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Commerce, Consumers and Communications  
Ministry of Business, Innovation & Employment  
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**Discussion document on regulations under the new regime for the conduct of financial institutions  
– ASB Bank Limited submission**

ASB Bank Limited (**ASB**) welcomes the opportunity to provide feedback to Ministry of Business, Innovation & Employment (**MBIE**) on its discussion document on regulations to support the Financial Markets (Conduct of Institutions) Amendment Bill (**COFI**).

As an organisation that exists to accelerate the financial progress of all New Zealanders and puts customer outcomes at the centre of what we do, ASB welcomes the introduction of a conduct regime for financial services. We consider the risk of consumer harm would be reduced if the conduct regime was applied more widely, to set products and services regardless of the type of entity that provides them. Consumers would be better protected if the scope of the legislation was broadened.

ASB supports regulations to prohibit certain sales incentives, in line with the changes the banking industry has already made. Regulations will need to clearly prescribe what will and will not be allowable to ensure consistency and we would welcome further discussion with MBIE on the detail of the regulations. Clear regulations are particularly important in relation to sales incentives given the potential impact on competition and the requirement for the Minister to have regard to the likely effect of regulations prohibiting any incentives “on the financial services industry generally”<sup>1</sup>. ASB does not consider that further regulations are needed for other elements of the conduct regime, to preserve firms’ flexibility of approach, and to avoid duplicating existing requirements elsewhere.

Our key feedback and recommendations are outlined in Section A, with further detail provided in Section B.

We acknowledge that ASB’s submission may be published by MBIE. ASB does not seek confidentiality for any aspect of this submission, other than the personal contact details below.

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<sup>1</sup> Proposed new section 546(5)(c)(ii)

If you require any further information in relation to this submission, please do not hesitate to contact Jennifer Bourne Senior Manager Government Relations and Regulatory Affairs  
Privacy of natural persons

Yours sincerely

Privacy of natural persons

Adam Boyd  
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## Section A: ASB's key feedback and recommendations

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A summary of our key feedback and recommendations is provided here, with more detail provided in our responses to the consultation questions at section B.

### Our key points:

- At ASB **good customer outcomes are at the heart of what we do**. We have an established Good Customer Outcomes measurement framework, that defines the customer outcomes we want to achieve and measures our delivery of these through a broad set of indicator metrics. We welcome the introduction of a conduct regime for financial services.
- **Regulation should be by product rather than by entity**. Given the current scope of COFI is limited to banks, insurers and non-bank deposit takers we are concerned that customer detriment will happen outside the regime, for example, where a loan is obtained from an entity that is not subject to fair conduct requirements. Our engagement with consumer organisations suggests they are particularly worried about car finance companies because loans from these providers recur as an issue for people that seek consumer organisation or debt advice support. Product based regulation will lead to the best outcomes for consumers because it creates certainty for New Zealand consumers that, wherever they obtain a financial product or service, they can expect the same standard of fair conduct.
- **We support regulations that clearly prescribe what sales incentives are not allowable under the conduct regime**. This will ensure a consistent approach across a broader range of financial service providers. Our experience has been that where regulations are not clearly prescribed, they are interpreted differently leading both to confusion for consumers and a unlevel playing field for market participants.<sup>2</sup> We agree that incentives which are linked to targets for value and volume of sales should be prohibited, provided they are appropriately defined. As the Bill stands currently and from the discussion paper, it is unclear how broad the definition of incentive is intended to be, particularly the reference to incentives “calculated in any way by reference (directly or indirectly) to the volume or value of products”. It could capture incentives used in balanced scorecards for more senior employees, linked to financial metrics (such as Cash Net Profit After Tax (NPAT) and Profit After Capital Charge (PACC)) and metrics tied to market share. This should be clarified and such financial metrics should not be included in the definition of volume and value targets.
- **We support the application of incentive regulations to frontline employees and their immediate managers only**, otherwise the proposals in the discussion paper could have a much greater impact than is envisaged. The discussion paper notes that sales targets based on volume or value are usually only in use for frontline or customer-facing staff. However, market share and lending growth are commonly included as metrics in balanced scorecards for more senior employees, as well as the financial metrics outlined above. Incentives linked to market share and financial

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<sup>2</sup> We have seen this recently in the context of Kiwisaver promotions, where FMA guidance has been provided to ensure that Kiwisaver investors are not influenced to make poor investment decisions because of high-value inducements. Some recent promotions appear to be in contravention of this guidance, leading to both potential consumer harm, and an unlevel playing field for others in the market who are complying with the guidance.

metrics are commonly used across banking and other sectors. There is little differentiation between the two options presented in the discussion paper for who should be covered by incentive regulations, particularly for large organisations with multiple layers of management between frontline staff and senior managers. We understand that the rationale for the scope of application is due to difficulties in defining 'immediate managers' and we do not consider this should drive a wider scope of application of incentive regulations.

