# Submission template

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

### Your name and organisation

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| **Email** | Privacy of natural persons |
| **Organisation/Iwi** | Financial Advice NZ |

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| **Option 1: Amend definition of intermediary to focus on sales and distribution** | |
| | Do you have any comments on Option 1: 'Amend definition of intermediary to focus on sales and distribution'? |
| 1 | We believe the scope of intermediary should be narrowed to focus on sales and distribution.<br><br>However, we believe the definition is the simplest way to exclude those that provide regulated financial advice by removing FSLAA FAP's and Financial Advisers.<br><br>This would remove the issues later in the bill where the monitoring, training and supervision duplicates FSLAA duties, obligations and full licensing standard conditions which addresses these matters.<br><br>The area where financial advisers could be included are identified in misconduct. |
| 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? |
| | Yes |
| **Option 2: Refine scope of who is covered as an agent** | |
| 3 | Do you have any comments on Option 2? |
| | No comment |
| 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 comment |
| 5 | Do you think any explicit exclusions are needed for particular occupations or activities? If so, which ones, and why? |
| | No comment |
| **Objectives** | |
| 6 | Do you have any comments on the objectives regarding the treatment of intermediaries? |

We agree with the objectives in principle but believe the bill and the discussion paper are too wide in scope:

***1. "Ensure that financial institutions are taking appropriate responsibility for the fair treatment of consumers in all circumstances, including where their services and products are distributed and serviced through intermediaries."***

Financial Advisers who provide regulated financial advice should be excluded from these objectives because it is a duplication of treating clients fairly which would be required under two separate pieces of legislation.

It is unnecessary for financial institutions to be responsible for the fair treatment of financial advisers who provide regulated financial advice to their clients. Reference: FSLAA – Code of Professional Conduct for Financial Advice Services- Standard 1 – Treat Clients Fairly

Part 1 of the Code covers ethical behaviour and in particular stated as its first point Treat Clients Fairly – A person who gives advice must always treat clients fairly.

*PART 1: ETHICAL BEHAVIOUR, CONDUCT, AND CLIENT CARE 1. Treat clients fairly 2. Act with integrity 3. Give financial advice that is suitable 4. Ensure that the client understands the financial advice 5. Protect client information.*

*COMMENTARY What is fair depends on the particular circumstances, including the nature and scope of the financial advice. Treating clients fairly should include: › treating clients with respect › listening to clients, considering their views and responding to their concerns and preferences › communicating with clients in a timely, clear and effective manner › not taking advantage of clients' lack of financial knowledge or other vulnerabilities › not applying undue pressure on clients.*

Therefore, any intermediary which provides regulated financial advice via FSLAA has this requirement and to duplicate this requirement via CoFI is confusing for the adviser and the consumer.

The consumer needs to be able to easily identify who is responsible for the delivery of advice and if they have been treated fairly. The current bill creates confusion for redress for the consumer and the identification of which legislation would respond.

2. "Minimise uncertainty and unnecessary duplication of regulatory obligations."

We believe CoFI and FSLAA are not complimentary, but rather significantly overlap and will cause confusion for the consumer and result in negative consumer outcomes.

Please refer to the arguments above.

Option 3: Minimal changes to intermediaries obligations (remove 446M(1)(b) only)

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| 7 | Do you have any comments on Option 3: 'Minimal changes to intermediaries' obligations'? |

It makes no sense that Financial Advisers who provide regulated financial advice under FSLAA should have to follow "the procedures or processes that are necessary or desirable to support the financial institutions compliance with the fair conduct principle" as stated in 446m(1)(b).

