Submission template

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

Your name and organisation

Name	Privacy of natural persons
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Organisation/Iwi	Fidelity Life Assurance Company Limited

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n/a

Introduction

Thank you for the opportunity to provide feedback on possible amendments to the Financial Markets (Conduct of Institutions) Amendment Bill (**Bill**) regarding the treatment of intermediaries.

Fidelity Life (**we/our**) is the largest New Zealand-owned and operated life insurer and the 2017, 2018 and 2019 ANZIIF New Zealand Life Insurance Company of the year. We're all about protecting New Zealanders' way of life.

We're in the business of paying claims and we're there for our customers and their families when they need us. In the 2020 financial year we paid out $139.7 million in claims and since 1973 we've paid out more than $1.1 billion.

We're committed to a model where consumers' interests come first, we have greater transparency across the industry and good conduct is a given. That's why we're active participants in the legislative process helping to shape our industry and support measures that help build trust in the life insurance industry.

It is our view that further amendments to the Bill are required to ensure that financial institutions better understand what is required of them in relation to intermediary treatment while also removing unnecessary compliance, costs, and duplication of regulation.

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'?

We agree the scope of the definition of 'intermediary' in the Bill is broad. Sales and distribution activities are fundamental to achieving good customer outcomes in the provision of financial services. We agree that there are specific risks and conflicts that exist in distribution channels that involve direct facilitation or promotion of a product or service. Fidelity Life supports narrowing the definition of 'intermediary' to capture sales and distribution activities only as long as those sales and distribution activities are comprehensively captured, including non-advised sales.

It is not clear from the discussion document what sales and distribution activities are included in the definition. It is our view the definition of 'intermediary' must be clear so that it captures all activities undertaken by an intermediary throughout the product lifecycle, including where an intermediary continues to receive any form of commission (including trail commission). For example, the definition must capture all distribution activities involved in the life cycle of an insurance contract including ongoing servicing or review, or support at claim time.

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?

The definition should cover all methods of sales and distribution of insurance products, including via dealer groups or other persons/groups where they are involved in sales and distribution activities in any way, and receiving payment for their involvement by the product provider. This is to ensure that all persons who are paid by a product provider for services that are linked in any way to the sales and distribution activities of the provider's products, are also taking adequate responsibility for customer outcomes.

Option 2: Refine scope of who is covered as an agent

3. Do you have any comments on Option 2?

Fidelity Life supports refining the scope of who is covered as an 'agent' to those persons who have a direct or specific involvement in the provision of financial products. This would mean carving out those people who are only involved in a very generalised way and are not involved directly or indirectly in providing any part of the insurance services or products to customers, such as lawyers and accountants.

We agree that agents who undertake claims management, for example, would be included in the scope because claims is an integral part of providing an insurer's services.

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?

We support the scope of excluding advisory services such as lawyers and accountants and other service providers who are not involved, directly or indirectly, in providing any part of the financial institution's relevant service or associated products to consumers. But we believe further clarity is needed as to what particular advisory services would be excluded to avoid uncertainty going forward.

5. Do you think any explicit exclusions are needed for particular occupations or activities? If so, which ones, and why?

We consider that explicit exclusions are needed for particular occupations and activities. Our view is that medical professionals and consultants, for example, who are involved in the provision of life insurance products, during different stages of the product lifecycle (for example at underwriting or claim time) should be excluded. These professionals provide an independent view, are covered by their own professional conduct standards and are not directly involved in the provision of products and services to customers.

For clarity, we do not expect the exclusions would apply where a person (despite their occupation or activity) is clearly acting as an agent for a financial institution, for example an in-house lawyer or a Chief Medical Officer.

Objectives

6. Do you have any comments on the objectives regarding the treatment of intermediaries?

Fidelity Life supports the objectives regarding the treatment of intermediaries, to ensure that financial institutions take appropriate responsibility for the fair treatment of consumers including where services and products are distributed through intermediaries, and to minimise uncertainty and unnecessary duplication of regulatory obligations.

We acknowledge the significant role intermediaries play in insurance distribution. As noted in previous submissions we agree with the International Association of Insurance Supervisors (IAIS) that, while the insurer has a responsibility for good conduct throughout the insurance lifecycle, where there is more than one party involved in the distribution of products, good conduct in relation to distribution is a shared responsibility of those involved.[1]

We want to ensure a practical approach is required to be taken by insurers to how they monitor intermediaries and there needs to be a consistent message to consumers as to who is responsible for good customer outcomes and fair conduct.

We still have concerns about the interaction between the conduct and financial advice regime that creates the potential for some overlap in responsibilities (the financial advice regime already places conduct obligations on intermediaries when giving advice to retail clients), leading to consumer confusion and potentially poor outcomes for consumers. Where there is an overlap of requirements it needs to be clear who is responsible for good customer outcomes. Where there is anomaly there is scope for consumers to get tangled in a 'responsibility loop' between financial institutions and the Financial Advice Provider (**FAP**). It is also critical that increased compliance costs arising from the Bill are kept to a minimum to avoid the potential consequential effect of pricing many New Zealanders out of the insurance market.

Even following the Select Committee change removing the duty for intermediaries to comply with fair conduct programme, the Bill still imposes obligations on financial institutions to monitor and set expectations around the conduct of intermediaries. As such, some intermediaries will still have to comply with multiple conduct programmes which is problematic for intermediaries. We want to reiterate that access to independent financial advice is vital for consumers to make informed decisions about suitable insurance protection for their individual circumstances. It is important that regulation does not discourage financial advisers - or limit the independence of their advice - by limiting the products they provide advice on, because of varying oversight requirements of financial institutions. Neither of these outcomes are in consumers' best interests.