- We see **no need for further prescription around requirements for publication of fair conduct programmes; design and management of products; remediation; claims handling and settlement. Nor do we see a need for regulations on complaints handling**, given this would duplicate existing requirements elsewhere, including in dispute resolution scheme rules, and in financial advice regime licencing conditions. If further regulations on complaints are progressed, these should be consistent with such existing requirements.

#### Our recommendations:

1. As we note above, we strongly believe regulation should be by product rather than be entity, as this meets the intent of a conduct regime for financial services. We are concerned that the current scope, limited as it is to banks, insurers and NBDTs does not address the potential for consumer harm by those outside the regime's scope and introduces an unlevel playing field with very clear competitive advantages, especially in relation to the use of sales incentives, to those entities outside the regime. We also note that the Reserve Bank of New Zealand (RBNZ) and Financial Markets Authority (FMA) joint 2018 review of bank conduct and culture found that conduct and culture issues did not appear to be widespread in New Zealand banks. Nevertheless, each individual bank received a specific report detailing the RBNZ's and the FMA's observations and recommendations and ASB has undertaken significant work to respond to these. We therefore consider that banks are further advanced in their consideration of conduct and culture than other financial services sectors and would like to see standards improve across the financial services industry.
2. We understand that Government's current position is that the scope of the Bill will not be amended. In relation to the **scope of the regime**, we recommend that:
  - as a minimum, consumer detriment should be monitored in sectors and product providers that sit outside the regime;
  - there should be a requirement inserted into the statutory review provision (s446X (3)) of the Bill to require that the scope of those covered should be explicitly considered to ensure that the consumer protection objectives are being met.
  - That s446X (2) of the Bill be amended to require the review to be commenced before the second anniversary of the regime's implementation. We think that these reforms could have a significant impact on financial services and we are particularly concerned about unanticipated consequences arising from the regime applying at entity rather than product/service level.
3. In relation to **sales incentives prohibitions**, greater clarity is needed on what constitutes 'volume or value targets' and direct and indirect measures. The definition provided at paragraph 152 of the

discussion document is too broad and further information will be needed to assist understanding of what is and is not permitted and to ensure consistent application of the requirements.

4. Frontline employees and their immediate managers only should be subject to the **sales incentives** regulations, otherwise the impact of the regulations will be much greater than currently envisaged.

Other points we note:

1. We broadly agree with MBIE's proposals to have no further regulations on:

- overlapping regulatory regimes;
- conduct risk management;
- in relation to managing and supervising employees;
- the overarching obligation to design and manage incentives to avoid consumer detriment;
- communicating with customers;
- the review and maintenance of fair conduct programmes; and
- treatment of customers in vulnerable circumstances.

2. We support firms explicitly considering customers' personal circumstances, as a factor to have regard to in developing fair conduct programmes.

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**Section B: Responses to the consultation questions**

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**Do you have any comments on the status quo i.e., no further regulations to support the minimum requirements for fair conduct programmes in the Bill?**

- 1 We support retaining the status quo, no further regulations, which will better allow flexibility for firms to develop and operationalise their fair conduct programmes.

Any variability in approaches across firms could be addressed through FMA guidance, which can be updated as best practice emerges.

**Do you have any comments on MBIE's proposal position that no regulations are needed at this time to support section 446M(1)(a)?**

- 2 While in principle we support the position that no regulations are needed, we note that the consultation document anticipates that a financial institution's existing policies and procedures for meeting obligations under other consumer protection regimes would sit within their fair conduct programme. If the programme was to include *all* the policies and procedures related such other compliance programmes, e.g. CCCFA, it would be a significant, and potentially unwieldy document. We would welcome clarification on the extent to which the fair conduct programme is expected to incorporate these documents. Could this be by reference, for example, or is the intention that other processes or procedures relating to other consumer protection legislation be fully incorporated within the fair conduct programme itself? This clarity could be achieved through guidance, rather than regulations.

**Do you have any comments on the proposals regarding distribution of relevant services and associated products? We are particularly interested in how these proposals may be implemented.**

- 3 We do not think that further regulations on the distribution of services and products are required. ASB already has policies and processes in place which cover the types of requirements suggested for inclusion regarding the distribution of products and services.