Some of the reasons are:

1. Financial Advisers have their own processes and controls to ensure clients are treated fairly under FSLAA – they do not need to abide another legislation's definition as to fair or a financial institutions interpretation of this.
2. Most Financial Advisers have numerous financial institutions which they use to provide advice to clients – they could not abide by all financial institution's processes and procedures.
3. If financial advisers had to abide by financial institutions procedures and controls, how would this interface if their processes and procedures were different? Which processes and controls would dominate?
4. What if the financial institutions processes and controls were weaker that the processes and controls which the Financial Adviser had in place – why would you lower the bar?
5. How many masters does a Financial Adviser have to have – the FAP, the financial institutions, the regulator?
6. How many pieces of legislation does a Financial Adviser have to abide by which have the same outcome? Where is the redress for the consumer?
7. This duplication will force advisers to reduce the number of financial institutions to reduce the compliance costs which means consumers will have less choice. The Financial Adviser may choose to only use a financial institution which has less procedures and processes for simplicity. This may influence access and choice for consumers.

Previously we have not identified any harm with Financial Advisers following their own processes and procedures (which are now regulated by FSLAA) and we would be interested to see the evidence of harm which has resulted in this clauses inclusion in the bill.

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| 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? |

You cannot combine advisers who are regulated by FSLAA and those who are not as they have different legislative and regulative standards. The two types of advisers need to be identified and split as in Option 5. Our comments are based on Financial Advisers who provide regulated financial advice under FSLAA.

S446M(1)(bb),(bc),(bd),(bf) should all be removed.

**S446M(1)(bb)** – ongoing training should be removed.

There is no need to have this in legislation for Financial Advisers under FSLAA. This is because FSLAA via the Code of Professional Conduct for Financial Advice Services Part B Competence, Knowledge and Skill requires the Financial Adviser to ensure they have training. Therefore, this requirement is a duplication.

*Standard 9 - KEEP COMPETENCE, KNOWLEDGE, AND SKILL UP TO DATE*

*A person who gives financial advice must undertake continuing professional development as follows: Individuals must, at least annually, plan for and progressively complete learning activities designed to ensure that they maintain: › the competence, knowledge, and skill for the financial advice they give › to the extent relevant to the financial advice they give, an up-to-date understanding of the regulatory framework for financial advice in New Zealand. Entities must, at least annually, review their procedures, systems and expertise to ensure that they maintain the capabilities for the financial advice they give.*

We do not believe there is any evidence of harm in the sector where Financial Advisers did not have an understanding of the products which were advising on.

The financial institutions have worked collaboratively with Financial Advisers in ensuring that they had regular training, and this was provided in many ways – in person, online etc. In many instances Financial Advisers had to pass competency tests to be able to provide advice on financial institutions products and to hold accreditation for that financial institution.

The inclusion of this section in the bill has meant financial institutions are now more stringent on how many modules of training a Financial Adviser has to complete and in some instances with numerous tests and within tight timeframes.

For an industry where there was no identified issue with obtaining training or information the consequences already from the draft CoFI Bill has resulted in the financial institutions developing labour intensive and time-consuming training – in many instances above the requirements of FSLAA and CoFI with the financial institutions having no consideration of a Financial Advisers existing competence, knowledge and skill. This has created undue cost to all participants in the sector.

We would be interested to see the evidence of harm which has led to the inclusion of this requirement in the bill.

If Financial Advisers were not providing the correct advice due to lack of product knowledge, you would see significant complaints by consumers. Additionally, the declined claims statistics would show consumers had been placed into the wrong product. I do not believe that there is any evidence that is happening, therefore the current training the financial institution is providing is an adequate transfer of product knowledge.

If there was to be further consideration in the bill it would be financial advisers must have available detailed product information which an adviser can access to ensure they can stay abreast of knowledge required to provide financial advice. This is a different to a level of training.

**S446M(1)(bc)**

| Option 4: More significant changes to intermediaries obligations | |
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| 9 | Do you have any comments on Option 4: ‘More significant changes to intermediaries’ obligations’? |

Our preference is for Option 5 to split FSLAA and Non FSLAA advisers with additional adjustments made. You cannot combine advisers who are regulated by FSLAA and those which are not as they have different legislative and regulative standards.