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'?

[1] IAIS ICPS, 19.0.8

We do not support Option 3. Option 3 removes the requirement for financial institutions to require intermediaries to follow the procedures or processes that are necessary or desirable to support the financial institution's compliance with the fair conduct principle. However, Option 3 still requires a strong degree of control over intermediaries through the requirements to "manage or supervise the intermediaries to ensure they are supporting the financial institution's compliance with the fair conduct principle."

While we want to take appropriate responsibility for the fair treatment of consumers where services and products are distributed through intermediaries, as a product provider we are not able to control the conduct of intermediaries. It may be more appropriate for the responsibility to sit with the FAP.

It is our view Option 3 does not go far enough to achieve the objectives set out in the proposals.

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?

Yes. Refer to our answer to question 7. Further clarification would be required to understand the requirements to 'manage and supervise.'

Option 4: More significant changes to intermediaries obligations

9. Do you have any comments on Option 4: 'More significant changes to intermediaries obligations'?

We generally support Option 4 and the removal of a greater number of the current obligations in section 446M(1) that apply to financial institutions in relation to intermediaries.

We agree a monitoring approach is more appropriate acknowledging that some intermediaries are also regulated under the new financial advice regime, are subject to conduct duties and monitored by the Financial Markets Authority (**FMA**).

This option also provides for a consistent approach to oversight of intermediaries while still allowing some flexibility as to how financial institutions treat FSLAA intermediaries versus non-FSLAA intermediaries through section 446M(1A).

While this could lead to inconsistencies in how non-FSLAA intermediaries are 'monitored', financial institutions can work with the FMA to develop guidance to set appropriate standards.

We are of the view this option better meets the objectives to minimise the potential duplication of responsibilities required under the conduct regime and the new financial advice regime, and to reduce compliance costs associated with managing and supervising intermediaries.

While this option does not completely remove the compliance burden for both financial institutions and intermediaries, it reduces the breadth of obligations and uncertainty about what is required in practice in relation to intermediaries.

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?

We are of the view that 'monitoring intermediaries to ensure they are supporting the financial institution's compliance with the fair conduct principle' is more appropriate and allows for a more practical approach to oversight.

To ensure a consistent approach to monitoring by financial institutions and to provide some certainty for intermediaries, if necessary, we suggest the FMA works with financial institutions to develop guidance setting out examples and expectations.

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

We want to ensure any standard to oversee intermediaries does not discourage financial advisers or reduce the independence of their advice by limiting the products they provide advice on because of varying oversight requirements of financial institutions. This may in turn limit New Zealanders' access to financial advice and insurance protection. Any standard needs to be practical and as such we support a risk-based approach to monitoring of intermediates.

Monitoring intermediaries should only extend to product knowledge and related consumer outcomes as it relates to an insurer's products and services. Monitoring should not extend to general conduct or regulated activity (such as advice) that is already monitored by the FAP and also the FMA to ensure good outcomes.

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'?

We understand the purpose of Option 5 is to recognise that FAPs and their intermediaries are already subject to a form of conduct regulation under the financial advice regime in relation to the provision of financial advice (regulated by the FMA), and so require less oversight than non-FSLAA intermediates.

However, we are of the view this option complicates the oversight requirements, may cause consumer confusion by having two types of intermediaries by which different oversight requirements apply, and does not adequately differentiate between FSLAA and non-FSLAA intermediaries.

A more consistent approach across all intermediaries is preferred and in our view section 446M(1A) can be relied on to determine how to treat FSLAA intermediaries versus non-FSLAA intermediaries.

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)?

Paragraph 71 of the discussion document refers to monitoring 'product performance' and related outcomes for consumers, rather than general monitoring of the overall conduct of the intermediary. Product performance, however, is measured by a number of components. FAPs and financial advisers are responsible for ensuring that any advice provided and product(s) recommended is suitable. As such, Fidelity Life considers that oversight of regulated intermediaries should only extend to product knowledge and related consumer outcomes as it relates to an insurer's products and services. It should not extend to general conduct or regulated activity (such as advice) already monitored by the FAP and also by the FMA to ensure good outcomes.

Obligations in relation to employees and agents

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

We consider the obligations applying to employees and agents who are acting on behalf of a financial institution in relation to the provision of insurance products to consumers are appropriate, as long as the definition of 'agent 'is appropriately refined (see our answer to questions 3-5 of this submission).

If the definition of agent remains too broad, it may be difficult for an insurer to 'manage or supervise' some agents as we may have limited control over them. A more practical obligation on financial institutions would then be to 'monitor' agents.

15. Do you think there should be a distinction drawn between employees and agents? Why/why not?

See previous comment.

16. Do you think any amendments should be made to the obligations in section 446M(1) that would apply to employees and agents?

Please refer to our answer to question 14 of this submission. In some circumstances it may be more appropriate to only 'monitor' agents to ensure that they are supporting the financial institutions' compliance with the fair conduct principle instead of 'managing or supervising'.

17. Do you have any other comments or viable proposals?

We believe that there is still some overlap with existing licensing regimes and obligations which creates confusion both for the industry and consumers. Clarity and consistency across related legislation is required to ensure the Bill will achieve what it sets out to do.