**Do you have any comments on MBIE's position that no regulations are needed at this time to support s446M(1) (ac)**

- 4 We agree that no further regulations are needed to support the requirement to identify and manage conduct risks.

- 5 **Do you have any comments on MBIE's position that no regulations are needed at this time to support section 446M(1)(bb) to (bd)?**

We agree that the Bill requirements are clear in relation to managing and supervising employees. We have made comments on the treatment of intermediaries and the scope of agents in the consultation paper on *Treatment of Intermediaries under the new regime for conduct of financial institutions* and welcome more clarity of expectation relating to the oversight of intermediaries.

**Do you have any comments on the proposal to specify further minimum requirements regarding remediation of issues? Are there any further specific remediation principles that should be specified in regulations?**

6 We do not feel that additional prescriptive requirements are needed on remediation because we believe the Bill's current high-level drafting is sufficient. We would see any concerns around remediation are better addressed through guidance. We support the New Zealand Bankers Association's (NZBA) detailed submission response to this question. If requirements are introduced in regulations, we think that the threshold for assessing a firms' actions should be set at 'reasonable steps', rather than 'all reasonable steps', as an 'all reasonable steps' test creates a higher threshold of expectation which firms may find difficult to achieve in practice, especially in relation to historic remediations where, for example, identifying and then making contact with customers can be made more difficult where records hold out of date information or are no longer accessible.

**Do you have any comments on MBIE's position that no regulations are needed at this time to support section 446M(1)(be)?**

7 We agree that no further regulations are needed to support the overarching obligation to ensure that incentives are designed and managed to mitigate consumer detriment. We have made further comments with respect to sales incentives regulations in our responses to Questions 17-31.

**Do you have any comments on MBIE's position that no regulations are needed at this time to support section 446M(1)(bf)?**

8 We agree no regulations are needed on communicating with customers, though further guidance may be needed to clarify what 'effective' means, and effective for whom, noting that customers will need a diversity of method and channel to comply with the fair treatment principles.

**Do you have any comments on MBIE's position that no regulations are needed at this time to support section 446M(1)(d)?**

9 We agree no regulations are needed on review and maintenance of conduct programmes.

10 **Do you have any comments on the proposal to specify further minimum requirements regarding consumer complaints handling?**

We agree with the FSC and NZBA submissions on this, being that no obligations are required in respect of complaints handling, as this will duplicate existing obligations, such as those set out under dispute resolution scheme rules, and under the financial advice licence standard conditions. However, if obligations are put in place, then we encourage consistency across the various obligations to minimise complexity for organisations.

**Do you have any comments on the proposals to specify further minimum requirements regarding claims handling and settlement?**

- 11 We do not see a need for further minimum requirements regarding claims handling and settlement, noting there are existing industry standards on this. We also note that this may lead to additional compliance burden on ‘agents’ (which could include other financial intermediaries) for potentially limited benefit given the duplication with existing standards.

**Do you think there is need to define what ‘handling a claim under an insurance contract’ means? If so, why?**

- 12 We agree that there should be a definition of what handling a claim under an insurance contract means and we agree in principle with the activities and actors involved at paragraphs 101-102 of the discussion document, as well as those proposed to be excluded at paragraph 103.

**Do you have any comments on the discussion regarding customer vulnerability?**

- ASB supports an increasing focus on customers in circumstances which can drive vulnerability and we welcome the consistency of definition with that used in the United Kingdom. We agree that there is no need for specific regulations under the Bill at this time, noting the recent guidance issued by FMA and the Council of Financial Regulators on consumer vulnerability provides industry with regulatory direction. Given that good practice on customers in vulnerable circumstances is evolving, it may be preferable that guidance is provided as it is easier to update than legislation.
- 13

**Do you have comments regarding the option of including vulnerable consumers in section 446M(1A)?**

- 14 We are supportive of either an explicit requirement to consider customers in vulnerable circumstances as a specific factor that Financial Institutions must have regard to, or otherwise expand on the existing factor in s446M(1A)(d) to include the ‘types of consumers it deals with, *and their circumstances.*’

**Do you think any further factors should be added by regulations to the list under section 446M(1A)?**

15

See our response to question 14 above.



**Do you think any other regulations that could be made under new section 546(1)(oa) are necessary or desirable? Please provide reasons for your comments.**

16 No comment.

#### *Sales incentives*

**Do you have any comments on the Status Quo (no regulations)?**

17

We support regulations on sales incentives. Please see our responses Qs 18-31.

