MINISTRY OF BUSINESS, INNOVATION & EMPLOYMENT
HĪKINA WHAKATUTUKI

Submissions on: Disclosure requirements in the new financial advice regime

Submissions Chapman Tripp to First Capital

5 September 2018

New Zealand Government

Submissions on: Disclosure requirements in the new financial advice regime.

Contents

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by email

CONSULTATION ON DISCLOSURE REQUIREMENTS IN THE NEW FINANCIAL ADVICE REGIME - SUBMISSION

1 We refer to the paper "Disclosure requirements in the new financial advice regime", issued by the Minister of Commerce and Consumer Affairs in April 2018 (*Discussion Paper*). Chapman Tripp welcomes the opportunity to consider and submit on the Discussion Paper.

2 We **attach** to this letter our submissions on the Discussion Paper, in the submissions template provided by the Ministry of Business, Innovation & Employment.

3 We are happy to discuss any aspect of our submission with you further.

Yours faithfully
S9(2)(a)

Tim Williams / Bradley Kidd / Penny Sheerin
PARTNERS

DIRECT:
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Submission on discussion document: *Disclosure requirements in the new financial advice regime*
Your name and organisation

Name	Bradley Kidd, Tim Williams, Penny Sheerin
Organisation	Chapman Tripp

Responses to discussion document questions

1 *Do you agree with the objectives that we have identified? Are there any further objectives that the disclosure requirements should seek to achieve?*

Yes, we broadly agree with the objectives identified.

We believe that a further objective should be to ensure that there is *flexibility* in the disclosure regulations, so that:

- there are no constraints on the *method* in which disclosure can be made (to an extent, this flexibility is already captured by the reference to "innovative ways of providing disclosure" in Objective 5, but we believe flexibility should also be a key objective of itself); and
- disclosure at an earlier stage of a customer interaction can be sufficient in meeting any subsequent disclosure requirements, so as to reduce duplication, ensure meaningful disclosure is made at the appropriate time and avoid negative customer experiences (we expand on this below).

The timing and form of disclosure

2 *What are your views on the proposal that information be disclosed to consumers at different points in the advice process?*

In principle, we see the merits of the proposal that information should be disclosed to consumers at different points in the advice process. However:

- We believe there needs to be flexibility in the regulations to ensure that the multi-stage disclosure process does not give rise to customer confusion, and results in meaningful, timely disclosure. The interests of the customer should be at the heart of this consideration.
- Our primary concern in this context is that a rigid, multi-stage disclosure process could compromise the objectives in paragraphs 16-20 of the Discussion Paper. An example of this would be where disclosure is required both when the nature and scope of the advice is ascertained, and then subsequently when a recommendation is made – when a better customer outcome may be to combine that disclosure.

We elaborate below.

3	*Will this approach improve the effectiveness of disclosure by increasing consumers' engagement and understanding of the information they receive? Why or why not?*
	Yes, we believe this approach will improve the effectiveness of disclosure, as long as the issues we identify above are managed. In this context, it will be important to consider the views of industry as to how a multi-stage disclosure process will work in practice.
4	*Should those giving advice be required to tell consumers that they can access general information about the provider or refer to this general information in advertising material?*
	We believe that it would be sufficient to tell consumers that they can access general information about the provider on its website, rather than requiring this material to be in advertising material.
The form of disclosure	
5	*If the regulations were to provide flexibility on the form and timing of disclosure, how can they be drafted in such a way to provide certainty to the industry of what is required?*

We believe that providing for flexibility in the *form* of disclosure is relatively straightforward. It could be achieved, for example, by a tailored and expanded definition of "give" (borrowing from the Financial Markets Conduct Act), so that innovative electronic ways of conveying information are captured, for example:

- viewing disclosure on an in-store tablet or similar device and acknowledging that disclosure;
- live chat;
- electronic on-boarding processes (including phone or tablet based processes).

We also consider that there should be no rigid requirement that a customer must be given a physical or electronic copy of a relevant disclosure. As long as a provider has a record of disclosure having been made, and the relevant disclosure is available to the customer on request if s/he subsequently requires it, then that should be sufficient for the purposes of the regulations.

We believe that providing flexibility as to the *timing* of disclosure will be more challenging. In this context, for example:

- If "static" information is to be made available on a provider's website (e.g. dispute resolution scheme details), there should be no requirement for the provider to have to evidence that a customer has actually accessed that disclosure before moving to other stages of the advisory process. Rather, it should be sufficient for the provider to indicate to customers that that information is available if customers wish to access it.
- An inflexible requirement to provide disclosure of certain factors *immediately after* the nature and scope of the advice required is known may lead to unnatural customer engagements, and could confuse customers. We would favour an

	approach that allows, as an alternative, disclosure to be given before, or at the same time as, a recommendation is made.
	We do not believe that customer interests would be compromised by this approach. The customer will still receive the information s/he needs at the relevant time, and the provider will have more flexibility to ensure disclosure is given at the point in the process that is most meaningful to the customer.
6	*Should a person who contravenes the presentational requirements under the proposal be subject to civil liability or should it be dealt with by an FMA stop order or similar regulatory response?*
	We believe a contravention of the presentational requirements should be dealt with by a FMA order or similar regulatory response, rather than exposing the relevant person to civil liability.
What information do customers require?	
7	*Do you agree that information relating to the licence, duties and complaints process should be made available to consumers?*
	Yes, we believe the information relating to licence, duties and complaints processes should be made available to consumers. However, we question whether this information needs to be available at multiple points in the advice process. We believe it would be sufficient for this information to be generally available on a provider's website, with subsequent disclosure materials simply cross-referencing that website.
8	*Do you think that the regulations should provide prescribed text for the disclosure of these pieces of information?*
	Yes, we support prescribed text for disclosure of these pieces of information. This information should be common across all providers, and generally "static", so should comfortably lend itself to prescribed text (although similar to the PDS regime it may be appropriate to allow limited flexibility to depart from the standard wording if circumstances require it).
9	*Should consumers be informed of their ability to access a free dispute resolution service when making a complaint? Should this apply to all financial service providers who provide services to retail clients (in which case it might be implemented via the scheme rules rather than in regulations under the Bill)?*
	Yes, we believe it would be sensible and appropriate for consumers to be informed of the ability to access a free dispute resolution service when making a complaint, as part of the general disclosures on a provider's website. We would favour this being a requirement set out in regulations, which could provide a common disclosure for all scenarios – rather than this being left to potential variation between different schemes.

Information about the financial advice

Limitations in the nature and scope of the advice

10 *Do you agree with the proposal in relation to the disclosure of nature and scope of advice, as set out on page 19? Why or why not?*

We broadly agree with the proposal in relation to disclosure of the nature and scope of advice.

We also believe the regulations should be flexible enough to recognise that this information could be made available in the general website disclosure and (if there has been no change to that information) need not be updated. For example, if the website disclosure indicates that the provider only advises on, say, five KiwiSaver Schemes, and the provider has in fact considered all of those KiwiSaver Schemes, there should be no requirement for the provider to give further disclosure on that topic.

11 *How can the regulations ensure that consumers receive an accurate indication of the extent of the market that can (and will) be considered?*

We believe the regulations could simply require the provider to give an indication of the products on which they advise, within a particular market segment - for example "*we provide advice on the following KiwiSaver Schemes*" or "*any cash within your portfolio will be invested in the following product*". This could be accompanied by prescribed wording if required (such as "*While there are other products available in the market, we do not provide advice on those products.*") – although we query the need for that where it should be self-apparent that a competitor's products are not available (e.g. basic banking products).

Costs to client

12 *Do you agree with the proposal in relation to disclosure of costs to clients, as set out on page 20? Why or why not?*

We broadly agree with the proposal. In addition:

- We would strongly encourage that the regulations provide clarity on how to calculate an estimate of fees, similar to the PDS disclosure requirements for managed funds (see for example clause 38 of Schedule 4 of the Financial Markets Conduct Regulations).
- Consistent with our comments above, disclosure of fees at multiple points of the advisory process should not be required if there has been no change from the initial disclosure of fees made.

See also our answer to question 14 below regarding the preference to disclose a rate of commission in percentage terms, rather than an actual dollar amount.

13 *What role, if any, should the disclosure regulations play in ensuring that consumers are aware of the other fees that they might be charged should they follow the advice (e.g. bank fees, insurance premiums, management fees)?*

No particular comment to make.

Commission payments and other incentives

14 *Do you agree that commissions and other incentives should be disclosed in more general terms early, followed by more detailed disclosure later in the advice process?*

Yes, we see the merits of a staged disclosure approach in this context. However, we have the following observations:

- We are not convinced that three stages are necessary in all cases. Consistent with our comments above, the regulations should be flexible enough to allow the disclosure of commissions contemplated at the "nature and purpose stage", and those at the "recommendation stage", to be made in a single disclosure if that is more meaningful for the customer.
- We believe that the regulations need to make it clear when disclosure of a commission *rate* (in percentage terms), rather than an actual commission amount, is sufficient (this has been an issue under the existing disclosure regulations).
- Where an actual dollar estimate is required, as set out in our answer to question 12 above, the regulations should provide clarity on exactly what information is required (again the approach in clause 38 of Schedule 4 of the Financial Markets Conduct Regulations is a useful example).

Similarly, it will be important that the regulations do not give rise to an obligation to disclose private employee remuneration details. While the fact of commissions being payable (and their rate) should be disclosed, a provider should not be required to disclose actual amounts if that would lead to an employee's salary being ascertainable (this has been an issue on occasion under the existing disclosure regulations).

15 *If the regulations were to include a materiality test that would determine the commissions and incentives that needed to be disclosed, what would an appropriate test be?*

No particular comment to make. We believe the views of industry will be more relevant on this topic.

Options for how to disclose commissions and other incentives

16 *Is it necessary for the disclosure regulations to be prescriptive regarding the disclosure of commissions and other incentives? If so, why?*

We do see some merit in prescription regarding the disclosure of commissions and other incentives. However, we believe the views of industry in relation to the practicalities of this type of disclosure will be very important, as it will be essential to ensure that

	prescribed disclosures are both workable, and simple enough for customers to be able to readily understand which product has a higher commission (for example).
17	*Which of the options (as set out in pages 21-22) do you prefer? What are these costs and benefits of the options?*
	Consistent with our comments above, we do see some potential difficulties in Option 2 - disclosing commission and incentives in actual dollar terms, given the variables that may affect the commission / incentive level (e.g. amount invested, level of inflows and outflows etc). If Option 3 (principles based approach) is preferred, it will be important for the regulations to be clear on what those principles are, for example, whether providers will be required to make categorical statements such as *"We will receive a higher commission if you take product [X] rather than product [Y]"*. Our experience with the existing secondary disclosure regime for AFAs – which is partly principles-based – is that it is sometimes difficult to ascertain exactly what must be disclosed in this context (hence why it will be important for the principles to be easily understood).
	Other conflicts of interest and affiliations
18	*Do you agree that those giving financial advice should be required to disclose all relevant potential conflicts of interest?*
	Conflict of interest disclosure has (in our experience) been a difficult issue in the context of secondary disclosure for AFAs, because there has been a lack of certainty as to exactly what constitutes a "conflict of interest". We believe a requirement to disclose all relevant "potential" conflicts of interest is too broad. Rather, we believe a provider should disclose the actual conflicts of interest that may arise from the relationships it has with third party product providers / others which may influence the advice in question.
19	*Are there any additional factors that might influence financial advice that should be disclosed?*
	No comment.
20	*Should these factors be disclosed alongside information about the conduct and client care duties that financial advice will be subject to (as discussed on page 17)?*
	Yes, to the extent there are additional factors they could be disclosed at the same time as the conduct and client care duties (but as set out above, not at other points in the advisory process if those factors are unchanged).
Information about the firm or individual giving advice	
	Details of relevant disciplinary history
21	*Do you agree with the proposed requirement to disclose information relating to disciplinary history and bankruptcy or insolvency history? Why or why not?*

	Yes, we agree with this proposed requirement.
22	*Should the disclosure of information relating to disciplinary history and bankruptcy or insolvency history also apply to the directors of a financial advice provider?*
	Given the "fit and proper" requirements which a provider will need to meet to obtain a licence, and that disclosure of these details will presumably need to be made to the FMA as part of the licence application process, we query whether it is necessary to extend this disclosure to directors of a financial advice provider. It could instead be dealt with in specific licence conditions, if necessary.
23	*Should financial advice providers also be required to disclose if they have been found to have contravened a financial advice duty?*
	No comment.

Additional options

A prescribed summary document

24	*Do you think that a prescribed template will assist consumers in accessing the information that they require?*
	We are concerned that a summary document will become "just another piece of paper" in the advisory process, particularly given a multi-stage approach to disclosure. It could also confuse customers where disclosure has been made in other, more meaningful, ways. For that reason, we would not favour introducing an additional summary document into the advisory process.
25	*How could a prescribed template work in situations when advice is not provided in person (i.e. if it is provided over the phone or via an online platform)?*
	No comment.

Requirements for disclosure provided through different methods

26	*Should the regulations allow for disclosure to be provided verbally? Why or why not?*
	Yes, we believe some of the general disclosure material which is publically available on a website could also be made available verbally if need be (similar to the exemption allowing verbal QFE disclosure under the current disclosure regulations). Given that some parts of this general disclosure will be quite short, there is certainly some merit in enabling that to be provided verbally.
27	*If disclosure was provided verbally, should the regulations include any additional requirements?*
	No comment.

	Requirements for financial advice given through different channels
28	*Should the regulations provide for any additional requirements that would apply when advice is given via a robo-advice platform or over the phone?*
	We agree that advice given via a robo-advice platform should have an additional disclosure requirement setting out briefly how the platform works (e.g. by reference to an algorithm). We see this as relevant information for customers using that type of service.
29	*Do consumers require any additional information when receiving financial advice via an online platform?*
	In some circumstances yes. In addition to disclosure of the way in which the robo-platform operates, it may be appropriate for a clear statement to be made as to exactly what the advice covers (for example, if it is limited to insurance, KiwiSaver, managed funds or something else).
	Disclosure when replacing a financial product
30	*Should those advising consumers to replace financial products be required to provide a prescribed notification? If so, what should a prescribed notification contain?*
	We do see some merit in prescribed notifications for product replacements in circumstances where there may be material detriment to the customer. However, we query whether this type of disclosure would have to be made in any event, due to the "customer first" duty in the new Act, and it could be accommodated in the disclosure requirements in relation to conflicts of interest generally (for example).
31	*Should this apply to the financial advice given on the replacement of all financial advice products?*
	No – if a prescribed notification is preferred, then we believe this should be limited to areas where there is a perceived higher risk of sub-optimal consumer outcomes. See also our answer to Question 30.
	Information to existing financial advice clients
32	*Should the regulations provide for reduced disclosure requirements for existing clients? If so, in what situations should it apply and what information should consumers receive?*
	Yes, the regulations should provide for reduced disclosure requirements for existing clients. Take for example a broker who advises clients on trading in listed companies, where disclosure has been made of all relevant factors (including brokerage rates). There should be no need to update that disclosure if it is unchanged.

