeframe to be included, IBANZ submits that 30 months would be more appropriate than 12 months, and that existing clients be given the opportunity to reject repeat disclosures where the information has not materially changed.

**Drafting of Regulation 229G(2) may be misinterpreted, and a comma should be included**

IBANZ submits that a comma needs to be included before the words "*if requested*" to ensure that this drafting makes sense.

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

**The meaning of "conflict of interest" is too broad and should be amended to avoid unnecessary, lengthy disclosures**

***Materiality has not been included in the definition***

IBANZ submits that "materiality" should be included in the definition.

Materiality has not been included in the definition of "conflict of interest" in clause 2(2)(a), Schedule 21A, which is inconsistent with the "conflict of interest" definition included in clause 52(5), Schedule 4 of the FMC Regulations. These definitions should be more closely aligned, so the definitions of "conflict of interest" are as consistent as possible in the different contexts in which they are used in the FMC Regulations.

The definition of "commission or other incentive" in clause 2(3)(b), Schedule 21A needs to also be amended to include "materiality".

The inclusion of materiality is very important in relation to the general insurance advice sector, to exclude the need for disclosure of immaterial information, and to avoid confusion. For example, some clients may perceive an adviser providing general insurance advice to competing clients in the same business sector (e.g. plumbers in Taranaki) as a conflict, however, IBANZ does not believe client conflicts should be included as part of disclosure.

The MBIE publication dated March 2019 titled "*Summary of Disclosure Requirements in the new financial advice regime*" (*MBIE Summary Publication*) and the Disclosure Cabinet Paper both refer to the information needing to be disclosed in respect of conflicts of interest as information relating to commissions, incentives and other conflicts of interest that a client might perceive as having potential to materially influence/impact the financial advice.

In addition, conflicts disclosure should be limited to conflicts "*in relation to the giving of advice*", rather than "*in relation to advice*".

There is otherwise a risk that the conflict of interest disclosure requirement is too broad, the unintended consequence of which could be clients receiving overly lengthy disclosure which is not readily understandable (or relevant to their decision making), as a result of FAPs

seeking to ensure that they comply with the Disclosure Regulations.

***Amended "conflicts of interest" definition***

Accordingly, IBANZ submits that the drafting of the definition of "conflict of interest" in clause 2(2), Schedule 21A is amended to read as follows:

> (2) A **conflict of interest**, in relation to the giving of advice –
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> > (a) means any interest of A, P, or another person connected with the giving of the advice that a reasonable client would expect to, or to be likely to, materially influence the advice given by A.

In addition, IBANZ submits that clause 2(1), Schedule 21A should be amended to read as follows:

> (1) This clause defines what is meant by a conflict of interest and commission or other incentive in relation to advice given by a person (**A**), who is engaged by a financial advice provider (**P**) to give advice to P's clients on P's behalf, to a client of P.

**Need to clarify disclosure required in respect of "nature and scope of advice" in clause 5, Schedule 21A**

As discussed in the IBANZ Discussion Document Submissions, when providing advice in relation to general insurance products (other than in respect of simple advice conversations, e.g. a request for car insurance), the extent of the 'market available' (i.e. the information required to be provided by clause 5(1)(e), Schedule 21A) can in many cases be determined only after the scoping exercise has been completed by the adviser.

It would be usual to include details of the market considered when presenting recommendations to a client, i.e. as part of the "additional information" disclosure.

In addition, when advice is being provided on multiple general insurance product types, one of the challenges with providing concise disclosure to a client in relation to the "nature and scope of advice" early in the general insurance advice process is that nature and scope can move.

It would be helpful for the Disclosure Regulations to clarify the following:

- What does "*types of advice*" in clause 5(1)(c), Schedule 21A mean? There will be only regulated financial advice under the FMCA (as amended by the Financial Services Legislation Amendment Act 2019), as the concepts of personalised/class, category 1 and category 2 products are being removed. Lack of clarification may lead to inconsistency of disclosure between FAPs, and confusion for clients.
- Clause 5(1)(e)(ii), Schedule 21A should be amended by inserting the words "*to the extent known,*" before the words "*the names of the product providers.*" As discussed above, there are many product providers in the general insurance industry, and it may result in a very long list being included in the initial disclosure information (which is not particularly meaningful to the client), if this requirement is not qualified.

**Need to clarify meaning of "fees, expenses or other amounts payable"**

IBANZ submits the following clarifications are required in respect of the regulations in Schedule 21A in relation to the disclosure of fees, expenses, or other amounts payable:

- Clause 4(1)(h), Schedule 21A as currently drafted is too broad, and needs to be amended as follows to be consistent with clauses 5(2)(d) and 6(1)(d) in articulating who the fees, expenses, or other amounts are payable to:

> (h) if P's clients will or may have to pay fees, expenses, or other amounts in

relation to the giving of advice to A, P, or another person connected with the giving of the advice, an explanation of when, or in what circumstances, those amounts will or may be payable:

- Schedule 21A needs to clarify what "fees, expenses, or other amounts payable" are. IBANZ submits that the words "by the client" are added to distinguish fees from commissions.

