Submission

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	The New Zealand Automobile Association (NZAA)

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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'?

We are in favour of amending the definition of an 'intermediary' to capture sales and distribution activities only, however only insofar as these relate to advised sales.

The NZAA has relations with many financial institutions, and so broadening out what is captured by the term 'intermediary' would require us to meet each of our Insurers fair conduct principle obligations. Expanding the number of financial institutions who would be 'managing or supervising' the NZAA in relation to their fair conduct principle obligations would potentially quadruple the regulatory and practical burden on our ability to serve the same customers this amendment is trying to protect. We don't believe this is a good outcome for our customers especially when we already have our own good conduct systems and processes in place. Please also see our comments below in the related sections..

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 NZAA does not have a view around whether the definition would avoid gaps and risks of arbitrage.

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

Do you have any comments on Option 2?

No further comment, the term "Agent" as NZAA will not be operating as an "Agent".

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?

Yes. We agree that the term 'Agent' should exclude advisory services.

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

The NZAA does not have a view around explicit exclusions for occupations or activities.

Objectives

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

In relation to 'Treatment of intermediaries under the new regime for the conduct of financial institutions' Discussion document, there are three examples (a,b and c) of 'monitoring' intermediaries in relation to the *fair conduct principle*. In particular:

a) *'carrying out an assessment of the intermediary to determine the level of risk'*

b) *'monitoring (amongst other things) whether the intermediary is communicating clearly, concisely and effectively with the consumers about the institutions products; and*

c) *'taking any action in relation to any misconduct identified'*

The three areas above are already completed by the NZAA through its Quality Assurance (QA) function and Compliance Assurance Programme (CAP) and operational risk management systems, processes, and internal governance. The NZAA works with five individual insurers, with a shared set of customers. That is, whilst we may sell General Insurance to a customer which is underwritten by Insurer A, we may also sell Life Insurance to that same customer which is underwritten by Insurer B. Therefore, the challenge will be where each financial institution requires the NZAA to operate a certain way in relation to each area, which may be impossible to implement in practice. Also, consideration should be made to the additional resource burden and ultimately, cost-to-serve, associated with aligning NZAA practices to cater for each of our financial institution's requirements.

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'?

We noted under the previous section that the term "manage or supervise" the intermediary could be problematic due to the number of financial institutions' the NZAA has relationships with, some of which are joint ventures, i.e. AA Insurance which is a joint venture between the NZAA and Suncorp. Also, the financial institution's that the NZAA has relationships with are also not in a position to control the NZAA in this way. Reciprocal obligations of both the intermediary and insurer to report/attest to one-another around how each fulfils its obligations to meet the good conduct principles, would be a fairer and more effective approach to ensuring each party continues to meet its conduct obligations, both during the sale (intermediary) and post-sale (financial institution).

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?

***446M(1)(bb)** - requiring initial and regular ongoing training for each of those employees, agents, and intermediaries on the following matters to the extent that the training is relevant to their involvement in providing the financial institution's relevant services or associated products.*

We absolutely agree in principle that initial and ongoing regular 'training' should be provided by the financial institution to the intermediary, however further clarification is requested in relation to what is meant by the sentence '…to the extent the training is relevant to their involvement in providing the financial institutions relevant or associated products services'. For the NZAA the relevant training encompasses the financial institution providing product specific training necessary for the sale of the insurance product by NZAA's insurance consultants. Other training that NZAA's Insurance Consultants complete, are through internal training (e-learning), particularly in relation to meeting NZAA's conduct policies. We feel that the 446M(bb) should be amended to be explicit around ensuring the financial institution provides training specific to the sale of the product provided by the financial institution, as the statement is currently too broad.

***446M(1)(bc)** - checking that each of those employees, agents, and intermediaries has completed that training and has a reasonable understanding of the matters that have been covered by that training.*

Can some further examples be provided around how a financial institution would check that an intermediary has 'reasonable understanding of the matters covered by the training'? For example, would a financial institution be able to check this through the intermediary completing the training itself, or would it go further than this, i.e. passing an exam at the end of the training or would the financial institution require ongoing reports/attestations back from the intermediary confirming that through internal quality assurance or other methods, the intermediary has followed the requirements covered by the training?

***446M(1)(bd)** - managing or supervising each of those employees, agents, and intermediaries to ensure that they are supporting the financial institution's compliance with the fair conduct principle, and monitoring whether those persons are giving that support, including by…*

The notion of 'reasonable assurance' would require defining the extent to which financial institutions would manage or supervise the intermediary. For example, the NZAA has its own conduct programme, including systems, processes and procedures and quality assurance over the sale of its insurance products. We believe that 'managing or supervising' would need further clarification, particularly around how this would work in practice, and the extent of interference of the financial institution in NZAA's day-to-day practices.

Option 4: More significant changes to intermediaries obligations

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

Based on the previous sections, the NZAA agrees with Option 4, as indeed this would remove duplication and only require financial institutions to "monitor" intermediaries, to reflect that NZAA's financial institutions are not in a relationship of influence or control over independent third party intermediaries, particularly as the NZAA must adhere to its own obligations as a Financial Advice Provider (FAP), and would remove any duplicated obligations already covered under FSLAA and reported on through its regulatory returns to the FMA.

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 As mentioned previously the NZAA would not be able to easily accommodate being managed by the various financial institutions it has relations with, so "monitoring" would be consistent with the way the NZAA currently manages its relationships with its insurers.

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

11 As the NZAA is a registered FAP, the standard should require the financial institution to seek confirmation from the FAP that it is meeting its license conditions, with the intermediary providing attestations/reporting to the financial institution, particularly in relation to how it meets the requirements set out by the Code of Professional Conduct.

Option 5: Distinguish between FSLAA and non-FSLAA intermediaries

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

12 Option 5 would be even more of a preference for the NZAA, particularly as we have significantly invested in uplifting policies, procedures, systems and controls and people over the last two years to meet the additional conduct requirements set out by the new FSLAA regime. However, the term 'monitoring' would still require more clarification, i.e. if this meant reporting/attestations back to our Insurers around how the NZAA achieves compliance with the Code of Professional Conduct, or how the NZAA has established and meets its internal conduct policies, procedures, systems and controls, then that could be more of a workable solution.

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)?

	The NZAA has its own internal Compliance assurance Programme (CAP) to provide ongoing assurance to management and the Board Audit and Risk Committee, around its 'general conduct', particularly in relation to meeting its own internal conduct policies, procedures, systems, and controls. The reporting that our Insurers may be interested in would be around how the NZAA supervises the sale of its insurance products through its internal controls, such as through our QA Programme.
Obligations in relation to employees and agents	
	Do you have any comments on the proposals regarding obligations in relation to employees and agents?
4	No comment.
	Do you think there should be a distinction drawn between employees and agents? Why/why not?
5	No comment.
	Do you think any amendments should be made to the obligations in section 446M(1) that would apply to employees and agents?
6	No comment.
	Do you have any other comments or viable proposals?
7	No comment.
Other comments	