33	*Should there be a limit on the length of time that this relief would apply?*
	No, there should be no time limit on the length of this relief.
	Transitional requirements
34	*Is it necessary for the disclosure regulations to provide a transitional period for the industry to comply with the new requirements beyond this nine-month period?*
	We believe the views of industry on whether a nine-month transition period is sufficient will be important. Our experience is that re-design of disclosure material can take some time to plan and implement.
35	*Should the regulations include specific transitional provisions for AFAs authorised to provide personalised DIMS under the FA Act?*
	No comment.
	Disclosure to wholesale clients
36	*Should the regulations require the provision of additional information regarding the wholesale designation in some circumstances? If so, when would it be appropriate for this to take place?*
	We have submitted previously on this issue and reconfirm that we do not believe additional disclosure to wholesale clients is required.
37	*Do you have any alternative suggestions for how the regulations could ensure that wholesale clients are aware of what it means to be deemed a wholesale client?*
	No comment.

Submission on discussion document: *Disclosure requirements in the new financial advice regime*

Your name and organisation

Name	Chris Goddard
Organisation	Adelphi Insurance Ltd

Responses to discussion document questions

1	*Do you agree with the objectives that we have identified? Are there any further objectives that the disclosure requirements should seek to achieve?*
	Yes
The timing and form of disclosure	
2	*What are your views on the proposal that information be disclosed to consumers at different points in the advice process?*
	I think it should all be done at the beginning only. The advice process follows a consistent and free flowing manner and interrupting it with new disclosures will only lead to an adviser unwittingly missing something out of their normal process.
3	*Will this approach improve the effectiveness of disclosure by increasing consumers' engagement and understanding of the information they receive? Why or why not?*
	No. The majority of insurance clients are really not interested in the pre-amble that must be dealt with before any advice can be given. All they want to know is a plain English understanding of why the adviser is there and what they are competently able to do. No more No less!!
4	*Should those giving advice be required to tell consumers that they can access general information about the provider or refer to this general information in advertising material?*
	Most consumers are tech savy and quite able to access the information they want about anyone in our industry. The days of secrecy are over.
The form of disclosure	
5	*If the regulations were to provide flexibility on the form and timing of disclosure, how can they be drafted in such a way to provide certainty to the industry of what is required?*
	Make a manditory template available to all advisers. Such as the medical profession uses prior to most major surgeries.
6	*Should a person who contravenes the presentational requirements under the proposal be subject to civil liability or should it be dealt with by an FMA stop order or similar regulatory response?*

	It should be dealt with by the FMA and keep the lawyers and their costs away.
What information do customers require?	
7	*Do you agree that information relating to the licence, duties and complaints process should be made available to consumers?*
	Yes Absolutely
8	*Do you think that the regulations should provide prescribed text for the disclosure of these pieces of information?*
	Yes
9	*Should consumers be informed of their ability to access a free dispute resolution service when making a complaint? Should this apply to all financial service providers who provide services to retail clients (in which case it might be implemented via the scheme rules rather than in regulations under the Bill)?*
	Yes
Information about the financial advice	
	Limitations in the nature and scope of the advice
10	*Do you agree with the proposal in relation to the disclosure of nature and scope of advice, as set out on page 19? Why or why not?*
11	*How can the regulations ensure that consumers receive an accurate indication of the extent of the market that can (and will) be considered?*
	Costs to client
12	*Do you agree with the proposal in relation to disclosure of costs to clients, as set out on page 20? Why or why not?*
	Yes
13	*What role, if any, should the disclosure regulations play in ensuring that consumers are aware of the other fees that they might be charged should they follow the advice (e.g. bank fees, insurance premiums, management fees)?*
	They should be informed of the nature of the fees
	Commission payments and other incentives
14	*Do you agree that commissions and other incentives should be disclosed in more general terms early, followed by more detailed disclosure later in the advice process?*
	No. The consumer should be informed of the process of payment to an adviser, not the amount involved. GP's and lawyers do not tell their clients how must money they make. They just send them a bill. Actual

	income is not a consumers business.
15	*If the regulations were to include a materiality test that would determine the commissions and incentives that needed to be disclosed, what would an appropriate test be?*
	Options for how to disclose commissions and other incentives
16	*Is it necessary for the disclosure regulations to be prescriptive regarding the disclosure of commissions and other incentives? If so, why?*
	NO
17	*Which of the options (as set out in pages 21-22) do you prefer? What are these costs and benefits of the options?*
	Other conflicts of interest and affiliations
18	*Do you agree that those giving financial advice should be required to disclose all relevant potential conflicts of interest?*
	Yes
19	*Are there any additional factors that might influence financial advice that should be disclosed?*
20	*Should these factors be disclosed alongside information about the conduct and client care duties that financial advice will be subject to (as discussed on page 17)?*
	Yes
Information about the firm or individual giving advice	
	Details of relevant disciplinary history
21	*Do you agree with the proposed requirement to disclose information relating to disciplinary history and bankruptcy or insolvency history? Why or why not?*
	Absolutely. Consumers need to know the integrity of the adviser they are dealing with. Also with the disclosure advisers may not be so cavalier about their behaviour in future regarding disciplinary matters etc. That would be a real step forward to protecting the consumer.
22	*Should the disclosure of information relating to disciplinary history and bankruptcy or insolvency history also apply to the directors of a financial advice provider?* *Yes. Why should the adviser be punished for his behaviour when the impetus could have been provided by the director etc of the company in the first place. Ie.A campaign to churn a lot of opposition policies would*

	usually come from the "top". Who may not necessarily be AFA's or even RFA's.
23	*Should financial advice providers also be required to disclose if they have been found to have contravened a financial advice duty?*
	Yes
Additional options	
	A prescribed summary document
24	*Do you think that a prescribed template will assist consumers in accessing the information that they require?*
	yes
25	*How could a prescribed template work in situations when advice is not provided in person (i.e. if it is provided over the phone or via an online platform)?*
	Requirements for disclosure provided through different methods
26	*Should the regulations allow for disclosure to be provided verbally? Why or why not?*
	Yes a lot of the future technology in our industry will be by skype, phone etc. a verbal disclosure is essential.
27	*If disclosure was provided verbally, should the regulations include any additional requirements?*
	NO
	Requirements for financial advice given through different channels
28	*Should the regulations provide for any additional requirements that would apply when advice is given via a robo-advice platform or over the phone?*
29	*Do consumers require any additional information when receiving financial advice via an online platform?*
	Disclosure when replacing a financial product
30	*Should those advising consumers to replace financial products be required to provide a prescribed notification? If so, what should a prescribed notification contain?*
31	*Should this apply to the financial advice given on the replacement of all financial advice products?*

	Information to existing financial advice clients
32	*Should the regulations provide for reduced disclosure requirements for existing clients? If so, in what situations should it apply and what information should consumers receive?*
33	*Should there be a limit on the length of time that this relief would apply?*
	Transitional requirements
34	*Is it necessary for the disclosure regulations to provide a transitional period for the industry to comply with the new requirements beyond this nine-month period?*
	No
35	*Should the regulations include specific transitional provisions for AFAs authorised to provide personalised DIMS under the FA Act?*
	Disclosure to wholesale clients
36	*Should the regulations require the provision of additional information regarding the wholesale designation in some circumstances? If so, when would it be appropriate for this to take place?*
37	*Do you have any alternative suggestions for how the regulations could ensure that wholesale clients are aware of what it means to be deemed a wholesale client?*

Submission on discussion document: *Disclosure requirements in the new financial advice regime*

Your name and organisation

Name	Michael Burrowes
Organisation	Cigna Insurance NZ

Responses to discussion document questions

1	*Do you agree with the objectives that we have identified? Are there any further objectives that the disclosure requirements should seek to achieve?*
	Yes re identified objectives No re further objectives
The timing and form of disclosure	
2	*What are your views on the proposal that information be disclosed to consumers at different points in the advice process?*
	Generally we are comfortable, but there needs to be different treatment where simple insurance products are telemarketed
3	*Will this approach improve the effectiveness of disclosure by increasing consumers' engagement and understanding of the information they receive? Why or why not?*
	Yes
4	*Should those giving advice be required to tell consumers that they can access general information about the provider or refer to this general information in advertising material?*
	We agree with being required to tell consumers that they can access general information about us. We do not agree with referring to this general information in advertising material. It will simply clutter up advertising material, and will not be of great benefit to consumers.
The form of disclosure	
5	*If the regulations were to provide flexibility on the form and timing of disclosure, how can they be drafted in such a way to provide certainty to the industry of what is required?*
	We support the concept of enabling flexibility by setting clear requirements regarding the information that needs to be disclosed without being overly prescriptive in the regulations as to how.
6	*Should a person who contravenes the presentational requirements under the proposal be*

	subject to civil liability or should it be dealt with by an FMA stop order or similar regulatory response?
	We support an FMA regulatory response to a contravention of the presentation requirements. In designing the framework for the type of FMA response, it is important to have a materiality threshold, and we suggest proportionate measures depending on the extent or nature of the contravention.
What information do customers require?	
7	*Do you agree that information relating to the licence, duties and complaints process should be made available to consumers?*
	Yes
8	*Do you think that the regulations should provide prescribed text for the disclosure of these pieces of information?*
	Yes
9	*Should consumers be informed of their ability to access a free dispute resolution service when making a complaint? Should this apply to all financial service providers who provide services to retail clients (in which case it might be implemented via the scheme rules rather than in regulations under the Bill)?*
	No - many complaints take the form of an expression of dissatisfaction or a query, rather than being a full-blown complaint. Our experience is that in most cases the matter can be remedied at the point where the customer contacts us, and there is no need for the complaint to be escalated to our Customer Resolution Manager. It would not be of any use to tell consumers at the initial point of contact about the ability to access a free dispute resolution service. In any event, we have already informed our customers of their right to access a free dispute resolution service in our policy documents. We are a member of the IFSO scheme and the scheme rules state that Cigna must, in writing, inform users of its services that the IFSO Scheme is available to provide them with a free complaints resolution service. Also, if a complaint becomes deadlocked we advise our customer of their ability to access the IFSO scheme.
Information about the financial advice	
	Limitations in the nature and scope of the advice
10	*Do you agree with the proposal in relation to the disclosure of nature and scope of advice, as set out on page 19? Why or why not?*
	We generally support the proposal in relation to the disclosure of nature and scope of advice, as set out on pages 18 and 19 of the discussion paper.
11	*How can the regulations ensure that consumers receive an accurate indication of the extent of the market that can (and will) be considered?*
	We agree it is important that consumers have a clear understanding of the type of service that the individual or firm giving advice can provide and the extent of the relevant market that may be actively considered in doing this. We consider the focus of this is better placed

	on what the scope of advice covers rather than what it doesn't. We support the proposal in relation to the disclosure and scope of advice as set out in the three bullet points below paragraph 53. As part of this Cigna supports disclosure of the types of arrangements detailed in paragraph 51 of the discussion paper.
	Costs to client
12	*Do you agree with the proposal in relation to disclosure of costs to clients, as set out on page 20? Why or why not?*
	Yes
13	*What role, if any, should the disclosure regulations play in ensuring that consumers are aware of the other fees that they might be charged should they follow the advice (e.g. bank fees, insurance premiums, management fees)?*
	Care needs to be taken in designing disclosure regulations where life insurance is being sold. In many cases it is not possible to ensure that consumers are aware of the insurance premiums that might be charged until underwriting has been completed.
	Commission payments and other incentives
14	*Do you agree that commissions and other incentives should be disclosed in more general terms early, followed by more detailed disclosure later in the advice process?*
	Cigna supports the disclosure of commissions and other incentives. With regard to how and when this disclosure is made, we consider a degree of flexibility is important to ensure this can be constructively done during the advice process. It is important to recognise the advice process varies, for example it can often involve a single relatively brief phone call, or online.
15	*If the regulations were to include a materiality test that would determine the commissions and incentives that needed to be disclosed, what would an appropriate test be?*
	We will share with you separately on a confidential basis how our commissions and incentives are structured. Generally speaking, they are a minor part of the remuneration package of those people employed in our Contact Centre. We therefore believe that a simple materiality test would be that if an individual is receiving commissions and incentives that are more than 10% of their base salary, based on their individual performance, then these need to be disclosed
	Options for how to disclose commissions and other incentives
16	*Is it necessary for the disclosure regulations to be prescriptive regarding the disclosure of commissions and other incentives? If so, why?*
	We don't believe it is necessary for the regulations to be prescriptive regarding the disclosure of commissions and other incentives but they will need to set very clear expectations. This will be necessary to reduce uncertainty of application for subject entities and to ensure consumers receive the information required to help them decide whether to seek advice from a particular person, whether to accept any advice given and how any conflicts are managed. We expect supporting guidance may be required to address the variety of situations that

	might occur in practice in the different sectors and situations subject to the regime and note the usefulness of the case studies provided in the discussion paper.
17	*Which of the options (as set out in pages 21-22) do you prefer? What are these costs and benefits of the options?*
	We consider that taking a principles-based approach (Option 3) is the best of the three options outlined on pages 21-22 and recognise further detailed work will nonetheless be required to finalise these. Requirements in this area need to be sufficiently flexible to account for different arrangements and structures and the evolution of these. Also they need to be sufficiently clear to avoid under or over compliance.
	Other conflicts of interest and affiliations
18	*Do you agree that those giving financial advice should be required to disclose all relevant potential conflicts of interest?*
	Yes
19	*Are there any additional factors that might influence financial advice that should be disclosed?*
	Not from Cigna's point of view
20	*Should these factors be disclosed alongside information about the conduct and client care duties that financial advice will be subject to (as discussed on page 17)?*
Information about the firm or individual giving advice	
	Details of relevant disciplinary history
21	*Do you agree with the proposed requirement to disclose information relating to disciplinary history and bankruptcy or insolvency history? Why or why not?*
	Yes
22	*Should the disclosure of information relating to disciplinary history and bankruptcy or insolvency history also apply to the directors of a financial advice provider?*
	Yes
23	*Should financial advice providers also be required to disclose if they have been found to have contravened a financial advice duty?*
	Yes
Additional options	
	A prescribed summary document