**Do you have any comments on the option to prohibit sales incentives based on volume or value targets?**

We support this proposal as it provides certainty for firms. ASB, like other banks, has already committed to remove sales incentives for all frontline staff and their managers and made this change from 1 July 2020. A prohibition would ensure a consistent approach across a broader range of financial service providers.

But to be effective, greater clarity is needed on what constitutes 'volume or value targets' and 'indirect' and 'direct' sales measures. The definition provided at paragraph 152 is too broad. It is not clear from the Bill and the discussion document the extent to which incentives linked to financial metrics (such as Cash Net Profit After Tax (NPAT), Profit After Capital Charge (PACC)) and Return on Equity (ROE) and metrics such as a market share would be considered volume and value targets, and at what level (e.g. in relation to specific products or services, at a divisional level, in relation to the bank overall). This should be clarified and such financial metrics should not be included in the definition of volume and value targets, as if they are to be captured, it would require a significant departure from

18 current remuneration practices. This does not appear to be the intention of the policy, given the discussion document notes at paragraph 181 "*We would expect that incentives from sales targets based on volume or value are usually only in use for frontline and customer-facing staff*"

We also note that the proposed prohibitions do consider how organisations commonly measure performance, particular the widespread use of 'balanced scorecards' that set out a range of performance measures of different weightings. At ASB, business outcome measures are only a part of how we measure performance, with significant weighting given to measures related to customers, trust and people management. ASB also uses performance modifiers to ensure our people are guided by our values, demonstrate a commitment to good customer outcomes and are accountable for managing risk within their role. We would welcome recognition of the role of balanced scorecards in managing potential conflicts of interest and the risks of poor customer outcomes as MBIE develops regulations.

We are supportive of the following exclusions including linear sales incentives, salary-based remuneration, performance benefits, disincentives and remuneration based on aspects other than sales.

**What would the likely impacts be for financial institutions, intermediaries and/or consumers of prohibiting sales incentives based on volume or value based targets?**

19 As outlined in response to Q18, depending on the definition of 'volume or value targets' and 'indirect' and 'direct' sales measures, the prohibition could result in much greater changes to remuneration than envisaged in the discussion paper.

There is also a risk that financial services providers that fall outside the scope of the Bill and continue to pay these types of incentives could take advantage of these changes. This could lead to more consumers being at risk of being sold an unsuitable product.

**Do you have any feedback on a more principle-based approach to prohibiting some incentives?**

20 We think that better outcomes for customers will be achieved overall where there is certainty around what is and is not allowable from a remuneration perspective. It also provides firms with certainty as to what is acceptable and facilitates a consistent approach by the entities within scope.

**How could a more principles-based approach to prohibiting some incentives be made workable?**

21 We are concerned that a principles-based approach would not be workable at this time, and would risk differing outcomes for customers, depending on the maturity of the firm's approach to fair treatment of customers, and how firms apply the principle in practice. Firms would inevitably take a range of approaches to interpreting the principle, depending on their risk appetite, and it may result in consumer detriment. Equally, the regulator's views of what is acceptable may vary over time. This would create uncertainty for firms in complying. If a principles-based approach was taken, we expect that FMA would need to issue guidance, taking a 'hindsight' view once they had assessed firms' compliance, again leading to uncertainty for firms.

**If a more principles-based option was chosen, should there be some incentives specifically excluded?**

22 We support the certainty of a prescriptive approach, so would support specific exclusions if a principles-based option was chosen. We would support the exclusions already identified by MBIE in the discussion paper e.g. linear sales incentives, salary-based remuneration, performance benefits, disincentives and remuneration based on aspects other than sales.

23 **Do you think there are any other viable options other than what has been put forward by this discussion document? Please explain in detail.**

See our response to Q 18 above.

24 **Are there sales incentives based on volume or value targets that should be excluded from the regulations (i.e allowed to be offered/given)?**

See our response to Q 18 above.

25 **Do you think there are other types of incentives that should be excluded from the regulations? Please provide reasons for your comments.**

See our response to Q 18 above.

26 **Do you think that the scope of who can be covered by the regulations poses a risk of unintentionally capturing other intermediaries that are paid incentives but should not be covered?**

No comment.

