8 November 2019

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

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

Thank you for the opportunity to submit on the Financial Markets Conduct (Regulated Financial Advice Disclosure) Amendment Regulations 2019 (the **Regulations**).

Further to our submission dated 6 November 2019, we have identified an issue that we consider is worthy of a second submission.

The Regulations require disclosure of "reliability events" that have occurred in respect of a financial advice provider or a person giving financial advice.

Reliability event is broadly defined as being "the subject of a successful civil or criminal proceeding or regulatory action ... in relation to the contravention, or involvement in the contravention of, any ... financial markets legislation".

Financial markets legislation is defined in Schedule 1 to the Financial Markets Authority Act 2011. Worryingly, it includes a number of statutes that are not relevant to the provision of financial advice (for example, the Companies Act 1993).

Some of those statutes provide for regulators to, for example, issue private warnings or private direction orders to regulated entities. Our concern is that the Regulations override those regulators' statutory powers to issue private sanctions. If an entity is subject to a private sanction under one of the pieces of legislation listed in Schedule 1 to the Financial Markets Authority Act 2011, it would need to disclose that to all advice clients for the following five years. That cannot have been the intention of the Regulations.

For some financial advisers or financial service providers, this may not be a relevant issue. However, there are a number of financial advice providers who, as part of their business, undertake other activities (for example, issuing financial products). These people may be subject to enforcement action in respect of their businesses that is unconnected with the provision of financial advice. If enforcement action does not impact on the ability of a financial advice provider to provide a financial advice service, it should not be relevant to an advice client's decision whether or not to obtain that service (and, therefore, should not need to be disclosed).

We submit that the definition of reliability event *must* be changed so that only regulatory action that is relevant to the carrying out of a financial advice service is captured, and only if that regulatory action is made public.

Finally, we submit that the language should be made consistent in the Regulations. For example, there are various references to type of service and type of advice. If these mean the same thing, the same term should be used.

Questions about this submission should be directed to:

Glen Macann

Ian MacKenzie

Yours faithfully
**Kiwi Wealth Investments Limited Partnership**

Joe Bishop
GM Customer, Product & Innovation

# 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** | Joe Bishop, GM Customer, Product & Innovation |
| **Organisation** | Kiwi Wealth Investments Limited Partnership |

## Responses to discussion document questions

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| 1 | Will the proposed record-keeping requirement be workable in practice? |
| | Yes, we expect the record-keeping requirement to be workable. |
| 2 | Do you have any comments on the drafting of the Regulations that will require information to be made publicly available? |
| | We support the concept of having standing disclosure of relevant information that is publicly available. However, we have concerns about the level of duplication in the disclosures currently contemplated. Almost all the information required in the publicly available information is subsequently disclosed during the advice process. This achieves neither efficiency from a FAP perspective, nor better disclosure outcomes from a client perspective. We are concerned that the duplication of disclosure may result in clients being overwhelmed by the quantity of disclosure and, as a consequence, clients not comprehending the key information at each stage of the advice process. We submit that information should only be disclosed once. Accordingly, we have suggested throughout our submission a way to re-draft the Regulations so that information is disclosed once, at the most appropriate time.<br><br>Our view is that information relating to:<br>• licence status and conditions (clauses 4(1)(a) and (b) of Schedule 21A);<br>• complaints (clauses 4(1)(k) and (l) of Schedule 21A);<br>• dispute resolutions procedures (clause 4(1)(m) of Schedule 21A); and<br>• the duties that apply to the adviser (clause 6(1)(j) of Schedule 21A),<br>should be made on a standing basis, but not at any other time.<br><br>All other proposed standing disclosure (i.e. the remainder of clause 4(1) of Schedule 21A) should be removed. These disclosures would be more effective if made at the time that a client is actually engaging in the advice process. It is at that point that the type of products to be advised on, the fees for the advice and information about conflicts (for example) are relevant matters for a client. In the abstract, without the context of particular advice being sought, a client is unlikely to pay close attention to these. We know that many consumers are price-sensitive, so information on fees, for example, may dissuade a client from seeking advice if the client is unable to assess those fees in the context of the value that the advice could provide to that client. That would not result in better financial advice outcomes for |

New Zealanders.