24	*Do you think that a prescribed template will assist consumers in accessing the information that they require?*
	As outlined above we generally advocate a more principles-based, rather than prescriptive, approach. There may be a role for more specific presentational expectations to be set through guidance material, whilst still allowing flexibility and innovation in implementation. We are also cognisant of the limitations of this noted in the discussion paper in relation to online robo-advice or advice over the phone.
25	*How could a prescribed template work in situations when advice is not provided in person (i.e. if it is provided over the phone or via an online platform)?*
	We would like to workshop with you different possible solutions.
	Requirements for disclosure provided through different methods
26	*Should the regulations allow for disclosure to be provided verbally? Why or why not?*
	Yes, this is amongst other things necessary to facilitate advice being able to be provided over the phone, which is a key delivery model.
27	*If disclosure was provided verbally, should the regulations include any additional requirements?*
	Verbal disclosure can an effective form of communication but we recognise following it up with written disclosure could be convenient for consumers. There is also clearly value in having disclosure information available at all times on a website. In situations where summary disclosure is provided over the phone then customers should be allowed to request fuller disclosure in writing.
	Requirements for financial advice given through different channels
28	*Should the regulations provide for any additional requirements that would apply when advice is given via a robo-advice platform or over the phone?*
	No
29	*Do consumers require any additional information when receiving financial advice via an online platform?*
	We agree with the suggestion that it would be useful to disclose how a robo advice platform works i.e. that the advice is automatically generated by an algorithm based on information provided by the customer
	Disclosure when replacing a financial product
30	*Should those advising consumers to replace financial products be required to provide a prescribed notification? If so, what should a prescribed notification contain?*
	We think it is important that if a consumer is being advised to replace a life insurance product they are given a prescribed notification. The FSC has developed such a notification which we

	can share with you.
31	*Should this apply to the financial advice given on the replacement of all financial advice products?*
	This should not apply where a life insurance policy is being "internally" replaced.
	Information to existing financial advice clients
32	*Should the regulations provide for reduced disclosure requirements for existing clients? If so, in what situations should it apply and what information should consumers receive?*
	We see merit in the concept of reduced disclosure requirements for existing clients.
33	*Should there be a limit on the length of time that this relief would apply?*
	Yes – 24 months
	Transitional requirements
34	*Is it necessary for the disclosure regulations to provide a transitional period for the industry to comply with the new requirements beyond this nine-month period?*
	No
35	*Should the regulations include specific transitional provisions for AFAs authorised to provide personalised DIMS under the FA Act?*
	No comment
	Disclosure to wholesale clients
36	*Should the regulations require the provision of additional information regarding the wholesale designation in some circumstances? If so, when would it be appropriate for this to take place?*
	No comment
37	*Do you have any alternative suggestions for how the regulations could ensure that wholesale clients are aware of what it means to be deemed a wholesale client?*
	No comment

Other comments

Submission template

Disclosure requirements in the new financial advice regime

Instructions

This is the submission template for the discussion document, *Disclosure requirements in the new financial advice regime*.

The Ministry of Business, Innovation and Employment (MBIE) seeks written submissions on the issues raised in the discussion document by 5pm on **Friday 25 May 2018**. Please make your submission as follows:

1. Fill out your name and organisation in the table, "Your name and organisation".
2. Fill out your responses to the consultation document questions in the table, "Responses to discussion document questions". Your submission may respond to any or all of the questions in the discussion document. Where possible, please include evidence to support your views, for example references to independent research, facts and figures, or relevant examples.
3. We also encourage your input on any other relevant issues in the "Other comments" section below the table.
4. When sending your submission:
    a. Delete these first two pages of instructions.
    b. Include your e-mail address and telephone number in the e-mail or cover letter accompanying your submission – we may contact submitters directly if we require clarification of any matters in submissions.
    c. If your submission contains any confidential information:
        i. Please state this in the cover letter or e-mail accompanying your submission, and set out clearly which parts you consider should be withheld, together with the reasons for withholding the information. MBIE will take such objections into account and will consult with submitters when responding to requests under the Official Information Act 1982.
        ii. Indicate this on the front of your submission (e.g. the first page header may state "In Confidence"). Any confidential information should be clearly marked within the text of your submission (preferably as Microsoft Word comments).
        iii. Please provide a separate version of your submission excluding the relevant information for publication on our website (unless you wish your submission to remain unpublished). If you do not wish your submission to be published, please clearly indicate this in the cover letter or e-mail accompanying your submission.

    Note that submissions are subject to the Official Information Act 1982.

5. Send your submission:
    - as a Microsoft Word document to ***faareview@mbie.govt.nz*** (preferred), or
    - by mailing your submission to:

      Financial Markets Policy
      Building, Resources and Markets
      Ministry of Business, Innovation & Employment
      PO Box 1473
      Wellington 6140
      New Zealand

Please direct any questions that you have in relation to the submissions process to ***faareview@mbie.govt.nz***.

Submission on discussion document: *Disclosure requirements in the new financial advice regime*

Your name and organisation

Name	Ray Brott
Organisation	Emerre & Hathaway Insurances Ltd

Responses to discussion document questions

1	*Do you agree with the objectives that we have identified? Are there any further objectives that the disclosure requirements should seek to achieve?*
	Some but must be in moderation and reflect what a person should know NOT what it would be politically correct for everyone to know
The timing and form of disclosure	
2	*What are your views on the proposal that information be disclosed to consumers at different points in the advice process?*
	We could give advice 20-30 times a year per client – s/be max at commencement and renewal time
3	*Will this approach improve the effectiveness of disclosure by increasing consumers' engagement and understanding of the information they receive? Why or why not?*
	I suspect not – very few read our I page disclosure statement now
4	*Should those giving advice be required to tell consumers that they can access general information about the provider or refer to this general information in advertising material?*
	Referral to website
The form of disclosure	
5	*If the regulations were to provide flexibility on the form and timing of disclosure, how can they be drafted in such a way to provide certainty to the industry of what is required?*
	Our IBANZ already has minimum disclosure
6	*Should a person who contravenes the presentational requirements under the proposal be subject to civil liability or should it be dealt with by an FMA stop order or similar regulatory response?*
	Stop then maybe civil

What information do customers require?	
7	*Do you agree that information relating to the licence, duties and complaints process should be made available to consumers?*
	yes
8	*Do you think that the regulations should provide prescribed text for the disclosure of these pieces of information?*
	No – allow the experts IBANZ
9	*Should consumers be informed of their ability to access a free dispute resolution service when making a complaint? Should this apply to all financial service providers who provide services to retail clients (in which case it might be implemented via the scheme rules rather than in regulations under the Bill)?*
	Yes – already have
Information about the financial advice	
	Limitations in the nature and scope of the advice
10	*Do you agree with the proposal in relation to the disclosure of nature and scope of advice, as set out on page 19? Why or why not?*
	yes
11	*How can the regulations ensure that consumers receive an accurate indication of the extent of the market that can (and will) be considered?*
	Something simple – a brief summation of those in market dealt with
	Costs to client
12	*Do you agree with the proposal in relation to disclosure of costs to clients, as set out on page 20? Why or why not?*
	Yes – disclose fees – although some ARE MINIMAL
13	*What role, if any, should the disclosure regulations play in ensuring that consumers are aware of the other fees that they might be charged should they follow the advice (e.g. bank fees, insurance premiums, management fees)?*
	Commission payments and other incentives
14	*Do you agree that commissions and other incentives should be disclosed in more general terms early, followed by more detailed disclosure later in the advice process?*
	No – a waste of time – unless an influence in which case the Fair Trading Act is probably breached – we receive no Brokerage for EQC or FSL which greatly influence premiums

15	*If the regulations were to include a materiality test that would determine the commissions and incentives that needed to be disclosed, what would an appropriate test be?*
	Lunches / dinners ate are in every industry – I don't believe any are an incentive to put business to a particular insurer
	Options for how to disclose commissions and other incentives
16	*Is it necessary for the disclosure regulations to be prescriptive regarding the disclosure of commissions and other incentives? If so, why?*
	no
17	*Which of the options (as set out in pages 21-22) do you prefer? What are these costs and benefits of the options?*
	Option 3 but minimal
	Other conflicts of interest and affiliations
18	*Do you agree that those giving financial advice should be required to disclose all relevant potential conflicts of interest?*
	yes
19	*Are there any additional factors that might influence financial advice that should be disclosed?*
	no
20	*Should these factors be disclosed alongside information about the conduct and client care duties that financial advice will be subject to (as discussed on page 17)?*
	Minor general disclosure
Information about the firm or individual giving advice	
	Details of relevant disciplinary history
21	*Do you agree with the proposed requirement to disclose information relating to disciplinary history and bankruptcy or insolvency history? Why or why not?*
	yes
22	*Should the disclosure of information relating to disciplinary history and bankruptcy or insolvency history also apply to the directors of a financial advice provider?*
	yes
23	*Should financial advice providers also be required to disclose if they have been found to have contravened a financial advice duty?*
	Yes – depending on seriousness

Additional options	
	A prescribed summary document
24	*Do you think that a prescribed template will assist consumers in accessing the information that they require?*
	No – to varied advice
25	*How could a prescribed template work in situations when advice is not provided in person (i.e. if it is provided over the phone or via an online platform)?*
	Won't work
	Requirements for disclosure provided through different methods
26	*Should the regulations allow for disclosure to be provided verbally? Why or why not?*
	Yes – there are minor doc's that could support
27	*If disclosure was provided verbally, should the regulations include any additional requirements?*
	Over regulation will distract consumers
	Requirements for financial advice given through different channels
28	*Should the regulations provide for any additional requirements that would apply when advice is given via a robo-advice platform or over the phone?*
	I wouldn't accept Robo advice and I don't see why my clients should
29	*Do consumers require any additional information when receiving financial advice via an online platform?*
	Yes – a lot to get a proper answer
	Disclosure when replacing a financial product
30	*Should those advising consumers to replace financial products be required to provide a prescribed notification? If so, what should a prescribed notification contain?*
	Our products are too varied for this to be worked properly
31	*Should this apply to the financial advice given on the replacement of all financial advice products?*
	yes
	Information to existing financial advice clients
32	*Should the regulations provide for reduced disclosure requirements for existing clients? If so, in what situations should it apply and what information should consumers receive?*

	Yes – only when material change
33	*Should there be a limit on the length of time that this relief would apply?*
	No – not necessary
	Transitional requirements
34	*Is it necessary for the disclosure regulations to provide a transitional period for the industry to comply with the new requirements beyond this nine-month period?*
	Depends on how complex – unless govt. fund the IT changes
35	*Should the regulations include specific transitional provisions for AFAs authorised to provide personalised DIMS under the FA Act?*
	pass
	Disclosure to wholesale clients
36	*Should the regulations require the provision of additional information regarding the wholesale designation in some circumstances? If so, when would it be appropriate for this to take place?*
	pass
37	*Do you have any alternative suggestions for how the regulations could ensure that wholesale clients are aware of what it means to be deemed a wholesale client?*
	Need to keep it simple – most people won't read or probably understand all this – it would put them off dealing with us and have them go somewhere easier – say direct insurer and that is worse – no advice

Other comments

FMG – Responses to questions in the discussion paper

1	**Do you agree with the objectives that we have identified? Are there any further objectives that the disclosure requirements should seek to achieve?**
	Yes.
The timing and form of disclosure	
2	**What are your views on the proposal that information be disclosed to consumers at different points in the advice process?**
	We support this approach noting that the timing and form of disclosure must be principled based and reflect the potential risk to the consumer, specifically around conflicts of interest. For example, timing of the disclosure is critical in terms of long-tail insurance products (life, health, disability etc.); especially where a consumer is disposing of one. A detailed disclosure must be made prior to the consumer committing; as opposed to the option of providing a short form at the time of sale with a more detailed form post sale – which would be appropriate for short tail insurance products.
3	**Will this approach improve the effectiveness of disclosure by increasing consumers' engagement and understanding of the information they receive? Why or why not?**
	This approach will improve the effectiveness of disclosure because consumers receive information at the time it is pertinent to their decision making (e.g. at the time they decide who to seek advice from and subsequently whether to accept that advice). It also avoids the need to provide what turns out to be unnecessary and irrelevant disclosure information to consumers early in the process or to repeat information.
4	**Should those giving advice be required to tell consumers that they can access general information about the provider or refer to this general information in advertising material?**
	We support the regulations prescribing what information is to be disclosed in the general publicly available information but not setting the specific form for how this information must be disclosed.
The form of disclosure	
5	**If the regulations were to provide flexibility on the form and timing of disclosure, how can they be drafted in such a way to provide certainty to the industry of what is required?**
	We support the concept of enabling flexibility by setting clear requirements regarding the information that needs to be disclosed without being overly prescriptive in the regulations as to how it is presented. Some requirements on presentation may be appropriate and we recognise that standardising these provide can aid consumers in comparing providers (e.g. existing Kiwisaver disclosure requirements) and in reducing excessively long disclosure statements. We also consider taking a more specific approach to the matter of disclosure of incentives etc. will be necessary (as outlined on pages 20-21 of the discussion paper).

6	**Should a person who contravenes the presentational requirements under the proposal be subject to civil liability or should it be dealt with by an FMA stop order or similar regulatory response?**
	We would suggest that the FMA should have a number of options available depending on the nature and severity of the contravention. For example, a minor infraction with no potential for material impact to the consumer should be addressed through a warning. In contrast, deliberately misleading disclosure should attract much harsher penalties.
What information do customers require?	
7	**Do you agree that information relating to the licence, duties and complaints process should be made available to consumers?**
	Yes.
8	**Do you think that the regulations should provide prescribed text for the disclosure of these pieces of information?**
	FMG does not have a strong view on this, provided any prescribed text is not unnecessarily long or complex. Should a principle-based approach to disclosure be adopted, FMG suggests that it would be helpful for the FMA to develop Guidance Notes as to what is expected in relation to different product /advice offerings.
9	**Should consumers be informed of their ability to access a free dispute resolution service when making a complaint? Should this apply to all financial service providers who provide services to retail clients (in which case it might be implemented via the scheme rules rather than in regulations under the Bill)?**
	Yes
Information about the financial advice	
	Limitations in the nature and scope of the advice
10	**Do you agree with the proposal in relation to the disclosure of nature and scope of advice, as set out on page 19? Why or why not?**
	We support the proposal in relation to the disclosure of nature and scope of advice, as set out on pages 18 and 19 of the discussion paper. The nature and scope of the disclosure should align with the risk to the consumer /any potential conflicts of interest.
11	**How can the regulations ensure that consumers receive an accurate indication of the extent of the market that can (and will) be considered?**
	We agree it is important that consumers have a clear understanding of the type of service that the individual or firm giving advice can provide and the extent of the relevant market

that may be actively considered in doing this. We consider the focus of this is better placed on what the scope of advice covers rather than what it doesn't.

