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Financial Markets Policy
Commerce, Consumers and Communications
Ministry of Business, Innovation and Employment
PO Box 1473
Wellington 6140

CONSULTATION – TREATMENT OF INTERMEDIARIES UNDER THE NEW REGIME FOR THE CONDUCT OF FINANCIAL INSTITUTIONS

This submission is made on behalf of AIA New Zealand Limited and its related entities (together "AIA NZ"). It relates to the Ministry of Business, Innovation and Employment's April 2021 discussion document on the treatment of intermediaries under the new regime for the conduct of financial institutions. AIA NZ has provided a separate submission on the discussion document relating to regulations supporting the regime.

About AIA NZ

AIA NZ is a member of the AIA Group ("AIA"), which comprises the largest independent publicly listed pan-Asian life insurance group. It has a presence in 18 markets in Asia-Pacific and is listed on the Main Board of The Stock Exchange of Hong Kong. It is a market leader in the Asia-Pacific region (excluding Japan) based on life insurance premiums and holds leading positions across the majority of its markets.

Established in New Zealand in 1981, AIA acquired Sovereign Assurance Company Limited in 2018 which, at the time, was New Zealand's largest life insurer having been in business in New Zealand for over 30 years. Sovereign formally amalgamated under the AIA brand in August 2019, and we have been protecting New Zealanders and helping them to lead Healthier, Longer, Better Lives ever since.

AIA NZ offers a range of life and health insurance products that meet the needs of over 450,000 New Zealanders. AIA NZ is committed to an operating philosophy of *Doing the Right Thing, in the Right Way, with the Right People*. AIA NZ launched the New Zealand Conduct Framework in January 2019 to help ensure the consistent delivery of good customer outcomes across the organisation.

In addition to being a licensed insurer, AIA NZ (through its subsidiary AIA Services New Zealand Limited) is a licensed financial advice provider and provides financial advice services through two authorised bodies: AIA Thrive Limited and AdviceQual Limited. AIA NZ is also a prominent member of the Financial Services Council ('**FSC**').

Key submission points

AIA NZ continues to broadly support the conduct regime that will be introduced by the Financial Markets (Conduct of Institutions) Amendment Bill ("Bill"). We also largely support the proposals outlined in this discussion document. We believe it will improve the regime by addressing the key problems with the treatment of intermediaries under the Bill as it currently stands.

The key points of our submission are:

- We support option 1 in order to focus the intermediary provisions on sales and distribution activities.
- We support option 2 but consider changes need to be made to exclude professional service providers (including medical professionals) from the concept of agent.
- We support option 5. We agree that financial institutions should be required to monitor intermediaries and agree that more is required for non-FSLAA intermediaries. However, clarity is needed on the definition of "monitor" to provide certainty and ensure consistency across the industry.

Our full submission is **attached**, and follows the format outlined by MBIE. In addition to our own submission, we contributed to and support the FSC submission on this discussion document.

We would be pleased to discuss any questions you have on this submission and we would welcome the opportunity to collaborate or consult further with MBIE as it considers the next steps.

Yours sincerely

Privacy of natural persons

Nicholas Stanhope
Chief Executive Officer
AIA New Zealand

Treatment of intermediaries under the new regime for the conduct of financial institutions

Your name and organisation

Name	Privacy of natural persons
Email	
Organisation/Iwi	AIA New Zealand Limited

[Double click on check boxes, then select 'checked' if you wish to select any of the following.]

☒ The Privacy Act 1993 applies to submissions. Please check the box if you do not wish your name or other personal information to be included in any information about submissions that MBIE may publish.

☐ MBIE intends to upload submissions received to MBIE's website at ***www.mbie.govt.nz***. If you do not want your submission to be placed on our website, please check the box and type an explanation below.

Not applicable.

Please check if your submission contains confidential information:

☐ I would like my submission (or identified parts of my submission) to be kept confidential, and **have stated below** my reasons and grounds under the Official Information Act that I believe apply, for consideration by MBIE.