We also support amending the regulations so that only information that is relevant to a FAP is disclosed. The regulations appear to assume only one type of advice model – FAPs who advise on a range of different products from different manufacturers and receive fees and commissions for doing so. However, there are a number of FAPs, such as ourselves, who advise on their own products and have advisers who are not rewarded on commission (particularly following the conduct and culture reviews that have been taking place in the financial services industry). The regulations do not work well advising on simple products, like bank accounts. The disclosure required for these simple products is disproportionate to the complexity of the products.

Accordingly, as an alternative submission, regulation 229C could apply differently to FAPs that are product manufacturers and those that are not. In the context of a business that has financial advisers or nominated representatives that advise on the FAP's own products, disclosures about product types, fees and conflicts are not appropriate for a standing disclosure regime because it is more important for these disclosures to be made when they are relevant to the client – i.e. at the point of engaging in the advice process. In accordance with our belief that information should only be disclosed once, it is more important to disclose this information when advice is being sought.

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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? |

We support the concept of splitting up disclosure obligations, but we support this split being between standing, publicly available disclosures, and flexible specific disclosures when (or before) the client needs to make decisions in relation to the financial advice, like whether to formally seek it (if the client will need to pay for it), or to follow it (if the advice is free).

We have concerns about the level of duplication in the disclosures required. The duplication is so extensive that there is almost no new information likely to be provided at the advice stage. Our view is that disclosure is usually best given at the start of an advice relationship, so that the client can make the most informed decisions about certain key matters (such as whether the person providing the advice can advise on the correct products, whether the fees are appropriate and whether any unsuitably managed conflicts exist). However, there are some advice relationships (such as free advice on very simple products) that mean that disclosure should need only be given by the time the client needs to determine whether to follow the advice.

We submit that there should be an obligation to disclose the information not subject to standing public disclosure. While the most appropriate time for this disclosure might be when the nature and scope of the advice is known, there should be flexibility to allow this disclosure to be made at or before the time that the client needs to make relevant decisions about the financial advice. There should also be flexibility to make the disclosure at multiple times if that is most appropriate. Allowing this flexibility will assist with, for example, digital advice, which is likely to be given in a different manner to in-person advice.

We submit that the disclosure at this point should address the following matters:

- the nature and scope of the advice (clauses 5(1)(c), (d), (e), (f) and (g) of Schedule 21A);
- the reliability history of the adviser (clause 5(1)(h) of Schedule 21A);
- information about the people involved in the advice (clauses 5(2)(a), (b) and (c) of Schedule 21A);

- information about fees (clause 5(2)(d) of Schedule 21A);
- information about conflicts of interest (clause 5(2)(e) and (f) of Schedule 21A); and
- information about the availability of information, which should refer to the existence of the standing disclosure (clause 5(2)(g) of Schedule 21A).

There should be no requirement to re-disclose information subject to standing disclosure.

While regulation 229D allows for a FAP to disclose only that information subject to a material change, we expect that most FAPs will not look to take advantage of this. From a process perspective, it is easier to make disclosure of all required information (thereby ensuring that the disclosure obligation has been complied with) than it is to determine what information has been previously provided and whether that information is materially different to what would be provided in updated disclosure.

Separately, the information required by regulation 229D is so extensive that it is not appropriate for telephone disclosure. A pre-recorded disclosure addressing all of this information would take a long time to read and we doubt that clients would listen to, or understand, such a lengthy disclosure if read over the phone. Accordingly, we expect that this information will need to be provided in electronic form after the phone call has concluded.

We also submit that providing the details of a nominated representative giving advice is not practical. This should be limited to a financial adviser. Because a nominated representative cannot be subject to individual independent disciplinary action, there is simply no point providing their details (unlike with a financial adviser, who can be subject to action).

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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? |

We have concerns about the level of duplication in the disclosures required, and suggest that regulation 229E and the requirements of clause 6 Schedule 21A are removed (with the exception of clause 6(1)(j), which we suggest is included with the disclosures made under regulation 229D).

Under the current drafting of the regulations, the only disclosure obligation that has not already been complied with by the time the third form of disclosure is made is the statement about the financial adviser/nominated representative's obligation to comply with the Act and Code.