We support the proposal in relation to the disclosure and scope of advice as set out in the three bullet points below paragraph 53. As part of this FMG supports disclosure of the types of arrangements detailed in paragraph 51 of the discussion paper.

Costs to client

12	**Do you agree with the proposal in relation to disclosure of costs to clients, as set out on page 20? Why or why not?**

At a principled level, we agree it is fundamental consumers are aware of any direct fees or costs that a financial advice provider charges for the advice they give and any expenses that they might be required to pay in the event of a cancellation, including any clawback commissions.

13	**What role, if any, should the disclosure regulations play in ensuring that consumers are aware of the other fees that they might be charged should they follow the advice (e.g. bank fees, insurance premiums, management fees)?**

FMG supports measures to ensure consumers are aware of all the costs they might in following advice.

We question the characterisation of "insurance premiums" as an "other fee" in Question 13 as premiums are the price paid for an insurance policy in exchange for the cover the policy provides.

Commission payments and other incentives

14	**Do you agree that commissions and other incentives should be disclosed in more general terms early, followed by more detailed disclosure later in the advice process?**

There is a distinct difference between Advisers who are not employed by a financial product provider and are able to offer multiple financial product providers' products as opposed to Advisers who are tied agents or employees of a financial product provider. There is a fundamental potential for conflict of interest in relation to the former and limited, if any, in relation to the latter.

FMG employs all of our Advisers (both on the General Insurance and Personal Insurance (life, health, disability, etc.).

On the General Insurance side, FMG underwrites the vast majority of this business. To the extent, we do not have the risk appetite to underwrite, we have out-sourced the placement of certain products with other financial service providers.

On the Personal Insurance side, FMG acts as distributor of said products, but, again, our Advisers are not directly incentivised, either through direct commissions or 'soft incentives' (i.e. overseas trips) by the actual financial product provider – nor are they required to place a certain amount of business with any provider.

Whilst FMG, as an organisation, will receive a commission for placement of any out-sourced

business (both General and Personal Insurance), the individual Adviser is in no way incentivised with the placement with a particular financial service provider and FMG has no obligation to ensure a certain amount of business is placed with any given provider.

Whilst Advisers are eligible for incentives from FMG, these are not tied to particular placement of business with certain providers, but rather their overall performance.

Disclosure of commissions /incentives needs to be appropriately targeted. For example:

1. Adviser offering multiple financial product provider's products and directly receiving commissions /incentives - full disclosure on level of commissions from each financial product provider and any soft incentives;
2. Adviser only offering one financial product provider's products (i.e. tied agent) – disclosure as to the fact they are a tied agent and only able to offer the said product provider's product – no disclosure on commissions or soft incentives;
3. Firms that employ Advisers, but the Adviser receives no direct commissions or soft incentives from the placement of business with a financial product provider other than their employer – disclosure as to the fact that they are an employee and whilst they might receive incentives, they are not tied to the placement of business with a particular financial product provider, i.e. no disclosure requirement around the employee's particular incentives as there is no potential conflict of interest in the placement of business.

   Similarly, no requirement for the financial product provider to disclose their commission structure with out-sourced products as there is no potential conflict of interest – i.e. the individual employee adviser is not mandated to place a certain level of business with an out-sourced financial product provider.

15	**If the regulations were to include a materiality test that would determine the commissions and incentives that needed to be disclosed, what would an appropriate test be?**
	See 14 above.
	Options for how to disclose commissions and other incentives
16	**Is it necessary for the disclosure regulations to be prescriptive regarding the disclosure of commissions and other incentives? If so, why?**
	We don't necessarily believe it is necessary for the regulations to be prescriptive regarding the disclosure of commissions and other incentives but they will need to set very clear expectations. This will be necessary to reduce uncertainty of application for subject entities and to ensure consumers receive the information required to help them decide whether to seek advice from a particular person, whether to accept any advice given and how any conflicts are managed. We expect supporting guidance may be required to address the variety of situations that might occur in practice in the different sectors and situations subject to the regime and note the usefulness of the case studies provided in the discussion paper. FMG supports consumers being made aware of the differing commission rates an Adviser can receive between different products/providers where they are not a tied-agent or alternatively employed by a financial service provider and not receiving direct commissions

	or incentives in relation to the placement of business with an out-sourced financial service provider – See 14 above.
17	**Which of the options (as set out in pages 21-22) do you prefer? What are these costs and benefits of the options?**
	See 14 and 16 above.
	Other conflicts of interest and affiliations
18	**Do you agree that those giving financial advice should be required to disclose all relevant potential conflicts of interest?**
	Yes. It would be inconsistent and incomplete to require disclosure of commissions and other incentives whilst not requiring disclosure of other sorts of conflicts or affiliations, where material.
19	**Are there any additional factors that might influence financial advice that should be disclosed?**
	Whilst FMG does not operate in the broker market, we support the ICNZ position being that brokers often operate under binding authorities but may not have authority to provide advice on behalf of the insurer. In this context it would seem appropriate for the Adviser to disclose that while it may provide some services to the product provider (in the insurance context, limited underwriting services), it does not provide financial advice on the product provider's behalf. This would help provide clarity to the consumer on where their rights of recourse sit, and from the advisers' perspective would help them manage their duty to prioritise clients' interests.
20	**Should these factors be disclosed alongside information about the conduct and client care duties that financial advice will be subject to (as discussed on page 17)?**
	Yes.
	Information about the firm or individual giving advice
	Details of relevant disciplinary history
21	**Do you agree with the proposed requirement to disclose information relating to disciplinary history and bankruptcy or insolvency history? Why or why not?**
	We agree that any Adviser not employed by or who is not a nominated representative of a financial service provider should have to make the foregoing disclosure. All other Advisers should not have to make any said disclosure as the ultimate responsibility for the advice of said Advises will fall onto the financial service provider.
22	**Should the disclosure of information relating to disciplinary history and bankruptcy or insolvency history also apply to the directors of a financial advice provider?**
	No, where the financial service provider is independently regulated by another authority (i.e. the Reserve Bank of New Zealand). Requiring said disclosure complicates matters and

	does not add any value where the Regulator has deemed them appropriate to serve. It may be appropriate if there is no independent authority monitoring Directors on a Fit & Proper basis.
23	**Should financial advice providers also be required to disclose if they have been found to have contravened a financial advice duty?**
	We would suggest that this should be an option for the FMA to impose, but that it needs to be assessed on a risk-based approach and tailored to the specific infraction. For example, a minor, one-off infraction of a financial duty should not be required to be disclosed. However, in the case of a sustained history of infractions or deliberately misleading disclosure, this may be appropriate for disclosure.
Additional options	
	A prescribed summary document
24	**Do you think that a prescribed template will assist consumers in accessing the information that they require?**
	As outlined above we generally advocate a more principled-based, rather than prescriptive, approach. There may be a role for more specific presentational expectations to be set through guidance material, whilst still allowing flexibility and innovation in implementation. We are also cognisant of the limitations of this noted in the discussion paper in relation to online robo-advice or advice over the phone.
25	**How could a prescribed template work in situations when advice is not provided in person (i.e. if it is provided over the phone or via an online platform)?**
	Requirements for disclosure provided through different methods
26	**Should the regulations allow for disclosure to be provided verbally? Why or why not?**
	Yes, this is amongst other things necessary to facilitate advice being able to be provided over the phone, which is a key delivery model; noting the points made in item 2 above.
27	**If disclosure was provided verbally, should the regulations include any additional requirements?**
	Refer to item 2 above.
	Requirements for financial advice given through different channels
28	**Should the regulations provide for any additional requirements that would apply when advice is given via a robo-advice platform or over the phone?**
	A robo-advice platform is fundamentally different than providing advice over the phone. Whilst phone-based advice is not face-to-face, it still involves a consumer directly dealing with a person; hence it should be treated fundamentally in the same way as offering advice

	face-to-face (noting the comments in item 2 above). In terms of robo-advice, there is no direct person-to-person interaction. Appropriate disclosure in terms of conflicts /limitations as to scope of advice, still needs to be made, but, at the end of the day, it is the consumer's choice to engage on this platform being appropriately informed and consenting to said terms.
29	**Do consumers require any additional information when receiving financial advice via an online platform?**
	See 28 above
	Disclosure when replacing a financial product
30	**Should those advising consumers to replace financial products be required to provide a prescribed notification? If so, what should a prescribed notification contain?**
	For short-tail products, there should be no requirement. On long-tail products (i.e. life, disability, health insurance), where there is a potential for the consumer to be put in a worse position, yes. FMG has a strict Replacement of Business Policy on this, which stipulates, that if the client is not going to be in the same or better position overall, we require specific sign off from the client acknowledging same.
31	**Should this apply to the financial advice given on the replacement of all financial advice products?**
	See 30 above.
	Information to existing financial advice clients
32	**Should the regulations provide for reduced disclosure requirements for existing clients? If so, in what situations should it apply and what information should consumers receive?**
	From an insurance perspective, no. The General Insurance contract is renewable on anywhere from a monthly to annual basis. If there are any material changes, those should be communicated at the time of renewal.
33	**Should there be a limit on the length of time that this relief would apply?**
	See 32 above.
	Transitional requirements
34	**Is it necessary for the disclosure regulations to provide a transitional period for the industry to comply with the new requirements beyond this nine-month period?**
	No – nine months is more than sufficient to comply.
35	**Should the regulations include specific transitional provisions for AFAs authorised to provide personalised DIMS under the FA Act?**
	No comments – not relevant to general insurers.

	Disclosure to wholesale clients
36	**Should the regulations require the provision of additional information regarding the wholesale designation in some circumstances? If so, when would it be appropriate for this to take place?**
	FMG has no comment on the foregoing as we treat all our clients as retail clients in relation to disclosure regardless if they could qualify as wholesale under the legislation.
37	**Do you have any alternative suggestions for how the regulations could ensure that wholesale clients are aware of what it means to be deemed a wholesale client?**
	See 36 above.

FIDELITY LIFE

Submission on discussion document: Disclosure requirements in the new financial advice regime

Name	**Anna Black**
Organisation	**Fidelity Life Assurance Company Limited**
Email	S9(2)(a)

Fidelity Life Assurance Company Limited (Fidelity Life) welcomes the opportunity to provide feedback on the disclosure requirements in the new financial advice regime discussion paper.

Fidelity Life is New Zealand's largest locally-owned life insurer providing insurance for individuals, businesses and employers, and we are proud to be New Zealand's current Life Insurance Company of the Year. Our purpose is to protect New Zealanders' way of life. Everything we do is driven by this purpose.

Alongside New Zealand's network of independent financial advisers, we are committed to reducing under-insurance while protecting our customers. New Zealand has one of the lowest penetration rates of life insurance in the developed world[1] and approximately 30 percent of Kiwis have life insurance cover[2]. Our challenge is how we reach more New Zealanders and encourage them to protect their way of life. A thriving financial advice profession is essential to ensure that all consumers can access suitable insurance protection.

The life insurance industry is facing consolidation, regulatory and technological change. We believe that advice matters, and that independent financial advice has significant benefits for the financial health and wellbeing of New Zealanders. Financial advisers form long term relationships with consumers, ensuring they have adequate insurance protection as their circumstances change over time, helping them at claim time, and improving financial literacy.

We support a model where consumers' interests come first. Disclosure improves transparency of, and confidence in financial advice, ensuring consumers have the right information, at the right time, to make informed financial decisions. Fidelity Life expects the independent advisers who advise on our products to always put consumers' interests first and manage conflicts of interest. We also expect advisers to disclose remuneration and incentives in accordance with legislation and in a way that is clear and easy for consumers to understand. Transparency is a good thing because it will lead to greater trust in our industry.

We recommend that once the Bill has been passed that the disclosure requirements are reviewed against any further changes in the Bill to ensure consistency.

Our comments are set out below.

[1] Massey University and Financial Services Council - Exploring under-insurance in New Zealand

[2] NZIER - Resetting life insurance

Objectives identified

We agree with the objectives that have been identified and understand that it is a balancing act between ensuring the requirements minimise the impact on the industry while ensuring consumers can access the right information needed to make good decisions. We support the move towards a principles-based environment and we agree that the rules should not cause undue compliance costs on the industry and provide flexibility in terms of delivery of information.

Under the Bill however, financial providers may be civilly liable for a contravention of the duties relating to disclosure and as such, the rules must provide Financial Advice Providers (FAPs) and financial advisers certainty as to what is required/expected. This is particularly important as the disclosure rules need to be practical and work in a range of advice situations and across all delivery methods. Where information is required to be disclosed (such as commissions, other incentives and conflicts of interest) or additional requirements are expected of different advice channels, further guidance/templates would be helpful and ensure consistency across the industry.

Paragraph 38 of the discussion paper proposes that regulations include presentation requirements to ensure consistency with the objectives. The Code may also set some requirements for how information is given to clients. We submit that any presentational requirements are not duplicated in different areas of the regime.

Phased disclosure requirements

We support the proposal that information be disclosed to consumers at different points in the advice process, and make the following comments:

- We support prescribed text for the disclosure of information set out in the proposal, provided the requirements are consumer centric and the disclosure is clear, concise and in plain language. Information must be relevant to a consumer and not be overly complex.

- It is important that consumers have a clear understanding of the type of services an individual or firm can give, the products they can advise on, and the extent of the market being considered. This could be achieved with prescriptive questions. Where limited advice is provided this should be clearly articulated.

- The disclosure requirements should avoid repetitive or unnecessary disclosure throughout the process, for example where there have been no material changes to the nature and scope if the advice, the advice should not be required to be repeated.

- Phased disclosure must work across different FAP business models. For some, this could mean more emphasis on publicly available information which could be referred to.

Costs to clients

In relation to insurance, premiums will not be finalised until the underwriting process has completed. Once premiums are certain then they should be disclosed at an appropriate stage in the advice process.