Not applicable.

Option 1: 'Amend definition of intermediary to focus on sales and distribution'	
1	Do you have any comments on Option 1: 'Amend definition of intermediary to focus on sales and distribution'?
	AIA NZ supports this option. We agree the intermediary provisions should be focussed on sales and distribution activities, and not the wider group of intermediaries that currently fall within the scope of the Bill. Sales and distribution activities are core to the intended purpose of the conduct regime, and should be the focus of financial institutions' responsibilities.
2	Do you think the scope of the proposed definition of an intermediary is comprehensive enough to capture the variety of sales and distribution methods and to avoid gaps and risks of arbitrage?
	AIA NZ believes the proposed definition will capture all relevant sales and distribution methods. We do not believe there are any gaps or risks of arbitrage, but if this is a concern a regulation-making power could be introduced to allow certain activities to be brought within the definition (after appropriate consultation).
Option 2: Refine scope of who is covered as an agent	
	Do you have any comments on Option 2?
3	AIA NZ supports this option. We agree that those with a generalised role in acting as agents for a financial institution should not be captured by the regime. We do not believe this is necessary to achieve the purpose of the regime. One other group that it will be important to exclude is third party medical practitioners who provide support in assessing claims (either generally, or in respect of specific claims). We see this as being analogous to other professional service providers like lawyers and accountants. In our view, it would be appropriate to exclude professional service providers like medical practitioners, lawyers, and accountants from the definition of agent even if they are directly involved in respect of a particular claim. We consider that there is no need for a financial institution to have obligations in respect of third party professionals who are bound by separate professional duties (for example, lawyers are bound by the Conduct and Client Care Rules and medical professionals by the NZMA Code of Ethics). In addition, it is important to appreciate that professional service providers like medical practitioners, lawyers, and accountants are engaged in part because of their ability to provide independent, impartial advice to a financial institution. Including these groups within the scope of the definition of agent (and therefore requiring comprehensive oversight by a financial institution) is inconsistent with the nature of their role.
4	Do you think Option 2 would adequately exclude advisory services (e.g. lawyers, accountants) and other service providers to the financial institution who are not involved, directly or indirectly, in providing any part of the financial institution's relevant service or associated products to consumers?
	While we would need to see the proposed drafting to be sure, we consider option 2 should adequately exclude advisory and other services providers not directly or indirectly involved in the provision of relevant services or associated products.

	Do you think any explicit exclusions are needed for particular occupations or activities? If so, which ones, and why?
5	As mentioned in our responses above, we consider third party medical practitioners should be excluded from the concept of agent. However, we see no need for this to be an express exclusion, provided the drafting clearly operates to excludes this group (along with others – such as lawyers and accountants).
Objectives	
6	Do you have any comments on the objectives regarding the treatment of intermediaries?
	AIA NZ supports the conduct regime to be created by the Bill. We agree with the objectives outlined in paragraph 43 of the discussion document, in that we agree financial institutions should take appropriate responsibility for the fair treatment of consumers who interact through intermediaries. We also agree that it is important to minimise uncertainty and the potential duplication of regulation. To these we would add minimising compliance costs, which is noted in paragraph 20 of the discussion document as an objective. In our opinion, retaining the shape of the existing advice market, characterised by a diverse range of independent and aligned advice businesses of various sizes, should be a priority to ensure that the industry can continue to meet the needs of a diverse customer base. We consider the options outlined in the discussion document support these objectives and would make this aspect of the conduct regime much more workable than under the Bill as currently drafted.
Option 3: Minimal changes to intermediaries obligations (remove 446M(1)(b) only)	
	Do you have any comments on Option 3: 'Minimal changes to intermediaries obligations'?
7	AIA NZ does not support option 3. We do not consider this option would alleviate the practical challenges with this aspect of the Bill as currently drafted. In particular, and as paragraph 57 of the discussion document notes, if option 3 was adopted financial institutions would still be required to exert a strong degree of control over intermediaries. In practice, we expect this would lead to a consolidation of the industry, as insurers and advisers could not meet the requirements of the proposals based on the existing shape of the market. This consolidation would likely result in fewer smaller advice businesses, as insurers seek to partner with larger financial advice providers to achieve scale efficiencies. This partnership would also likely encourage a greater alignment between financial advice providers and insurers via a narrower approved product list. This loss of access to small advice practices, some loss of independence and potential reduction in product choice may not be in consumers' interests. This is not consistent with the objectives of the regime and would not address the concerns outlined in paragraphs 16 to 18 of the discussion document.
8	If Option 3 were pursued, do you think any other obligations in section 446M(1)(bb), (bc), (bd) or (bf) would need clarifying or amending? Why/why not?
	AIA NZ does not support option 3 and further consultation would be required to work through the practical implications of this approach. At a high level, we consider that sections