We have concerns that the amount of duplication of disclosure will cause advice clients to 'switch off' from the disclosure process. It will be apparent to advice clients that the information being provided at this point is information that they have already received. While the draft Regulations provide that information that has previously been disclose need not be re-disclosed, our view (as set out above) is that FAPs will not be inclined to use this provision. To ensure the disclosure obligation is complied with, we expect that procedures will be developed to make the relevant disclosure at the relevant time.

Accordingly, we submit that duplicated disclosures should be removed, so that advice clients only receive disclosure information once, rather than multiple times. In this regard, our suggested reordering of the advice requirements would remove the duplication we are concerned about.

To address the concern raised in the example for regulation 229E, an obligation to inform a client of material changes to the products that can be advised on could be included instead of the full requirements of regulation 229E. This would ensure that clients receive relevant

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| | information about new products that can be advise upon and, more relevantly, existing products that cannot if those changes have occurred since the disclosure under regulation 229D was made. |
| 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? |
| | If a FAP's complaints and disputes resolution process is already publicly available, there should be no need to re-disclose that information. As such, regulation 229F requiring disclosure of the complaints and disputes resolution process should be removed, or a FAP should be able to comply with this obligation by referring a person to the standing disclosure under regulation 229C (which could be done as part of the FAP's complaint resolution process). |
| 6 | Do you have any comments on the draft Regulations that set the manner in which information must be disclosed? |
| | We agree with the requirements for how disclosure information should be given (including that it be presented in a clear, concise and effective manner).<br><br>However, in a business community that is increasingly focussed on sustainability, we question why there is an obligation to provide hard copy disclosures on request. A better approach to this requirement could be that disclosure must be provided electronically if requested, and must only be provided in hard copy if the client has no ability to access electronic versions of the disclosures. |
| 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. |
| | We expect that disclosure will be given by the person giving the advice in most instances. The most likely situation a person will not be giving disclosure is in the case of digital advice, or in the case of telephone advice (where a prepared recording might be used). Regulation 229D allows for the disclosure to be made in the ways that we anticipate it will be required. |
| 8 | Do you have any further comments on new regulation 229A to 229H of the draft Regulations? |
| | No, we have no further comments on these regulations. |
| 9 | Do you have any further comments on new Schedule 21A in the draft Regulations? |
| | We have set out our comments on Schedule 21A in our answers to earlier questions. We submit that clause 4 should be reduced in scope and clause 6 should be removed.<br><br>Disclosure should be aimed at identifying the differences between advisers and allowing consumers to make a choice about who should give them that advice. If information is common between advisers, it does not help in achieving that purpose. For example, generic |

statements about an obligation to comply with the Code, or that there are complaints resolution processes in place, leave clients with the impression that advisers are more similar than they are different. The disclosure should assist clients to determine how one adviser might be more appropriate, not reinforce what all advisers must do that is the same. In this regard, the Regulations do not require than an adviser disclose to a client the qualifications they hold or the experience they have. These are two very relevant factors in a client's decision of which adviser to use. We suggest that the disclosure obligation should have a section focussed on the adviser themselves, and the experience they have.

We also submit that the form and timing of disclosure should be up to the FAP – FAPs should have to disclose information that is relevant to the client's advice decision in the way that is most relevant and at the time that is most relevant. Prescribing information that must be disclosed is appropriate (assuming that it acknowledges the differences between simple and complex advice products), but mandating the time at which it is given does not allow for processes to be tailored to achieve the best customer outcomes. Disclosure must certainly be given by the point that a client must make a decision about whether to take action in relation to the financial advice, but prescribing specific times runs the risk that disclosure becomes a box-ticking exercise, rather than a way to assist consumers to make informed decisions.

| 10 | What (if any) transitional provisions should be included in the regulations? |
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If the Regulations are passed in their current form, our view is that there should be a transitional period of 24 months to allow for disclosures to be updated. Finalising disclosure regulations just a few months before that disclosure obligation applies does not give enough time to produce the new disclosures and train staff of the new disclosure obligations. Utilising the existing transitional period for the competency requirements would provide for a smoother transition to the new regime. If our proposed changes to the Regulations are accepted, our view is that a transitional period is less important (because a single point of disclosure more closely resembles our current disclosure process).

Our view is that transitional arrangements for disclosure should apply to all clients of a FAP (whether they are existing clients or new clients seeking advice after the Regulations take effect). To have two disclosure regimes would be too difficult to implement for FAPs.