Commissions and other incentives

We support commissions, soft commissions and other incentives which might be perceived to materially influence the financial advice being disclosed. We recommend there is a clear definition of commissions, soft commissions and other incentives and that the materiality threshold is clearly defined. This will help ensure consistency amongst the industry and consumers having the right information to support making informed decisions.

Regarding the options for how to disclose commissions we support an approach that is consumer-centric. To establish the most appropriate method to disclose commissions we recommend further consultation with the industry.

Conflicts of Interest

We support all information relevant to a consumer being provided and agree that all potential conflicts of interest which could be perceived to materially influence the financial advice that they receive should be disclosed. When disclosing conflicts of interest, guidance should be provided on how the disclosure regime deals with changes (including during the life of the policy). Further working examples would be helpful.

Additional options

- We support the development of a prescribed summary document, provided the template is consumer-centric and it allows for the same information to be communicated through different mediums.

- We require further clarification about whether positive acknowledgement of disclosure from consumers is required.

- We agree that replacement business should have prescribed notification which should include the risks and benefits to the consumer of replacing the product, details as to why the replacement is recommend and what information is not being considered.

We thank you for the opportunity to make a submission.

Submission on discussion document: *Disclosure requirements in the new financial advice regime*

Your name and organisation

Name	Simon Webster
Organisation	Finance New Zealand Limited

Responses to discussion document questions

1	*Do you agree with the objectives that we have identified? Are there any further objectives that the disclosure requirements should seek to achieve?*
	Yes, we agree with the Objectives 1-5
The timing and form of disclosure	
2	*What are your views on the proposal that information be disclosed to consumers at different points in the advice process?*
	We agree with this approach where a consumer is requesting advice of a scope and nature that is wide reaching and requires a holistic view of the customer position vs. all options available in the market. For example, financial investment planning advice, or a new mortgage lending scenario. For more transactional forms of regulated product the proposal contemplating separate forms of advice to be "disclosed when the nature of advice is known" and "disclosed when making a recommendation" could overly complicate a transactional process. For example, where a customer has requested a CCCFA loan for simple asset finance (e.g. car loans, boat loans) the overall transactional timeframe is often based on speed of delivery rather than a full overview of a consumer's financial position. In these examples the timing of "when the nature of advice is known" and "disclosed when making a recommendation" may essentially be the same. While we agree with the general intent of the proposal it is our view that the requirements for timing and form of disclosure must provide flexibility for more simple transactions.
3	*Will this approach improve the effectiveness of disclosure by increasing consumers' engagement and understanding of the information they receive? Why or why not?*
	At face value yes. However, the detail and complexity of the disclosure must not be such that it "overwhelms" the actual advice process in the eyes of the consumer.
4	*Should those giving advice be required to tell consumers that they can access general information about the provider or refer to this general information in advertising material?*
	Yes, in our view.
The form of disclosure	

5	*If the regulations were to provide flexibility on the form and timing of disclosure, how can they be drafted in such a way to provide certainty to the industry of what is required?*
	We believe that provided the regulations set clear requirements as per point. 38 of the Discussion Paper this can be achieved with a degree of consistency across the industry.
6	*Should a person who contravenes the presentational requirements under the proposal be subject to civil liability or should it be dealt with by an FMA stop order or similar regulatory response?*
	We have no view on this question.
What information do customers require?	
7	*Do you agree that information relating to the licence, duties and complaints process should be made available to consumers?*
	Yes, in our view.
8	*Do you think that the regulations should provide prescribed text for the disclosure of these pieces of information?*
	Yes, in our view.
9	*Should consumers be informed of their ability to access a free dispute resolution service when making a complaint? Should this apply to all financial service providers who provide services to retail clients (in which case it might be implemented via the scheme rules rather than in regulations under the Bill)?*
	Yes, in our view.
Information about the financial advice	
	Limitations in the nature and scope of the advice
10	*Do you agree with the proposal in relation to the disclosure of nature and scope of advice, as set out on page 19? Why or why not?*
	We agree with the proposal in relation to general publicly available information. We note that the legislation may need to require product providers to allow this information to be made publicly available by advisers. Currently, most Head Group agreements require us to seek approval to publicly disclose our relationship. We agree that disclosure should be made if only a limited number of products were considered when making a recommendation. In general advice should detail why an adviser is recommending products from specific product providers and provided adequate explanation as to why other providers have been excluded. For simple transactions such as CCCFA car loans, boat loans, we believe that disclosure as to limitations in the nature and scope of advice that will be provided may in a practical sense need to be provided at the time a recommendation is made.
11	*How can the regulations ensure that consumers receive an accurate indication of the extent of the market that can (and will) be considered?*

	We believe the requirements outlined in your proposal in relation to generally publicly available information meet this requirement. In relation to point 51. of the discussion document, we believe that the obligation to send a certain amount of business to a product provider (e.g. minimum volume requirements in the mortgage lending environment) may result in outcomes where the recommended product is not "putting the customers interest first". In our view such practices should be removed from the industry so that advisers can put the customers interest first without risk of conflict with obligations under product provider agreements.
	Costs to client
12	*Do you agree with the proposal in relation to disclosure of costs to clients, as set out on page 20? Why or why not?*
	Yes, we agree in relation to fee disclosure.
13	*What role, if any, should the disclosure regulations play in ensuring that consumers are aware of the other fees that they might be charged should they follow the advice (e.g. bank fees, insurance premiums, management fees)?*
	This could be disclosed in general terms at the time a recommendation is made.
	Commission payments and other incentives
14	*Do you agree that commissions and other incentives should be disclosed in more general terms early, followed by more detailed disclosure later in the advice process?*
	We agree with a requirement for disclosure that we receive commission or incentives from product providers in general terms in our publicly available information. We do not agree with detailed disclosure later in the advice process other than disclosure of material variation in the methods of commission calculation that may influence a recommendation made by the adviser towards one product or another. Where commission structures and/or calculation methods are materially similar we do not believe that disclosure of specific amounts or methods of calculation are relevant to the consumer for the reasons outlined in our response to Q.16 & Q.17 below.
15	*If the regulations were to include a materiality test that would determine the commissions and incentives that needed to be disclosed, what would an appropriate test be?*
	We have no view on this question.
	Options for how to disclose commissions and other incentives
16	*Is it necessary for the disclosure regulations to be prescriptive regarding the disclosure of commissions and other incentives? If so, why?*
	Some degree of prescription is necessary to ensure all advisers are on a level playing field. We have concerns over how consumers may perceive commissions and how this may impact the adviser market if disclosure is required as contemplated by this discussion document. We believe a consumer can be protected, and receive good advice outcomes, where an adviser must disclose material variation in the commission structures and/or calculation methods, that might materially influence the adviser's recommendation. We are supportive

of a material variation approach as it ensures a consumer is made aware of where material variation may influence advice outcomes.

However, should prescriptive disclosure go beyond a requirement to disclose material variation, and require disclosure of methods of calculation and/or dollar amounts of commission there is a risk that consumers may be misled into believing that using an adviser is more expensive than dealing with a product provider directly. This may impact consumer behaviour and lead to worse overall advice outcomes.

For example, the commission earnt by a mortgage broker does not reflect profit to the mortgage broker. Rather, it reflects the total cost to the mortgage broker of running their business.

A good mortgage adviser business benefits the consumer by providing advice across a range of product providers, provides a consumer choice of product solutions, creates price tension between product providers, provides good advice in terms of product & security structure, and aids the consumer in navigating the mortgage lending process.

The adviser also provides the product provider with an alternative distribution strategy, where the costs of running that network sit with the adviser rather than with the product provider.

For example, using a mortgage lending example, one consumer looking at the same mortgage product may be provided with disclosure of different commission & incentive amounts depending on the channel they use:

- If seeking advice from a small mortgage adviser firm the mortgage adviser would need to disclose the full amount of the commission. Under this scenario this represents the full cost of the adviser's business. This reflects that the product provider (e.g. a bank) does not carry the cost of origination and much of the ongoing client care costs. The commission amount disclosed to the consumer therefore reflects a high component of the overall transaction cost, being the total costs carried by the adviser being overhead and employee costs of origination and running their business.
- The same consumer seeking advice from an employee of a product provider who is receiving salary, plus incentive and bonus, may only receive disclosure of "commissions and incentives" related to that transaction. Fundamentally these will be lower than would be expected to be paid to the mortgage adviser firm in the above scenario, as these reflect only a small portion of the total costs incurred by the product provider. The difference reflects costs incurred by the product provider in terms of salary and other wider overhead costs. Total transaction costs would be hidden from the consumer.

It is our view that the above risks distorting the view of the consumer as to the costs of using an adviser. It risks creating a market perception that using an adviser is an additional cost to the consumer whereas the difference in the above two scenarios only reflects which organisation is carrying the cost involved in the customer transaction.

17	*Which of the options (as set out in pages 21-22) do you prefer? What are these costs and benefits of the options?*

We support Option Three, based on the principal that advisers should be required to disclose material variation in commission structures that may influence a decision about what product provider is recommended, and that this along with other obligations under the Code of Conduct provide adequate consumer protection.

We believe that disclosure of commission beyond material variation, particularly if required

	in dollar terms, would likely distort the market by providing consumers the perception that there is additional cost in using an adviser relative to using a product provider directly. This could only be mitigated if product providers using their own direct sales force were required to disclose their wider costs in relation to the consumer transaction – salary, commission, incentive, wider business overhead involved in the consumer transaction.
	Other conflicts of interest and affiliations
18	*Do you agree that those giving financial advice should be required to disclose all relevant potential conflicts of interest?*
	Yes, we agree.
19	*Are there any additional factors that might influence financial advice that should be disclosed?*
	We believe this is adequately covered by the definition outlined in point 67.
20	*Should these factors be disclosed alongside information about the conduct and client care duties that financial advice will be subject to (as discussed on page 17)?*
	Yes, we agree.
Information about the firm or individual giving advice	
	Details of relevant disciplinary history
21	*Do you agree with the proposed requirement to disclose information relating to disciplinary history and bankruptcy or insolvency history? Why or why not?*
	Yes, we agree.
22	*Should the disclosure of information relating to disciplinary history and bankruptcy or insolvency history also apply to the directors of a financial advice provider?*
	Yes, we agree.
23	*Should financial advice providers also be required to disclose if they have been found to have contravened a financial advice duty?*
	Yes, we agree.
Additional options	
	A prescribed summary document
24	*Do you think that a prescribed template will assist consumers in accessing the information that they require?*
	Yes, we agree.
25	*How could a prescribed template work in situations when advice is not provided in person (i.e. if it is provided over the phone or via an online platform)?*

	This should still be publicly available, for example on the adviser website.
	Requirements for disclosure provided through different methods
26	*Should the regulations allow for disclosure to be provided verbally? Why or why not?*
	Yes, however we believe this should be followed up by written advice that a consumer can refer to.
27	*If disclosure was provided verbally, should the regulations include any additional requirements?*
	Should be followed up by written advice, although this could be provided electronically (e.g. via email).
	Requirements for financial advice given through different channels
28	*Should the regulations provide for any additional requirements that would apply when advice is given via a robo-advice platform or over the phone?*
	Where advice is robo advice we believe that the mechanism of advice should be disclosed in general terms to the consumer.
29	*Do consumers require any additional information when receiving financial advice via an online platform?*
	We have no view on this question.
	Disclosure when replacing a financial product
30	*Should those advising consumers to replace financial products be required to provide a prescribed notification? If so, what should a prescribed notification contain?*
	We believe it is appropriate that a warning of risks is provided. We would expect the general requirement of an adviser to recommend a product with consideration of the greater balance of benefits for the consumer vs. risks to the consumer to be captured within the general requirement of acting in the customers interests. It may not be necessary that this is captured under a prescribed notification, however we do not object to one.
31	*Should this apply to the financial advice given on the replacement of all financial advice products?*
	Yes, in our view.
	Information to existing financial advice clients
32	*Should the regulations provide for reduced disclosure requirements for existing clients? If so, in what situations should it apply and what information should consumers receive?*
	We believe prescribed disclosure should be required where the nature and scope of advice is materially changing, e.g. from mortgage advice to kiwisaver advice. Where the nature and scope of advice is not changing we do not see the need for additional disclosure unless the previously disclosed information has substantially changed.

33	*Should there be a limit on the length of time that this relief would apply?*
	We would suggest 24 months as an appropriate timeframe outside of material change.
	Transitional requirements
34	*Is it necessary for the disclosure regulations to provide a transitional period for the industry to comply with the new requirements beyond this nine-month period?*
	We have no view on this question.
35	*Should the regulations include specific transitional provisions for AFAs authorised to provide personalised DIMS under the FA Act?*
	We have no view on this question.
	Disclosure to wholesale clients
36	*Should the regulations require the provision of additional information regarding the wholesale designation in some circumstances? If so, when would it be appropriate for this to take place?*
	We have no view on this question.
37	*Do you have any alternative suggestions for how the regulations could ensure that wholesale clients are aware of what it means to be deemed a wholesale client?*
	We have no view on this question.

Other comments

SUBMISSION ON DISCLOSURE REQUIREMENTS IN THE NEW FINANCIAL ADVICE REGIME

25th May 2018

NOTE: Financial Advice New Zealand is the new professional body for professional New Zealand advisers. Combining the memberships of The Institute of Financial Advisers, The Professional Advisers Association and NZ Financial Advisers Association, Financial Advice New Zealand represents the interests of over 1,800 AFA and RFA members.

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Introduction

Consumers are increasingly faced with many and varied financial decisions in the areas of:

Lending advice, Personal risk advice, Health Insurance, Investment advice, Retirement planning – Accumulation, Retirement planning – Decumulation and Comprehensive Financial Planning which includes all these areas and also includes financial management, estate planning and taxation issues.

Financial Advisers provide a valuable service in helping consumers make financial decisions around these complex issues.

The financial advice industry contributes positively to the New Zealand economy by ensuring people have quality and timely advice in these areas. Research conducted by the Financial Planning Standards Board (FPSB) has shown that people who had received financial advice felt more financially confident, had greater control over their financial future and were better prepared for retirement.

It is also apparent however that there is a lack of appreciation of the value of financial advice.

Financial literacy levels in New Zealand are such that often the adviser's time is spent educating clients as to what their options are so that they can make informed decisions. There is immense value in this.