446M(1)(bb), (bc), and (bd) would need to be amended to mitigate the concerns outlined in paragraphs 16 to 18 of the discussion document. The changes that would be necessary would be to remove these requirements and replace them with more proportionate requirements – in other words, to amend them as proposed by options 4 and 5.

Section 446M(1)(bf) relates to processes, systems and controls for communicating with consumers. It does not explicitly relate to intermediaries. We do not consider that section would need clarifying should option 3 be adopted. Options 4 and 5 do not contemplate changes to that section, and we have no concerns with the section as currently drafted.

Option 4: More significant changes to intermediaries obligations

	Do you have any comments on Option 4: 'More significant changes to intermediaries obligations'?
9	Subject to our comments in questions 10 and 11 regarding the concept of "monitoring", AIA NZ considers that option 4 will address the concerns outlined in paragraphs 16 to 18 of the discussion document. However, AIA NZ prefers option 5 – we consider it is appropriate that a financial institution should have additional oversight responsibilities for non-FSLAA intermediaries.
	What do you think the level of responsibility should be for financial institutions' oversight of intermediaries? For example, "*managing or supervising* the intermediary to ensure they support the financial institutions compliance with the fair conduct principle", or "*monitoring* whether the intermediary is supporting the financial institution's compliance with the fair conduct principle", or something else?
10	AIA NZ considers that financial institutions should be required to "monitor" whether the intermediary is supporting the financial institution's compliance with the fair conduct principle. In our opinion, a requirement to "monitor" sets the level of responsibility at a more appropriate level than the current requirement to "manage or supervise". As paragraph 63 of the discussion document notes, this standard recognises what is typically a limited degree of influence or control over intermediaries, and will minimise the degree of overlap between the conduct regime and FSLAA. FSLAA (and the Code of Conduct) are designed to secure good customer outcomes from an advice process, and it is difficult to weigh the marginal benefits of additional protections under the Bill as currently drafted against the high costs and impacts on the industry. To ensure consistency across the industry and to minimise uncertainty we consider that it will be necessary to clarify what it means to "monitor". The term is not defined in the Bill, in the Financial Markets Conduct Act 2013 generally, or in other New Zealand financial services legislation. Ordinary usage suggests the concept would require a financial institution to "observe" or "check" an intermediary (or similar), but the interpretation of this is key. There is a wide spectrum of activities that could be considered "monitoring". At one end of the spectrum are simple and relatively low-cost activities like adviser and FAP due diligence and complaints monitoring, and at the other end there is data analytics and file reviews which require a significant amount of resource and investment. Even these activities in of themselves can be scalable. For example, FAP due diligence may be as simple as checking the FAP's licence and whether there are any conditions on that licence, or it can be as involved as requesting the FAP's FMCA compliance programme and reviewing it for adequacy.

Ultimately this is likely to be a topic that would benefit from regulatory guidance. Guidance would benefit both financial institutions and intermediaries. Financial institutions will benefit from additional certainty, which should in turn lead to greater consistency of monitoring practices across institutions. This will benefit intermediaries as it would minimise the risk of intermediaries being subject to multiple different or conflicting monitoring requirements. We see the imposition of multiple different or conflicting monitoring requirements to be a key risk that needs to be avoided as the regime is implemented.