The removal of the requirements in section 446M(1) for financial institutions is required:

a. *requiring intermediaries to follow procedures or processes that are necessary or desirableto support FI's compliance with the fair conduct principle (446M(1)(b))*

b. *requiring training for the intermediary on the FI's fair conduct programme and"procedures and processes" (446M(1)(bb)(ii))*

c. *checking that intermediary has completed training and has a reasonable understanding ofit (446M(1)(bc))*

d. *managing or supervising intermediaries to ensure they are supporting the financialinstitution's compliance with the fair conduct principle (446M(1)(bd)).*

e. *Communicating with consumers (446M(1)(bf)*

It is not the role of the financial institutions to set the standards for Financial Advisers who provide regulated financial advice under FSLAA. These requirements are meet through the Code of Professional Conduct and the Duties and Obligations in the legislation.

The alternative under Option 4 has been stated as:

Would only require financial institutions to have effective processes etc f

a. *requiring training for each intermediary in the financial institution's relevant services and associated products (to the extent relevant to the intermediary's involvement in the provision of the financial institution's services and products)*

We believe the industry already provides significant training for Financial Advisers to ensure they have the correct product knowledge to be able to provide the relevant recommendations to clients.

If they were currently not providing the correct financial advice based on the level of training been provided you would see significant complaints by consumers and declined claims statistics which would show consumers had been placed into the wrong product. I do not believe that there is any evidence this is happening therefore the training which the provider is currently providing is an adequate transfer of knowledge.

The FSCL 2019/2020 Annual Report stated they formally investigated 48 complaints about advisers (including fire and general brokers). Whilst the Disputes Resolution Scheme Fairway upheld complaints against advisers in single digits - 2019/2020 had only 9 complaints and 2018/2019 had only 6 complaints.

There is no indication there is any systemic failure with the incorrect advice being provided to date. This would indicate that legislating training is not required.

However, we believe it is the responsibility of the financial institution to have available detailed product knowledge for Financial Advisers.

Recommendation: The financial institutions must have available detailed product

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| | 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? |
| | Managing and supervision of Financial Advisers through the power of legislation for conduct and culture of third parties seems extreme when Conduct and Culture is already covered in FSLAA regime and has only just been implemented.<br><br>There has not been time to determine whether this legislation has achieved what it was designed for in terms of conduct and culture for Financial Advisers, nor has there been any evidence that the conduct and culture of Financial Advisers has any systemic issues which needs to be remedied. I believe that applying another level of legislation will blur the success of the FSLAA legislation which has been in place for 3 months and will further confuse the consumer.<br><br>Monitoring has the same arguments as above – monitoring will not provide any better outcomes that already fall within FSLAA.<br><br>The consumer would not know where to obtain redress – through the FSLAA or CoFI. This goes against the intent of both bills which is to obtain better outcomes for consumers. |
| | What standard do you think financial institutions should have to oversee their intermediaries to? |
| 10 | Financial institutions should not set standards for FAPs who already have standards set by their own legislation and regulations. The current standards have already been through a robust process and numerous providers setting numerous standards only undermine the regulative standards and cause confusion for consumers.<br><br>Standards have already been set by legislation. We require the FSLAA regime to be implemented and tested before additional standards are identified and implemented. To have numerous standards (set by financial institutions) across numerous financial institutions empowered by primary legislation will ultimately confuse Financial Advisers as to what the individual financial standards are and what the legislative standards are and will ultimately undermine the new FSLAA regime. |
| Option 5: Distinguish between FSLAA and non-FSLAA intermediaries | |
| 11 | Do you have any comments on Option 5: 'Distinguish between FSLAA and non-FSLAA intermediaries'? |