The advice-process is one of continuous verbal and written disclosure. However, written, mandatory disclosure is a vital part of the advice process and adds value and reduces risk to the consumer by informing them of a number of key facts and processes regarding the product provider, financial advice provider, the adviser, their competence and knowledge, their services and the limitations.

The key purpose of mandatory disclosure is to ensure the consumer is in a position to make an informed decision – and the success of any mandatory disclosure requirements must be assessed to that outcome.

We therefore agree with the objectives set out in the Discussion paper of:

- Objective 1 - provide consumers with the key information they need
- Objective 2 – provide consumers with the right information at the right time
- Objective 3 – provide information in a way that is accessible to consumers
- Objective 4 – provide consumers with effective disclosure, regardless of the channel used
- Objective 5 – not impose unnecessary compliance costs on industry

The journey of disclosure.

Item 3 in the Discussion paper *"provides a summary of the information that should be disclosed and the points in the financial advice process when it should be disclosed"*

Three points are discussed:

- Information that should be publicly available – or available to clients on request
- Information to be disclosed when the nature and scope is known
- Information that should be disclosed when making a recommendation

Advice Process & Disclosure

Financial advice involves an ongoing two-way process of continuous disclosure between the client and adviser.

However, the timing of written, mandatory disclosures has to be taken in the context of the advice-cycle.

There are 'key points' in the six-step advice-process when disclosure ought to be mandatory. We provide a schematic of the advice-process and how these disclosure work in practice.

In this Advice-Process Schematic we note:

a) The purpose of the disclosure from an adviser's perspective
b) The client outcome after the written disclosure is made
c) What disclosure (evidence) is required in the mandatory, written format
d) When the disclosure is required (in the advice-process context)
e) Where the disclosure is required
f) In regard to a recommendation to replace a financial product what are the additional disclosure requirements

Financial Advice that includes a recommendation to replace a financial product

Rationale:

Financial advice that includes a recommendation to replace a client's existing financial product is an area that represents an area of risk to the consumer, often very high risk.

The consequences to the consumer of accepting a poorly researched recommendation to dispose or replace a financial product can be material and ongoing. In many circumstanced the consumer has made this decision based on in-complete analysis of their needs, and a poor or non-existent presentation to them of a product comparison and the risks that this 'replacement advice' may expose them to.

Recommendation:

We would recommend that there be additional disclosure requirements for 'replacement advice' with a mandatory requirement to provide the consumer:

a) a product comparison*, outlining to the client the material difference in the products,
b) the reasons for the recommendation to replace the financial product with a meaningful narrative that the consumer can understand, and
c) the specific risks to the client of taking this advice.

Replacement of financial products can clearly be in the client's best interests. With these additional mandatory, disclosures to the consumer in place inappropriate advice to the consumer in this area can be minimised and even eliminated.

[*In the cases where a product comparison is not practically viable to complete e.g. an very old insurance policy document cannot be located, then the adviser must disclosure that limitation and risk inherent in proceeding with the replacement.]

Note: There also may be cases where an adviser is instructed by a client to find a replacement for a product the consumer has decided to dispose of. This is not a situation of a replacement recommendation nevertheless the adviser should be required to disclose the risks to the consumer and seek client acknowledge of the limitation of the advice engagement.

Adviser Commissions and Embedded Costs

The current insurance commission regime spreads the cost of the financial adviser to the client over the lifetime of the policy. The client pays the premium every year and within that premium is the actual cost of the advice. Most advisers are normally remunerated upfront by the provider for their work in establishing the insurance policy however there are many variations to this remuneration model.

We do not consider that initial adviser remuneration and trailing commission leads to poor client outcomes where there are appropriate compliance measures, commission disclosure and disclosure and management of actual and potential conflicts.

Disclosure of commissions as a percentage must be taken in this context. The main aim of these commission disclosures is to highlight actual and perceived conflicts of interest. However, clients often get confused that they are paying these commissions and additionally many get confused as to whether they are paying extra premiums for their insurance**.**

It is our firm opinion that discussion of commissions should not dominate the entire disclosure debate. Commission disclosure, in isolation, could override a more useful disclosure between the consumer and adviser. We hold that there also ought to be discussion and disclosure of the actual embedded advice costs to the client.

Rationale:

Embedded in the insurance premium is the additional amount on the premium that relates to the adviser services. The cost to the consumer is the margin the insurer adds to the premium to cover the costs of using adviser distribution. Currently, insurance consumers do not know what it actually costs them for the service and advice provided by their adviser however this information is generally available.

E.g. an insurance premium quoted without commission doesn't reduce it by the upfront commission. Instead it reduces by about 12-15%. This is what it costs the consumer to obtain advice.

Consumers could be informed that this is the cost of acquiring the expertise of a qualified adviser and their advice services, namely:

- Assess their personal risk management needs and review them on a regular basis
- Advise them on the risks and benefits of product – and what best suits their needs
- Ensure that the insurance portfolio is relevant to their overall risk needs
- Negotiate terms on behalf of the client.
- Manage policy adjustments and advise changes as required over time
- Advise the client through a claims process

Recommendation:

Disclose at step four of the advice-process the actual 'embedded costs' of advice in the cost of the financial product – expressed as a percentage cost.

Commission in other distribution channels such as Vertically Integrated Organisations

Rationale:

Vertically Integrated Organisations (VIO) often offer badged insurance products that are underwritten by a product provider. In-house salaried staff provide financial advice on these in-house products.

In taking this example further, if banks in New Zealand were required to provide an expanded product suite – how would their commission earnings be disclosed? Often these product offerings are identical or very similar to those offered by non-aligned advisers.

E.g. ASB currently offers Sovereign insurance products. Westpac currently offers their bank-badged insurance products underwritten by AIA. There is a similar arrangement between BNZ and Partners Life product and ANZ and OnePath.

Recommendation:

Consumers ought to have the same rights of protection and disclosure when considering a financial product offered by a Financial Advice Provider who is a VIO. There ought to be disclosure of the payment and commission paid between the VIO and the Insurer. Similarly the embedded acquisition

and distribution costs in the product premium should be disclosed in the same manner as that proposed above for adviser's embedded costs in the premium.

Lending and Mortgage Advice

A similar situation occurs in regard to residential lending advice and the mortgage adviser community. Mortgage advisers receive initial and ongoing commission on lending products. Within the loan lending rate the lender should provide the adviser and client the embedded advice costs to the client.

Customers may deal directly with the Bank and their salaried employees. In these circumstances the mortgage provider should be required to disclose the embedded advice costs of their own in-house products.

This will ensure a level playing field and provide the consumer with a meaningful comparison of alternatives.

Percentage Commission or Dollar $ figures

It is our firm opinion that discussion of commission in dollar terms would;

- **be often very difficult to quantify and**
- **override a more useful disclosure discussion between the client and advisers.**

A more meaningful disclosure from a client's perspective would be actual costs of the advice embedded in the premium.

We have made specific recommendations in regard to dollar disclosures in Option 2 under the 'Principles-based vs Prescriptive' section below.

How to disclosure - Principles-based vs Prescriptive 'approach'

With regard to questions 16 & 17 (page 22) there are three helpful 'options' in regard to taking either a Principles-based or prescriptive approach in regard to disclosure of commissions and incentives. Our key question is – in this area of managing conflicts of interest is - what approach best serves the client and adviser relationship? Option 1, 2, or 3?

Option 3 – Principles-based approach

We agree.

Rationale:

A 'principles-based' approach provides a high duty of care on financial advice providers, advisers and their supporting financial advice processes without the limitations of a prescriptive approach.

With a principles-based approach the desired consumer outcomes can be clearly articulated. E.g. in the case of disclosure of the adviser interests the outcome could be expressed as; 'The client can provide their informed consent to such conflicts or reject them'.

However, while fully supporting this principles-based approach, the advice process could be significantly improved for the consumer and risk reduced for them, if there is a mandatory requirement that the adviser provide 'sufficient factual information' (see our principles-based policy below).

Recommendation:

Adopt the principles-based policy below

DISCLOSURE & MANAGEMENT OF CONFLICTS

"When providing financial advice a financial adviser (and nominated representative) must make full disclosure of all material conflicts of interest that could affect the client-adviser relationship.

This obligation requires the adviser ***to provide sufficient specific facts*** *so that the client is able to understand the adviser's conflicts of interest, the business practices that give rise to the conflicts and the mechanisms through which the adviser manages such conflicts, so the client can provide informed consent to such conflicts or reject them.*

A sincere belief held by the adviser with a material conflict of interest that he or she is acting in the best interests of the clients is insufficient to excuse failure to make full disclosure.

An adviser must adopt and follow business practices reasonably designed to prevent material conflicts of interest from compromising the adviser's ability to act in the client's best interest."

Option 1 – Require a comparison of commission rates

We agree

Rationale:

Such a comparison table would meet the 'sufficient specific facts' principle. In such an important area such as commissions the adviser ought to provide sufficient facts to assist the client in understandings the conflict and the business practices that give rise to the conflict and how the adviser manages those conflicts.

Recommendation:

In addition to the principles-based option 1 we agree to this requirement to disclose sufficient specific facts on relevant commissions and other incentives paid by providers.

Option 2 – Require the disclosure of commission and incentives in dollars terms

Disagree

Rationale:

There is a common assumption by clients that the commissions paid to advisers are the direct cost to them for the advice given. Commissions are paid by the provider to the adviser and are not a cost paid by the client. The lending and insurance commission structures reflects the reality that advisers provide many clients advice that never leads to a product purchase, for a myriad of reasons, not the least reason being client eligibility but also loading costs, exclusions and affordability.

Recommendation:

The additional disclosure of commission dollars to the client would add significantly to the current client confusion around commissions and ought not to be adopted.

Instead, as discussed earlier, we recommend the more meaningful disclosure of cost of advice in terms of the percentage of the premium.

Alternative to Option 2 – disclosure of embedded costs in percentage terms

Rationale:

The premium is the direct cost to the client. What ought to be transparent to the client is the embedded cost to them of the advice provided. This can be simply calculated by providers supplying advisers additional quotes for financial product, without the cost of commissions and incentives paid to the adviser.

E.g. on a $3,000 per year life insurance premium, the ongoing embedded cost of advice is say 15%. The adviser can then explain these embedded advice costs to the client in relation to the service provided and ongoing support to the client, such as claims support and reviews.

Recommendation:

That product-providers be required to disclose to the adviser the embedded adviser cost. This would enable the adviser to provide 'sufficient specific facts' to their client around the direct cost of their advice and give context to their remuneration.

Disclosure of Soft Incentives as conflicts

Rationale:

Soft Incentives are not remuneration for services. Some soft incentive as noted in the recent FMA report would be unlikely to lead to a material conflict. For example an incentive where the aim is to provide professional development for the adviser would at least would be neutral for the client. Although there is potential conflict, full disclosure of such incentives could manage these.

However other soft incentives can lead directly to a material conflict because they can influence the adviser in a manner that compromises their ability to act in the client's best interest. Such practices ought to be avoided to prevent the material conflict.

Recommendation:

Adopt the principles-based approach. An adviser must adopt and follow business practices reasonably designed to prevent material conflicts of interest from compromising the adviser's ability to act in the client's best interest.

Attachments

Schematic A: Proposed mandatory disclosure requirements and the Advice-Process

Submission Template from Financial Advice New Zealand

Schematic A Proposed mandatory disclosure requirements and the Advice-Process

Page 1 : Advice-Process, advice outcomes, purpose of disclosure, key client outcomes, written** mandatory disclosures

Advice Process*	Establish client relationship ->	Collect client information ->	Analyse & assess client financial status->	Develop/present recommendations->	Implement recommendations ->	Review client's situation -> to 2,3,4,5
	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6
Advice Outcomes	Inform client about financial advice/adviser's competencies Determine if adviser can meet client needs **Define scope of engagement**	Identify client's personal/financial needs, objectives and priorities Collect quantitative information and documents Collect qualitative information	Analyse client's information Assess client objectives, needs and priorities Identify issues and concerns	Identify & evaluate advice strategies Develop financial advice recommendations **Present recommendations to clients**	Agree on implementation responsibilities Identify & present to client products and services for implementation	Agree on responsibilities and terms of review of client situation Review and re-evaluate the clients' situation
Purpose of disclosure - the adviser's perspective (outcome)	To inform the consumer that they bona fide and have a service proposition that is suitable for the client's needs			Place the client in a position to make an 'informed decision' to buy and/or dispose product/service		The client has been advised about any changes to scope of service, remuneration or other material matters
Client's key outcome after disclosure provided by adviser	I am in a position to make an informed decision to engage this adviser? Are they right for me?			Can I make an informed decision to purchase this product? (and/or replace or dispose of another) Do I provide consent to conflicts or business practices that give rise to the conflicts?		Have the changes disclosed by my advisers affect my decision to continue wth their recommendations and services? Are they still right for me?
Written**, Mandatory disclosures	1. FAP License and Adviser FSPR # 2. Suite of possible product providers 3. Interests and how conflicts managed 4. Nature and scope of services 5. General info as to remuneration, fee and commission structure 6. FAP internal/external complaints and relevant disciplinary disclosures 7. Relevant qualifications held 8. Attest to CPD compliance (current competence)			1. Specific and material conflicts, business practices that give rise to conflicts, management of conflicts 2. Embedded costs of their advice and/or service in the product cost to the client as a % of that cost 3. Actual commissions payable to the adviser as a % of the product cost to the client 4. Direct $ costs payable for advice and/or service 5. Actual scope of service - specific limits to the advice and/or service, material changes 6. Any changes to disciplinary history		1. New disciplinary or regulatory proceedings, judgements 2. Changes or limitations to service or scope. 3. Changes to embedded % costs of advice/service in product 4. Changes to commissions as % to adviser 5. Changes to ongoing direct costs of advice/service

Schematic A : Proposed mandatory disclosure requirements and the Advice-Process

Page 2 : Advice-Process, when mandatory disclosure required, where disclosure published, Disclosure for replacement product

Advice Process*	Establish client relationship ->	Collect client information ->	Analyse & assess client financial status->	Develop/present recommendations->	Implement recommendations ->	Review client's situation -> to 2,3,4,5
	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6
When Mandatory disclosure is required	Must be made prior to engagement, and prior to any recommendations presented to client at step 4 Preferrably at step 1, or if the steps 1,2 & 3 are combined then before step 4			Must be made prior to or at time of presentation of recommendation(s), with sufficent time to allow informed consent to conflicts of interest or limitations. Must be prior to the client commitment to buy, dispose, replace, step 5		Must be at time of review, step 6
Where Mandatory disclosure is required and what format	**Required to client in written form**** Verbal disclosures and disclaimers are not sufficient General Website & apps - optional only			**Required to client in written form**** Verbal disclosures and disclaimers are not sufficient Client online file/apps - optional		

Additional disclosure requirements for advice on replacement product

Additional Written, Mandatory disclosure in case of **Replacement Recommendation**				**1. A comprehensive product comparison, outlining to the client the material differences and the specific risks to the client** 2. Reasons for the recommendation to replace the financial product IMPORTANT NOTE: A RECOMMENDATION TO REPLACE A PRODUCT CANNOT PROCEED WITH THE CLIENT UNLESS THERE IS WRITTEN DISCLOSURE OF PRODUCT COMPARISON***.		Key ** 'written form' means any personal delivery INCLDUING any digital means e.g. email, text, video format, audio message *Financial Advice New Zealand - Practice Standards process and the requirements for written mandatory, disclosure.

