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18 June 2021

Financial Markets Policy
Commerce, Consumers and Communications
Ministry of Business, Innovation & Employment
Wellington 6140
New Zealand

By email: *financialconduct@mbie.govt.nz*

To whom it may concern,

Discussion Document: Treatment of intermediaries under the new regime for the conduct of financial institutions

1. AMP Services (NZ) Limited (**AMP**) welcomes the opportunity to submit on MBIE's Discussion Document "*Treatment of Intermediaries under the new regime for the conduct of financial institutions*".
2. These submissions are intentionally brief and limited in scope. AMP wishes to record its preference for Option 5 in the Discussion Document and, as such, it has only responded to questions 12 and 13.
3. AMP acknowledges that both financial institutions and intermediaries share the responsibility of providing good customer outcomes. AMP supports a general requirement for financial institutions to monitor their intermediaries (to the extent necessary) to ensure their customers are being treated fairly, regardless of which distribution channel the customer engages with. AMP considers that an expanded Option 5 is the most appropriate way to achieve this outcome, for the reasons outlined in this submission.

Yours faithfully,

Privacy of natural persons

Tim Pritchard | General Counsel
Privacy of natural persons

Submission template

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

Your name and organisation

Name	Olivia Rees, Senior Legal Adviser
Email	Privacy of natural persons
Organisation/Iwi	AMP Services (NZ) Limited

☒ The Privacy Act 2020 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.

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.

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'?
	No response.
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?
	No response.
Option 2: Refine scope of who is covered as an agent	
3	Do you have any comments on Option 2?
	No response.
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?
	No response.
5	Do you think any explicit exclusions are needed for particular occupations or activities? If so, which ones, and why?
	No response.
Objectives	
6	Do you have any comments on the objectives regarding the treatment of intermediaries?
	No response.
Option 3: Minimal changes to intermediaries obligations (remove 446M(1)(b) only)	
7	Do you have any comments on Option 3: 'Minimal changes to intermediaries obligations'?
	No response.
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?
	No response.

Option 4: More significant changes to intermediaries obligations	
9	Do you have any comments on Option 4: 'More significant changes to intermediaries obligations'?
	No response.
10	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?
	No response.
11	What standard do you think financial institutions should have to oversee their intermediaries to?
	No response.
Option 5: Distinguish between FSLAA and non-FSLAA intermediaries	
12	Do you have any comments on Option 5: 'Distinguish between FSLAA and non-FSLAA intermediaries'?

AMP considers it is generally appropriate for financial institutions to play a role in monitoring how their products and services are sold and in monitoring customer outcomes. Financial institutions cannot be sure they are complying with the fair conduct principle, and their fair conduct programmes, without some level of oversight over intermediaries.

MBIE has proposed that intermediaries who have obtained a licence as a Financial Advice Provider (**FAP**) be treated as "FSLAA intermediaries" (in this submission **FMCA intermediaries**), and those without a licence are treated as "non-FSLAA intermediaries" (in this submission **non-FMCA intermediaries**). **AMP agrees with the approach suggested in Option 5**, specifically that a distinction should be drawn between intermediaries who are regulated under the Financial Markets Conduct Act 2013 (FMCA) and those who are not, such that financial institutions are required to have lesser levels of oversight over the former and increased levels of oversight over the latter.

In the absence of other conduct regulations, non-FMCA intermediaries (such as car dealers, travel agents or retailers selling add-on finance or insurance) should be regulated by the Bill.

FMCA intermediaries do not need to be subjected to the same level of monitoring and oversight by financial institutions as non-FMCA intermediaries. The new FMCA financial advice regime sets base levels of customer disclosure, training and competence standards, duties owed to customers, complaints handling, dispute resolution, and FMA supervision, which are not imposed on non-FMCA intermediaries.

It is not necessary for the Bill to repeat the conduct standards the financial advice regime has already created for FMCA intermediaries. If the Bill does not distinguish between FMCA and non-FMCA intermediaries, it would duplicate conduct regulation and add a layer of complexity because FMCA intermediaries would be regulated by the FMA, their FAPs and financial institutions (albeit to a lesser extent). Examples of this duplication of conduct regulation in new s 446M(1) include the training standards, consequences of misconduct, and the setting of conduct expectations – all of which are already addressed in the FMCA or the Code of Professional Conduct for Financial Advice Services (the **Financial Advice Code**).