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| | We are supportive of Option 5 in splitting Financial Advisers under the FSLAA legislation and those who provide financial advice outside of the legislation.<br><br>It makes sense to allow FSLAA to be the primary legislation for conduct and culture for Financial Advisers and in particular Standard 1 - Treating clients fairly.<br><br>The regulator for this standard should be the FMA and not individual financial institutions which would provide them extraordinary legislative powers to act as quasi-regulators. |
| 12 | 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)? |

An alternative has been stated as:

2. Instead, this option would only require financial institutions to have effective processes etc.for:

a. *requiring training for each intermediary in the financial institution's relevant services and associated products (to the extent relevant to the intermediary's involvement in the provision of the financial institution's services and products)*

There is no need to have this in legislation for Financial Advisers under FSLAA. This is because FSLAA via the Code of Professional Conduct for Financial Advice Services Part B Competence, Knowledge and Skill requires Financial Advisers to have training. Therefore, this requirement is a duplication.

*Standard 9 - KEEP COMPETENCE, KNOWLEDGE, AND SKILL UP-TO-DATE*

*A person who gives financial advice must undertake continuing professional development as follows: Individuals must, at least annually, plan for and progressively complete learning activities designed to ensure that they maintain: › the competence, knowledge, and skill for the financial advice they give › to the extent relevant to the financial advice they give, an up-to-date understanding of the regulatory framework for financial advice in New Zealand. Entities must, at least annually, review their procedures, systems and expertise to ensure that they maintain the capabilities for the financial advice they give.*

We do not believe there is any evidence of harm in the sector that Financial Advisers do not have an understanding of the products which they are advising on.

The financial institutions have worked collaboratively with Financial Advisers in ensuring that they have regular training, and this is provided in many ways – in person, online etc. In many instances Financial Advisers had to pass competency tests to be able to provide advice on financial institutions products and to be able to hold the accreditation for that financial institution.

By including this section in the bill has already resulted in financial institutions being more stringent on how many modules of training a Financial Adviser has to perform and in some instances with numerous tests and within tight timeframes.

For an industry where there was no problem in obtaining training or information the consequences already from the draft CoFI Bill has resulted in the financial institutions developing labour intensive and time-consuming training – in many instances above the requirements of FSLAA – with the financial institutions having no consideration of a Financial Advisers existing competence, knowledge and skill. This has created undue cost to all participants in the sector.

We would be interested to see the evidence of harm which has led to this requirement in the bill.

If Financial Advisers were not providing the correct advice due to lack of product knowledge, you would see significant complaints by consumers and the declined claims statistics would show consumers had been placed into the wrong product. We do not believe there is any evidence this is happening therefore the current training which the financial institution is providing is an adequate transfer of knowledge.

The FSCL 2019/2020 Annual Report stated they formally investigated 48 complaints about advisers (including fire and general brokers). Whilst the Disputes Resolution Scheme Fairway upheld complaints against advisers in single digits - 2019/2020 had only 9

| Obligations in relation to employees and agents | |
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| 13 | Do you have any comments on the proposals regarding obligations in relation to employees and agents? |
| | No comment |
| 14 | Do you think there should be a distinction drawn between employees and agents? Why/why not? |
| | No comment |
| 15 | Do you think any amendments should be made to the obligations in section 446M(1) that would apply to employees and agents? |
| | No comment |
| 16 | Do you have any other comments or viable proposals? |
| | No comment |

Other comments

The sector response to CoFI has shown the financial institutions have taken an extremely conservative approach to ensure they meet any minimum requirements of the bill by setting requirements which reach far greater than the bill in terms of Financial Advisers training, supervision and monitoring. This has led to not only reaching into the advice process, but also into the Financial Advisers' business structures, systems, processes and controls. Due to the size of the market, Financial Advisers have had no option but to agree to terms of financial institutions which have been both expensive and time consuming.

We believe to obtain good outcomes for consumers you need to allow the new FSLAA regime to have time to be implemented, monitored and assessed. After this process if there are improvements required these should then be considered.