***In the cases where a product comparison is not practically viable to complete e.g. an very old insurance policy document cannot be located, then the adviser must disclosure that limitation and risk inherent in proceeding with the replacement.

Note: There also may be cases where an adviser is instructed by a client to find a replacement for a product the consumer has decided to dispose of. This is not a situation of a replacement recommendation nevertheless the adviser should be required to disclose the risks to the consumer and seek client acknowledge of the limitation of the advice engagement.

Submission on discussion document: *Disclosure requirements in the new financial advice regime*

Your name and organisation

Name	FRED DODDS
Organisation	FINANCIAL ADVICE NEW ZEALAND

Responses to discussion document questions

1	*Do you agree with the objectives that we have identified? Are there any further objectives that the disclosure requirements should seek to achieve?*
	Yes
The timing and form of disclosure	
2	*What are your views on the proposal that information be disclosed to consumers at different points in the advice process?*
	Agree with process
3	*Will this approach improve the effectiveness of disclosure by increasing consumers' engagement and understanding of the information they receive? Why or why not?*
	Yes
4	*Should those giving advice be required to tell consumers that they can access general information about the provider or refer to this general information in advertising material?*
	Yes
The form of disclosure	
5	*If the regulations were to provide flexibility on the form and timing of disclosure, how can they be drafted in such a way to provide certainty to the industry of what is required?*
	See our schematic
6	*Should a person who contravenes the presentational requirements under the proposal be subject to civil liability or should it be dealt with by an FMA stop order or similar regulatory response?*
	Dealt with by FMA
What information do customers require?	
7	*Do you agree that information relating to the licence, duties and complaints process should be*

	made available to consumers?
	Yes
8	*Do you think that the regulations should provide prescribed text for the disclosure of these pieces of information?*
	Yes to allow consumers to make meaningful disclosure comparisons across advisers
9	*Should consumers be informed of their ability to access a free dispute resolution service when making a complaint? Should this apply to all financial service providers who provide services to retail clients (in which case it might be implemented via the scheme rules rather than in regulations under the Bill)?*
	Yes
Information about the financial advice	
	Limitations in the nature and scope of the advice
10	*Do you agree with the proposal in relation to the disclosure of nature and scope of advice, as set out on page 19? Why or why not?*
	Yes
11	*How can the regulations ensure that consumers receive an accurate indication of the extent of the market that can (and will) be considered?*
	By including limitations in the Disclosure Document
	Costs to client
12	*Do you agree with the proposal in relation to disclosure of costs to clients, as set out on page 20? Why or why not?*
	Yes
13	*What role, if any, should the disclosure regulations play in ensuring that consumers are aware of the other fees that they might be charged should they follow the advice (e.g. bank fees, insurance premiums, management fees)?*
	The “additional expenses” particularly the claw back of commissions needs to be clearly communicated to the customer so they can absolutely understand the extent of any such fee being charged. industry
	Commission payments and other incentives
14	*Do you agree that commissions and other incentives should be disclosed in more general terms early, followed by more detailed disclosure later in the advice process?*
	Yes – but an initial and a final only. The process of an insurance application eg involving loadings, deferment, and change to client priorities if disclosed at each point would confuse a client.

15	*If the regulations were to include a materiality test that would determine the commissions and incentives that needed to be disclosed, what would an appropriate test be?*
	The issue is could commissions and incentives influence the advisers decisions and are they substantive enough to give rise to a conflict. We have provided a detailed view on commissions in an attached submission. Incentives come in many forms from minor eg a ticket to a sports fixture through to possible offshore trips but could also include an incentive to the adviser in the form of professional development. The "test" is that it should all be disclosed.
	Options for how to disclose commissions and other incentives
16	*Is it necessary for the disclosure regulations to be prescriptive regarding the disclosure of commissions and other incentives? If so, why?*
	No – should be principles based
17	*Which of the options (as set out in pages 21-22) do you prefer? What are these costs and benefits of the options?*
	See our wider submission on this point
	Other conflicts of interest and affiliations
18	*Do you agree that those giving financial advice should be required to disclose all relevant potential conflicts of interest?*
	Yes
19	*Are there any additional factors that might influence financial advice that should be disclosed?*
	No
20	*Should these factors be disclosed alongside information about the conduct and client care duties that financial advice will be subject to (as discussed on page 17)?*
	Yes
Information about the firm or individual giving advice	
	Details of relevant disciplinary history
21	*Do you agree with the proposed requirement to disclose information relating to disciplinary history and bankruptcy or insolvency history? Why or why not?*
	Agree
22	*Should the disclosure of information relating to disciplinary history and bankruptcy or insolvency history also apply to the directors of a financial advice provider?*
	Yes

23	*Should financial advice providers also be required to disclose if they have been found to have contravened a financial advice duty?*
	Yes
Additional options	
	A prescribed summary document
24	*Do you think that a prescribed template will assist consumers in accessing the information that they require?*
	Yes
25	*How could a prescribed template work in situations when advice is not provided in person (i.e. if it is provided over the phone or via an online platform)?*
	This is most important and there should be no difference to disclosure requirements merely by distribution or advice type. Customers must receive written and mandatory disclosure information in all cases that aligns with face to face adviser responsibilities.
	Requirements for disclosure provided through different methods
26	*Should the regulations allow for disclosure to be provided verbally? Why or why not?*
	No – verbal disclosure is not appropriate and over the phone disclaimers are borderline. Stated/recorded acceptance alone should be subject to more scrutiny, and those processes that currently rely on playing or reading a disclosure on the phone should also involve an emailed written disclosure.
27	*If disclosure was provided verbally, should the regulations include any additional requirements?*
	Yes – see Q26
	Requirements for financial advice given through different channels
28	*Should the regulations provide for any additional requirements that would apply when advice is given via a robo-advice platform or over the phone?*
	Robo advice should certainly inform the client that there is no human involved. A disclosure to a client must reinforce that and that the information is “computer advice”. Phone advice see Q26
29	*Do consumers require any additional information when receiving financial advice via an online platform?*
	No
	Disclosure when replacing a financial product
30	*Should those advising consumers to replace financial products be required to provide a prescribed notification? If so, what should a prescribed notification contain?*

	See our wider submission on this point
31	*Should this apply to the financial advice given on the replacement of all financial advice products?*
	Yes
	Information to existing financial advice clients
32	*Should the regulations provide for reduced disclosure requirements for existing clients? If so, in what situations should it apply and what information should consumers receive?*
	Yes – if the ongoing advice is not changing the initial agreed advice there should merely be a confirmation that there has been no material change to an original plan. If there is a change eg to life cover, asset allocations etc then a more detailed disclosure would be required.
33	*Should there be a limit on the length of time that this relief would apply?*
	No
	Transitional requirements
34	*Is it necessary for the disclosure regulations to provide a transitional period for the industry to comply with the new requirements beyond this nine-month period?*
	No
35	*Should the regulations include specific transitional provisions for AFAs authorised to provide personalised DIMS under the FA Act?*
	No
	Disclosure to wholesale clients
36	*Should the regulations require the provision of additional information regarding the wholesale designation in some circumstances? If so, when would it be appropriate for this to take place?*
	The key is as per current Code Standard 6 and that a client is made full aware of that status to the extent that the client signs off to that knowledge.
37	*Do you have any alternative suggestions for how the regulations could ensure that wholesale clients are aware of what it means to be deemed a wholesale client?*
	See Q36

Other comments

Submission on discussion document: *Disclosure requirements in the new financial advice regime*

Your name and organisation

Name	Trevor Slater
Organisation	Financial Dispute Resolution Service

Responses to discussion document questions

1	*Do you agree with the objectives that we have identified? Are there any further objectives that the disclosure requirements should seek to achieve?*
	Yes, I agree with the objectives.
The timing and form of disclosure	
2	*What are your views on the proposal that information be disclosed to consumers at different points in the advice process?*
	I think this is a good idea and creates a higher chance that the consumer will read each piece rather than needing to read one large document.
3	*Will this approach improve the effectiveness of disclosure by increasing consumers' engagement and understanding of the information they receive? Why or why not?*
	Yes – see above comment.
4	*Should those giving advice be required to tell consumers that they can access general information about the provider or refer to this general information in advertising material?*
	Yes, a consumer should be advised that general information is available and where it can be found.
The form of disclosure	
5	*If the regulations were to provide flexibility on the form and timing of disclosure, how can they be drafted in such a way to provide certainty to the industry of what is required?*
	There is flexibility and there is flexibility! I think the best way to be certain the right information is given at the right time is by providing examples and information on what needs to be done at what time. I also think that making the objectives clear (eg informed consumers) will help advisers understand their obligations.
6	*Should a person who contravenes the presentational requirements under the proposal be subject to civil liability or should it be dealt with by an FMA stop order or similar regulatory response?*
	To some extent this would depend on the level of contravention and motivation. In the first

	instance it has to be dealt with by the FMA but the regulations could allow for civil liability/action if the FMA believed the contravention to be of a high level.
What information do customers require?	
7	*Do you agree that information relating to the licence, duties and complaints process should be made available to consumers?*
	Yes, definitely.
8	*Do you think that the regulations should provide prescribed text for the disclosure of these pieces of information?*
	Yes. This stops confusion and this method has worked well for the AFA Primary Disclosure document.
9	*Should consumers be informed of their ability to access a free dispute resolution service when making a complaint? Should this apply to all financial service providers who provide services to retail clients (in which case it might be implemented via the scheme rules rather than in regulations under the Bill)?*
	Yes it must be compulsory for a consumer to be advised of DRS at the time a complaint is made <u>but also when the FSP provides the outcome of the complaint</u>. It should apply to all FSPs. This is currently a requirement of all the DRS, however, it would be better if it was part of the regulations as this would provide greater ability for the Schemes to enforce it. The other issue here is that most FSPs do not recognise what a complaint is. i.e. the definition of a complaint. In the current Code of Conduct for AFAs the definition is incorrect in that it is not the same as contained in the NZ and Australian Standard on complaint handling. The definition actually requires an assessment of the complaint for it to be deemed a complaint when it should be just a definition. It is vital that the definition of a complaint is defined in the disclosure regulations and education needs to be provided to the FSP to ensure they are able to recognise a complaint.
Information about the financial advice	
	Limitations in the nature and scope of the advice
10	*Do you agree with the proposal in relation to the disclosure of nature and scope of advice, as set out on page 19? Why or why not?*
	Yes, as it makes the advice process more transparent.
11	*How can the regulations ensure that consumers receive an accurate indication of the extent of the market that can (and will) be considered?*
	One way would be to create generic information on the different types of products and what they do and don't do. This is already available in varying formats and it could be provided in the general information given to consumers.
	Costs to client
12	*Do you agree with the proposal in relation to disclosure of costs to clients, as set out on page*

	20? Why or why not?
	Financial advisers must disclose any fee they are going to charge prior to the consumer making a decision to proceed. A 'fee' should not be estimated as this will allow fee increases. It is not difficult to give a firm fee as do many other professions. The issue of claw-back is of concern. Not all financial advisers do so. Advisers who do impose a claw back often do not disclose this in a way that is clear about the cost e.g. "I reserve the right to claw back my commission if you surrender the policy within two years'. This is too vague and disclosure of claw-back needs to be accurate including a maximum amount. The other issue with clawback is that sometimes the amount being clawback does not align with the service received. For example, an adviser might spend 15 hours preparing and providing advice. At $200 per hour this would be $3,000. However, the lost commission could well be much higher. Any clawback must be relevant to the level of advice provided.
13	*What role, if any, should the disclosure regulations play in ensuring that consumers are aware of the other fees that they might be charged should they follow the advice (e.g. bank fees, insurance premiums, management fees)?*
	Again, this could be covered by some generic guides or information.
	Commission payments and other incentives
14	*Do you agree that commissions and other incentives should be disclosed in more general terms early, followed by more detailed disclosure later in the advice process?*
	Yes. How an adviser is paid should be disclosed early. How much they are paid should be disclosed later as often the adviser won't know until the advice has been provided and the policy premium quoted. I strongly agree that employed financial advisers (such as a bank) must disclose specific sales targets and incentives and at the point of sale time. For individual advisers who are paid by fee or commission a clear statement of the type and level of soft commissions that could be earned need to be disclosed.
15	*If the regulations were to include a materiality test that would determine the commissions and incentives that needed to be disclosed, what would an appropriate test be?*
	I feel that all incentives should be disclosed. To have a materiality test, say based on value, could facilitate manipulation of incentives to bring them under the threshold. For example, if an incentive $500 or under did not need to be disclosed a provider could award $500 one week then again in a month etc and these could then be redeemed for a higher incentive.
	Options for how to disclose commissions and other incentives