What standard do you think financial institutions should have to oversee their intermediaries to?

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AIA NZ considers the appropriate oversight standard should recognise that, while conduct is a shared responsibility, financial institutions typically have limited influence or control over intermediaries. This lends itself to a lower standard of oversight than would be expected of, for example, a financial advice provider in overseeing financial advice provided on its behalf. It also recognises the desirability of minimising duplication in regulation. In addition, oversight should be focused on matters that financial institutions can control, such as product design and ease of claims.

The required oversight standard could have significant cost considerations. As a general rule, financial institutions do not currently have the capacity to perform extensive supervisory oversight of their intermediaries by way of (for example) file reviews or audit. If this standard was to be required of financial institutions, then they would need to significantly increase their supervisory and oversight capabilities. This would add cost that would inevitably be passed on to consumers (at least in part).

Finally, there is the potential for unintended consequences in imposing a high standard of oversight. In addition to the possibility of intermediaries reducing the number of financial institutions they deal with, which affects consumer choice, extensive oversight can create conflicts of interest and risks a loss of independence between an intermediary and financial institution. As an example, an insurer could use oversight methods to make it difficult for advisers to replace that insurer's own products, creating a disincentive for an adviser to recommend an alternative product even where it may provide a better customer outcome.

Option 5: Distinguish between FSLAA and non-FSLAA intermediaries

Do you have any comments on Option 5: 'Distinguish between FSLAA and non-FSLAA intermediaries'?

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Option 5 is AIA NZ's preferred option. Subject to our comments in questions 10 and 11 regarding the concept of "monitoring", AIA NZ considers that option 5 will address the concerns outlined in paragraphs 16 to 18 of the discussion document. We consider it is appropriate that a financial institution should have additional oversight responsibilities for non-FSLAA intermediaries. We agree that the lists of proposed oversight responsibilities in paragraphs 70 and 72 of the discussion document are appropriate.

How far do you think financial institutions' oversight of FSLAA intermediaries under Option 5 should extend? For example, should it cover the general conduct of the intermediaries, or more narrowly on product performance and related consumer outcomes (or something else)?

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AIA NZ's view is that oversight of FSLAA intermediaries should focus on product performance and related consumer outcomes and should not cover the general conduct of intermediaries

	other than as already required by other legislation. As paragraph 71 of the discussion document notes, this recognises that FSLAA intermediaries are already subject to duties under FSLAA. A more limited obligation is therefore consistent with the objective of minimising compliance costs and the potential duplication of regulation.
Obligations in relation to employees and agents	
14	Do you have any comments on the proposals regarding obligations in relation to employees and agents?
	AIA NZ agrees with the discussion document's comments on this point. We agree that major amendments to the Bill's obligations relating to employees and agents are not required.
15	Do you think there should be a distinction drawn between employees and agents? Why/why not?
	AIA NZ does not consider a distinction needs to be drawn between employees and agents. We agree with the comments in paragraph 75 of the discussion document to the effect that a financial institution should have more extensive processes in place regarding employees and agents. However, we consider it needs to be clear that the concepts of "intermediary" and "agent" are mutually exclusive. The purpose of the more refined duties in respect of intermediaries would be defeated if there was any suggestion that intermediates fell within the Bill's concept of "agent". We think clarity on this point is important as, in some cases and for some purposes, an intermediary may be deemed to be an agent of an insurance company, despite not being intended as an "agent" for the purposes of the Bill.
16	Do you think any amendments should be made to the obligations in 446M(1) that would apply to employees and agents?
	AIA NZ does not believe any such amendments are required.
17	Do you have any other comments or viable proposals?
	AIA NZ does not have any other comments or wish to raise any other proposals.
Other comments	

AIA NZ does not have any other comments.