Furthermore, to distinguish between FMCA and non-FMCA intermediaries in this way would reduce the regulatory burden on both FMCA intermediaries as well as their financial institutions, while introducing no further burden or resource requirement on the FMA than already exists.

MBIE has proposed that the category of FSLAA intermediaries (i.e. FMCA intermediaries) be administered on an "entity level". AMP submits that this approach is potentially too simplistic because it does not take into account the different roles and capacities of the FAPs' employed Financial Advisers (**employed FAs**) and Nominated Representatives (**NRs**) as compared to Financial Advisers engaged independently via a contract for services (**Independent FAs**).

AMP proposes that employed FAs and NRs be included in MBIE's FSLAA intermediaries category, and that Independent FAs be categorised somewhere between them and MBIE's non-FSLAA intermediary category.

Independent FAs have historically been, and continue to be, less monitored. Their non-

employed status (by their engaging FAP) means there is less control of their conduct. This is a natural consequence of their greater distance from their FAP's oversight. Conversely, employed FAs, like NRs, tend to have higher degrees of control over their advice, underpinning greater uniformity in standards of advice and, one should expect, client outcomes.

Put graphically, the relative level of FAP oversight of financial advice should be countered with an inversely proportional level of oversight required by financial institutions.

NRs	Employed FAs	Non-employed engaged FAs	Non-FMCA intermediaries
Maximum	----------	*Degree of oversight and control by a FAP*	---------- *None*
None	----------	*Need for oversight by financial institutions*	---------- *Maximum*

13	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)?

While removing the requirements for financial institutions to check that FMCA intermediaries have completed training, have knowledge of matters covered in the training, and to obtain assurance that FMCA intermediaries are competent and fit and proper is appropriate, this is not the only area of overlap the Bill has with FMCA and the Financial Advice Code.

The following aspects of good conduct are already regulated:

- training, competence, knowledge and skill – FMCA (s 431I, 431L) and the Financial Advice Code (Part 2)
- mandatory participation in independent dispute resolution schemes (s 11, Financial Service Providers (Registration and Dispute Resolution) Act 2008)
- complaints – FMCA (Part 5, Schedule 5)
- duty to give priority to the client's interests – FMCA (s 431K)
- treating clients fairly and acting with integrity – the Financial Advice Code (Code Standards 1 and 2)
- misleading and deceptive conduct – FMCA (s 431P) and the fair dealing provisions in Part 2 of the FMCA
- the suitability and understandability of financial advice - (Code Standards 3 and 4)
- consequences for misconduct/non-compliance with FMCA obligations (Part 8, including stop and direction orders, pecuniary penalties, banning orders and other offences), enforced by the FMA

Paragraph 71 of the Discussion Document suggests that financial institutions' oversight should focus more narrowly on product performance and related customer outcomes. It is unclear what is meant by "product performance", and how an FMCA intermediary could affect a product's performance. Naturally, products are produced and owned by the financial institution, and, *providing they were appropriately recommended initially*, the primary responsibility for ensuring they perform well and create good customer outcomes should sit with those financial institutions.

Financial institutions' involvement in FMCA intermediaries' conduct should be limited to ensuring their products and services are performing well and helping customers achieve good outcomes. Other aspects of good conduct by FMCA intermediaries are already well catered for by existing legislation, as outlined above. However, as outlined in the graphic to question 12, there is a place for a differentiated level of oversight of FMCA intermediaries by financial institutions (as opposed to non-FMCA intermediaries).

Obligations in relation to employees and agents

14 Do you have any comments on the proposals regarding obligations in relation to employees and agents?

No response.

15	Do you think there should be a distinction drawn between employees and agents? Why/why not?
	No response.
16	Do you think any amendments should be made to the obligations in section 446M(1) that would apply to employees and agents?
	No response.
17	Do you have any other comments or viable proposals?
	No response.

Other comments

No response.