  We understand from the MBIE Summary Publication that fees disclosure is intended to cover only "*information about applicable fees and costs relating to financial advice*".

  However, it is possible to interpret the words "*in relation to the giving of the advice*" broadly to mean all amounts payable by the client to the FAP as a result of the giving of the advice if it is followed by the client.

  Specifically, fees disclosure should not include:

  - *Premiums payable for a general insurance policy.* As MBIE may be aware, premiums are commonly paid by a client to a general insurance broker's insurance broking client account, and are then invested and paid to the relevant insurer by the broker in accordance with the requirements of the Insurance Intermediaries Act 1994 (*IIA*); or
  - *Investment income a "broker" is entitled to receive from the investment of "broking money" in its insurance broking client account*. Section 15 of the IIA permits brokers to invest money in their insurance broking client account, and retain investment income earned from doing so. This investment income is not a "fee", but rather a permitted entitlement of the broker.

  IBANZ submits that:

  - Schedule 21A should be amended to specifically carve out the above items from disclosure in relation to fees, expenses, or other amounts payable; and
  - The words "*or acting on the advice*" should be deleted from clause 6(1)(d), Schedule 21A.

**Requirement to describe how the amount or value (as applicable) of a fee/commission would be determined and (in respect of fees) the terms of payment will result in overly detailed, lengthy disclosure which may be confusing for clients, and difficult for them to understand**

Clauses 5(2)(d) and (f) and 6(1)(d) and (f), Schedule 21A should be amended to simplify the disclosure information required to be provided to clients in respect of fees and commissions.

The current drafting of these clauses would result in general insurance brokers having to provide lengthy and overly complex disclosure in respect of possible fees and commissions, which will not provide clients with the key information they need in a way that is accessible to clients. For example, an adviser could be advising in relation to 9 lines of product across 2-3 (or more) insurers.

IBANZ understands that MBIE wants to achieve clients getting information about commissions so they can see "what if anything may be driving the advice". However, commissions will be known (and therefore can be disclosed) only in very general terms at the start of the general insurance advice process. In general insurance, the actual amount of a commission is often not known until the final placement of cover is completed. Even then, adjustments can occur throughout the term of a policy and after it has ended, meaning absolute specific dollar amounts may not be able to be determined during the advice process.

In general insurance, the clearest point regarding the actual amount of remuneration (fees/commissions) paid to an adviser is at the time of sending the invoice to the client (or at least at the time of making the recommendation). It is generally not possible to determine exact dollar amounts before advice is provided.

IBANZ therefore submits that:

- The initial and additional information disclosure requirements in respect of fees/any disclosed commissions are simplified to enable FAPs to provide a range, rather than an explanation of how the amount will be determined (which may be very complicated).
- The drafting in clause 4(2) is applied also in clause 5 in respect of any disclosed commissions.
- The requirement to disclose "*the terms of payment (if known)*" is deleted from clauses 5(2)(d)(iii) and 6(1)(d)(ii). What is relevant to a client is that they will have to pay a fee for the advice they are receiving. The terms of payment will be dealt with in the invoice provided to the client, and do not need to be included as part of disclosure.

**Duties information should be publicly available and prescribed**

IBANZ considers the duties information in clause 6(1)(j), Schedule 21A should instead be made publicly available information (rather than being provided as part of the additional information disclosure), and should be prescribed. The Consumer Testing Report refers to "client care" information being provided on the adviser's website.

This is because all licensed FAPs who provide regulated financial advice to retail clients will be subject to the same duties under the FMCA.

It could be confusing for clients if there is inconsistent disclosure in the market in relation to the application of the same statutory duties.

If disclosure of duties information continues to be included as part of additional disclosure information, this requirement should be able to be satisfied simply by cross referring to the FAP's website (or hard copy disclosure, if they do not have a website).

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

**Transitional period required to allow for systems to be developed for FAPs to ensure compliance with initial and additional disclosure requirements**

IBANZ submits that a transitional period is required in relation to the requirement to comply with the initial and additional disclosure obligations (Regulations 229D and 229E), to allow for the necessary systems to be developed, particularly for larger or mass-market providers. A transitional period will also allow for FAPs to provide training/upskilling of financial advisers in the new systems and required disclosures.

Without a transitional period, manual work-arounds (while system developments are finalised) for general insurance brokers with a large number of financial advisers would be challenging, and would make it more difficult for FAPs to effectively supervise their financial advisers, and effectively manage risk/oversee compliance with disclosure obligations.

IBANZ submits that if the Disclosure Regulations are finalised largely as currently proposed, alignment of a transitional period for initial information and additional information disclosure obligations with the 2 year transitional period applicable for full licensing and upskilling would be preferable. If the amendments proposed by IBANZ in these submissions are adopted

(particularly those submissions in relation to streamlining disclosure provided in response to Questions 3 and 4), IBANZ submits that a transitional period of 12 months should be sufficient.

To achieve this, certain aspects of the Disclosure Regulations could be brought into force at different dates.

For the avoidance of doubt, IBANZ submits that no transitional period is required in respect of the disclosure obligations under the Disclosure Regulations relating to publicly available information and disclosure required in the event of a complaint.