27 **Do you agree/disagree that within financial institutions and intermediaries sales incentives regulations should only apply to all staff? Why/why not?**

We support the application of incentive regulations to frontline employees and their immediate managers only, otherwise the proposals in the discussion paper will have a much greater impact than is envisaged. There is little differentiation between the two options presented in the discussion paper if option 2 (“Frontline employees, agents and intermediaries and their managers only”) applies to all staff other than senior managers and directors (as defined by the Financial Markets Conduct Act). This is particularly the case for large organisations with multiple layers of management between frontline staff and senior managers. Such a broad application of Option 2 also appears inconsistent with the intention of this Option, which is to “[lessen] conflicts of interest at the point of interaction with consumers (frontline), which is where the conflict of interest operates.” The discussion paper also notes that “For staff who are more removed from the sales and advice process...their ability to influence the consumer is far lower and therefore less problematic.” For an organisation such as ASB, there are many people between frontline staff and senior managers that are removed from the sales and advice process.

The discussion paper notes that sales targets based on volume or value are usually only in use for frontline or customer-facing staff. However, market share and lending growth are commonly included as metrics in balanced scorecards for more senior employees, as well as the financial metrics outlined in the response to Q 18. If the regulations apply to all employees, the impact will be far greater than appears intended. As the discussion paper notes, sales targets based on volume or value are usually only in use for frontline or customer-facing staff. To apply the regulations more widely risks prohibiting incentives that do not appear to have been intended to be included, such as incentives linked to financial metrics that are commonly used for staff more senior than frontline staff and their immediate managers. The risk of top-down pressure on sales staff from these more senior staff is managed effectively through the use of balanced scorecards. These appropriately weight metrics such as financial performance, lending growth and market share with metrics such as progress against key conduct initiatives, customer metrics, risk modifiers and acting in line with organisational values and behaviours.

We understand that the rationale for the scope of application is due to the relative difficulty in defining ‘immediate managers’ compared to ‘senior managers’ (which is defined in the Financial Markets Conduct Act). However, we do not consider this should drive a wider scope of application of incentive regulations and would be happy to engage on a workable definition of ‘immediate manager.’

**Do you agree/disagree that within financial institutions and intermediaries, sales incentives regulations should only apply to frontline staff and their managers? Why/why not?**

28

We agree that sales incentives regulations should only apply to frontline staff and their immediate managers for the reasons set out in our response to Question 27 above.

**Do you think that external incentives should apply to any incentive paid to an agent, contractor or intermediary? Why/why not?**

29

We agree in principle, however we would like to further understand the position as it relates to contractors as they are not otherwise discussed in the consultation.

**Do you agree that both individual and collective incentives should be covered? Why/why not?**

30

We agree in principle, for the reasons outlined at paragraph 186 of the consultation paper.

**Do you have any other comments on the discussion in relation to incentives?**

31

It is not clear who, if a principles-based approach was taken, MBIE anticipate would be covered under the regulations; i.e. would it be frontline staff and their managers, or is the assumption that under a principles-based approach, that all staff of Financial Institutions and intermediaries are covered?

*Requirement to publish information about fair conduct programmes*

**Is more detail needed to outline what information should be published regarding financial institutions' fair conduct programmes to assist financial institutions to meet this requirement, or to assist customers in their interactions with financial institutions?**

32

In principle, we support Option 1: no further detail prescribed. The areas suggested for additional regulation under Option 2 feel overly prescriptive - we would prefer that a degree of flexibility is maintained. However, we do believe that further guidance on expectations around what the summaries should include would be helpful, especially at the outset of the regime. This guidance could be provided by the FMA and be more easily able to evolve over time, compared with regulations.

**Do you have any comments on the options outlined above? What do you think the costs and benefits would be to financial institutions and consumers of the two options?**

33

Please see our response to question 32.

**This discussion document outlines two options regarding the requirement to publish information about the fair conduct programmes. Do you have any other viable options?**

34

No comment.

*Calling in contracts of insurance as financial products under Part 2*

**Do you have any comments on the proposal to declare contracts of insurance as financial products under Part 2?**

35

We agree with the proposal.

*Exclusions of certain occupations or activities from the definition of intermediary*

**Do you think it would be appropriate to exclude people who are subject to professional regulation from the definition of an intermediary (e.g. lawyers, accountants, engineers)?**  
36

Yes, we agree it would be appropriate to carve out those already subject to professional regulation.

**Do you think that any other occupations or activities should be excluded from the new proposed definition of an “intermediary”? If so, why?**  
37

See our response to questions 3 – 5 of the *Treatment of Intermediaries under the new regime for conduct of financial institutions consultation*.