

10 June 2021

Financial Markets Policy  
Commerce, Consumers and Communications  
Ministry of Business, Innovation & Employment  
PO Box 1473  
Wellington 6140

By email: [financialconduct@mbie.govt.nz](mailto:financialconduct@mbie.govt.nz)

Dear Financial Markets Policy Team

**Securities Industry Association submission: Regulations to support the new regime for the conduct of financial institutions**

Please find attached the submission prepared by the Securities Industry Association (**SIA**) in response to the Consultation Paper: *Regulations to support the new regime for the conduct of financial institutions (April 2021)*.

Thank you for the opportunity to present our comments on this consultation paper.

**About SIA**

SIA represents the shared interests of sharebroking, wealth management and investment banking firms that are accredited NZX Market Participants.

SIA members employ more than 500 accredited NZX Advisers, NZDX Advisers and NZX Derivatives Advisers, and more than 400 Financial Advisers nationwide. The combined businesses of our members work with over 300,000 New Zealand retail investors, with total investment assets exceeding \$80 billion, including \$40 billion held in custodial accounts. Members also work with local and global institutions that invest in New Zealand.

No part of this submission is required to be kept confidential. Note, some SIA member firms may make an individual firm submission based on issues specific to their firm's business. Those issues and views may not be reflected in this submission.

If you have any questions about this submission or require further information, in the first instance, please contact:

Bridget MacDonald, Executive Director, SIA  
Privacy of natural persons

Yours faithfully

Privacy of natural  
persons

David Fear

**Chair**

**SECURITIES INDUSTRY ASSOCIATION**

Privacy of natural persons

# Regulations to support the new regime for the conduct of financial institutions

## Your name and organisation

<b>Name</b>	Bridget MacDonald
<b>Email</b>	Privacy of natural persons
<b>Organisation/lwi</b>	Securities Industry Association (SIA)

[Double click on check boxes, then select 'checked' if you wish to select any of the following.]

The Privacy Act 1993 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](http://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.

I do not want my submission placed on MBIE's website because... [Insert text]

### 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.

I would like my submission (or identified parts of my submission) to be kept confidential because...  
[Insert text]

## Requirements for fair conduct programmes

1 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?

No submission.

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

No submission.

3 Do you have any comments on the proposals regarding design and management of relevant services and products?

No submission.

4 Do you have any comments on the discussion regarding risk management?

No submission.

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

We agree with MBIE's position that no regulations are needed in relation to the management and supervision of intermediaries, as the proposed legislation provides sufficient detail.

6 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)?

No submission.

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

No submission.

8 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?

No submission.

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

No submission.

10

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

No submission.

11

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

No submission.

12

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

No submission.

13

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

No submission.

14

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

No submission.

15

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

No submission.

16

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.

No submission.

## Sales incentives

17

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

No submission.

18

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

This response addresses questions 18-24.

We refer to our separate submission, *Treatment of intermediaries under the new regime for the conduct of financial institutions, 4 June 2021*, that NZX Market Participant Firms as Financial Services Amendment Act (**FSLAA**) and/or Discretionary Investment Management Services (**DIMS**) licensees should not be considered intermediaries.

NZX Market Participant Firms are already regulated by the NZX Participant Rules and related Guidance, and those providing DIMS and/or financial advice to retail clients are also subject to the licensing regime and statutory duties of the Financial Markets Conduct Act 2013 and Regulations (as amended), including the Code Of Professional Conduct For Financial Advice Services where applicable. The regulatory requirements that each SIA member is required to adhere to, and are subject to audit requirements with respect to, are extensive.

Of the options presented, we prefer MBIE's preferred option of prohibition of sales incentives based on volume or value targets. This option addresses particularly problematic incentives without creating the uncertainty that a principles-based prohibition would entail.

It is not clear how the regulations would define "volume or value targets" for these purposes, and there is a risk of unintentional capture. We suggest that MBIE consults further on the proposed definition with those who might be affected.

To the extent that the incentive regulations apply to intermediaries, we note that they would only apply to the extent that the intermediaries were acting as such. For example, the regulations would not apply when intermediaries were distributing financial products not issued by financial institutions as defined.

19

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

Please refer to response to question 18.

20

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

Please refer to response to question 18.

21

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

Please refer to response to question 18.

22

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

Please refer to response to question 18.

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.

Please refer to response to question 18.

24

Do you think there are any types of incentives other than those discussed in the paper that should be excluded from the regulations? Please provide reasons for your comments.

Please refer to response to question 18.

25

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 submission.

26

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

This response addresses questions 26-31.

Of the options presented we agree with MBIE's preferred approach for the reasons given in the paper.

27

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?

Please refer to response to question 26.

28

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

Please refer to response to question 26.

29

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

Please refer to response to question 26.

30

Do you have any other comments on the discussion related to incentives?

Please refer to response to question 26.

31

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?

In accordance with our previous submission, it is the SIA's opinion that NZX Market Participants, and those operating under financial advice or Discretionary Investment Management Services (**DIMS**) licenses, should be expressly excluded from the definition of "intermediary" on the basis that the conduct requirements of the conduct of financial institutions regime are in effect already met by each SIA member by virtue of compliance with the regulatory requirements to which they adhere to.

#### Requirement to publish information about fair conduct programmes

32 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?

No submission.

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

No submission.

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

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

No submission.

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

35 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)?

As described above, SIA supports an approach that recognises the stringent conduct regime that some financial services are already subject to. We support a more streamlined approach that avoids duplication of compliance requirements and helps to minimise the burden to firms. The simplest way to address this would be to carve out NZX Market Participants from the definition of intermediary in this instance.

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

#### Other comments

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