16	*Is it necessary for the disclosure regulations to be prescriptive regarding the disclosure of commissions and other incentives? If so, why?*
	I do think there needs to be some prescriptive requirements for commission disclosure. This would create a level playing field. If not I could see a good adviser doing the right thing and fully disclosing his/her commission and a not so good adviser 'interpreting' the regulations differently and not fully disclosing. This could mean that some consumers are not fully informed of commission and fees. Early d fee and commission disclosure could be in the form of a commission percentage which would overcome the problem of not knowing the commission level until after acceptance of a proposal.
17	*Which of the options (as set out in pages 21-22) do you prefer? What are these costs and benefits of the options?*
	I like Option 1 as this would give the consumer a clear picture of how much each company pays and creates a more transparent process. It would also help to address the issue of churning. Whilst churning might not be widespread if a commission comparison chart was provided to the consumer they could see if the advice was producing large amounts of new commission. This would then require a higher level of reasoning from the adviser to confirm their advice was proper and balanced which is the case when appropriate policy replacement occurs. I am not keen on a principles based approach as it leaves to many options to avoid full and proper disclosure.
	Other conflicts of interest and affiliations
18	*Do you agree that those giving financial advice should be required to disclose all relevant potential conflicts of interest?*
	Yes.
19	*Are there any additional factors that might influence financial advice that should be disclosed?*
	Yes, there are. For example, a friend or relative might have an interest in a company or product that is being recommended. One way to overcome this is to produce a guide on the subject of conflicts of interest as do other professions. Examples could be used as to when an adviser needs to disclose a conflict of interest.
20	*Should these factors be disclosed alongside information about the conduct and client care duties that financial advice will be subject to (as discussed on page 17)?*
	Yes.
Information about the firm or individual giving advice	
	Details of relevant disciplinary history

21	*Do you agree with the proposed requirement to disclose information relating to disciplinary history and bankruptcy or insolvency history? Why or why not?*
	Yes, for the reasons stated in the paper.
22	*Should the disclosure of information relating to disciplinary history and bankruptcy or insolvency history also apply to the directors of a financial advice provider?*
	Yes.
23	*Should financial advice providers also be required to disclose if they have been found to have contravened a financial advice duty?*
	Yes but not complaints dealt with by DRS as these are often resolve by agreement. Further, often complaints against an adviser can arise from minor problems or miscommunication that once clarified with the help of DRS are resolved. If an adviser had to disclose these then the ramifications might not be congruent with the 'breach'.
Additional options	
	A prescribed summary document
24	*Do you think that a prescribed template will assist consumers in accessing the information that they require?*
	Yes.
25	*How could a prescribed template work in situations when advice is not provided in person (i.e. if it is provided over the phone or via an online platform)?*
	It could be provided by email or text as is the case with other products such as telecommunications.
	Requirements for disclosure provided through different methods
26	*Should the regulations allow for disclosure to be provided verbally? Why or why not?*
	No. The consumer receives a lot of verbal information during the advice process and to add to this verbal disclosure information creates a risk that the consumer might not remember it. More importantly it creates a situation where the adviser may well have disclosed the information but the consumer states he/she did not. Without a record of the disclosure being provided to the consumer the adviser faces a risk of a complaint. Confirmation the disclosure information has been given to the consumer is vital. Doing so verbally will not achieve that and only facilitate 'he said, she said' disputes.
27	*If disclosure was provided verbally, should the regulations include any additional requirements?*
	See above.

	Requirements for financial advice given through different channels
28	*Should the regulations provide for any additional requirements that would apply when advice is given via a robo-advice platform or over the phone?*
	Yes. It should be mandatory that there is an email or text sent to the consumer containing the disclosure information.
29	*Do consumers require any additional information when receiving financial advice via an online platform?*
	Yes. It needs to be made very clear to a consumer that the advice is not personal advice and not necessarily tailored to their individual needs and that as such there is a risk it may not provide the cover or investment performance best suited to them.
	Disclosure when replacing a financial product
30	*Should those advising consumers to replace financial products be required to provide a prescribed notification? If so, what should a prescribed notification contain?*
	Yes, very much so. An adviser must be required to show that the new product is better suited to the client's needs, that the client fully understand the risks of changing products, that the disadvantages (and losses) are clearly explained and understood by the client.
31	*Should this apply to the financial advice given on the replacement of all financial advice products?*
	Yes. Currently the requirement is too low and usually done by way of a single page 'tick box' form contained in the proposal document. The requirements need to be much higher. Genuine policy/business replacement is valid and detailing why a change is needed should not be difficult if it is a valid replacement. This will go some way to eliminating policy churn.
	Information to existing financial advice clients
32	*Should the regulations provide for reduced disclosure requirements for existing clients? If so, in what situations should it apply and what information should consumers receive?*
	Only possibly for general disclosure such as a AFA Primary Disclosure document and only when the consumer has retained a copy of the original supplied document.
33	*Should there be a limit on the length of time that this relief would apply?*
	Yes. Possibly 3 months?
	Transitional requirements
34	*Is it necessary for the disclosure regulations to provide a transitional period for the industry to comply with the new requirements beyond this nine-month period?*
	No. Most disclosure documents are personalised and created electronically. These can be changed almost immediately.
35	*Should the regulations include specific transitional provisions for AFAs authorised to provide*

	personalised DIMS under the FA Act?
	No.
	Disclosure to wholesale clients
36	*Should the regulations require the provision of additional information regarding the wholesale designation in some circumstances? If so, when would it be appropriate for this to take place?*
	I have argued that a wholesale client should only happens when requested by the client and only after they have been fully informed as to what being a wholesale client means.
37	*Do you have any alternative suggestions for how the regulations could ensure that wholesale clients are aware of what it means to be deemed a wholesale client?*
	They should not be 'deemed' wholesale. It should be by choices after an explanation is provided to the consumer as to what wholesale means. This could be done by a guide that states advantages and disadvantages. The consumer should then have the option to opt into being retails client. To set a financial limit that defines what an wholesale investor is does not work. You can have very wealthy folk that have none or very little understanding of financial affairs and who need the protection of being a retail client. Likewise you can have a not so wealthy person who has wide knowledge of the financial markets.

Other comments

Whilst I understand the reasoning for having a flexible approach to disclosure there needs to be caution exercised to ensure what needs to be done is clear to all advisers. Advisers need clear guidance so that there is no confusion and sometimes this may need a prescriptive approach. Such an approach also means those rare advisers who wants to break the rules will find it harder to do so.

Flexibility can still be achieved by providing guidelines and/or examples of how to meet the disclosure requirements.

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23 May 2018

Financial Markets Policy
Building, Resources and Markets
Ministry of Business, Innovation & Employment

Email: faareview@mbie.govt.nz

To whom it may concern:

Submissions on discussion paper: Disclosure requirements in the new financial advice regime

Our submissions are informed by our role as an independent financial dispute resolution scheme, which investigates complaints across the broad spectrum of financial advice and products (except banking).

We formally investigated 24 complaints about financial advisers (out of a total of 216 complaints investigated), in the year ended 30 June 2017. While complaint numbers are relatively small, the 24 complaints represented a 70% increase on adviser complaints investigated in the previous 12 months.

In these submissions, where we have not commented we generally agree with the approach set out in the discussion paper. We have submitted on sections of the discussion paper which are particularly relevant to FSCL's role as a dispute resolution scheme (DRS), where we consider there needs to be amendment to or further consideration of the discussion paper's proposals, and where we strongly agree with the discussion paper's approach.

1. Paragraph 22 – consumers should not be required to request publicly available information

1.1. This paragraph states that publicly available disclosure information should be publicly accessible, **or available on request**. In our view, consumers should not be required to request this information – it should simply be available and easy to find (for example on a financial advice provider (FAP)'s website). In addition, the information on websites needs to be clear and easy to navigate by avoiding too much information being provided on one screen. We also understand that

consumers want to know the risks of investing in or purchasing certain products, so we would encourage disclosure of general information to this effect in the publicly available information on FAPs' websites.

2. Disclosure of insolvency/bankruptcy history

2.1. With reference to paragraph 23(e) and questions 21 and 22, we consider there should be disclosure of a FAP or FA's insolvency/bankruptcy history, **and** that of the directors, key persons, or senior manager(s) of the FAP. This is because the bankruptcy history of those people will likely be as relevant as the FAP's insolvency history, when a consumer is deciding whether to engage with the FAP. We understand that consumers want to know about the people behind the products they are investing in or purchasing, and also that the organisations they are engaging with are socially responsible.

3. Costs, fees, and commissions

3.1. With reference to paragraph 22(e) we consider that if a FAP is charging a fee, there should be an indication in the publicly available disclosure about how the fee will be determined (for example, that it will be based on the time the FA or NR spends on providing the advice).

3.2. With reference to paragraph 23(d), we strongly support there being a reasonable estimate of fees and the basis on which they are charged, disclosed at the time the nature and scope of the financial advice is known.

Paragraph 25(b) and paragraph 55

3.3. With reference to paragraph 25(b), we strongly agree that FAPs, FAs, and NRs should advise customers if there is a fee for the financial advice, and the basis on which it is charged, before the consumer incurs the fee. This should extend to informing consumers about the likely commission clawback the adviser will pass onto the consumer if they cancel a product within a certain period of time. In addition, the term 'commission clawback' should be explained – it should not be assumed that consumers will understand what the phrase means.

3.4. In the same vein, we have found that in some commercial finance broking to small business complaints we have investigated, it is not always highlighted what the brokerage fee will be, and that the fee will be charged whether the consumer proceeds with the finance offer or not. Attached as appendices one and two are examples of two complaints FSCL investigated dealing with this issue.

Question 12

3.5. Yes, we agree with the proposals relating to the disclosure of costs to consumers, as set out in paragraphs 54 to 56 and the bullet points that follow. However, we also consider that any costs should be shown in dollar amounts where possible (even if this is an estimate), because it is hard for consumers to gauge costs shown as percentages, particularly when the client likely has no idea of the total amount of commission the adviser is receiving. For example, when disclosing a clawback commission when a consumer has cancelled within a year of product purchase, the amount could be disclosed as an estimated dollar figure. This could extend to disclosure of the amount that will be charged when a consumer has cancelled the product within two years of purchase (so that the consumer can compare the difference).

3.6. In the same vein we consider that in scenario 2 (pages 30 – 31 of the discussion paper), when Emilia is quoting her commissions, these should be quoted in a dollar value (even if this was an estimate), as well as the percentage.

Question 13

3.7. We consider if there is a known cost that will likely be charged to a consumer upon following the adviser's advice (for example, a bank fee), there should be disclosure of the fact such a fee will likely be charged, along with a fee estimate. If the adviser does not know the fee and cannot find out, the adviser should refer the consumer to, for example, the bank, to enquire further.

Paragraph 59 and questions 14 and 15

3.8. We agree that commissions and incentives should be disclosed in more general terms early, and in more detail later in the advice process.

3.9. However, we do not agree with the materiality threshold. We see real difficulties and risk in leaving FAPs, FAs, and NRs judging whether a commission or incentive **may** be **material**. We consider that if there is any connection between a product that was considered in reaching a recommendation and a commission/incentive, or between the product actually recommended and a commission/incentive, it should be disclosed.

3.10. With reference to the recent Financial Market Authority's 16 May 2018 report on soft commissions in the health and life insurance industry, concerns were expressed about the soft commission structure causing consumer harm. This gives weight to a requirement that all commissions, both standard and soft, be disclosed by all advisers and FAPs.

Questions 16 and 17

3.11. We consider that the disclosure for commissions should be prescriptive. Commissions should be disclosed in dollar terms (option 2). In addition, by having commissions disclosed in dollar values, the consumer can clearly see the link between commission earned and any clawback commission that may be charged if a product is later cancelled within a relevant time period.

3.12. In saying that, we are of the view that the appropriateness of commission clawbacks should be considered by regulators in any event. We consider that if a product is cancelled within a relevant clawback period, the adviser should charge a fee based on the time and level of expertise taken to provide the service to the consumer, rather than the amount of the commission clawback.

3.13. Having commissions set out in dollar values will not be detrimental to consumers. Commissions for different product providers are likely to be reasonably similar, and consumers will therefore simply better understand how advisers are paid. In other words, the consumer will learn that it is standard industry practice for large amounts of commission (particularly upfront commission) to be earned by advisers.

4. Paragraph 24 – including disclosure at the time of recommendation in a statement of advice

4.1. We consider the information to be disclosed at the time a recommendation is being made should be included in the adviser's statement of advice.

4.2. With reference to paragraph 24(b) – we consider the statement of advice should include disclosure of the different commissions for the different products the adviser considered before determining which product to recommend. This will encourage transparency and show the consumer that the adviser has not been influenced by commission amounts, when reaching their final decision about what product to recommend.

5. Complaints

5.1. With reference to paragraph 25(a) – we strongly support a proposal that the details of the relevant DRS are provided at the time **a complaint is made to** the FAP, FA, or NR. The words 'at the time the complaint is **received**' tend to indicate that the details of the DRS should only be provided when the consumer has **written** to the FAP, FA, or NR with a complaint.

5.2. We find that some financial service providers (FSPs) have difficulty recognising when a complaint has been made. If the International Standards Organisation's definition of a complaint (standard 10002) is considered: "An expression of dissatisfaction

made to a financial service provider, related to its products or services where a response is explicitly or implicitly expected", it is clear that for most businesses, complaints are often made during telephone calls with advisers or when meeting advisers in person.

5.3. Making sure information about the complaint process is provided at the first point when a consumer makes a complaint is critical because it provides impetus for a complaint to be dealt with in a timely manner through the FSP's internal complaints process (ICP). We often find that by the time the consumer reaches FSCL, they are already cynical about attempts to resolve the complaint because the complaint has been within the FSP's ICP for a long time.

5.4. We also submit that details for the DRS must be provided again at the time the FAP is providing its final decision on a complaint (i.e. when the complaint has exhausted the FAP's ICP).

5.5. Lastly, with reference to paragraph 22(f), 23, and 24, it is critical the FAP's DRS details are included in the disclosure to be provided at each of the three key steps in the advice process.

Paragraph 47

5.6. Footnote 9 refers to the Bill's current wording which gives FAs an exemption (which we do not support) from the requirement to be a member of an approved dispute resolution scheme, if the FAP on whose behalf they give advice is a member of an approved scheme. However, if FAs are required to have information about their ICP and DRS on their publicly available information (which we understand to be the FA's website), this may go some way to counteracting consumers being unable to find the FA's DRS's contact details (because the FA is not individually registered with a DRS).

Questions 7 to 9

5.7. Yes, we agree that information relating to the licence, duties, and complaints process should be made available to consumers in the disclosure given at each of the three key stages of the advice process. We consider there is no need for prescribed text and providers should have flexibility about the form in which the information is presented.

5.8. The DRSs' rules already provide that consumers should be told about their ability to access free dispute resolution when they make a complaint. However, we have found through experience that some advisers do not recognise a complaint when one is made and do not tell their client about the right to make and escalate a

complaint to FSCL. We therefore strongly encourage that the regulations require the FAP, FA, or NR to provide the DRS's details both:

a) at the time a **complaint is** made to the FAP, FA, or NR, and

b) when a FAP, FA, or NR is providing their final response to a complaint.

5.9. We also consider there should be a penalty in the case of a breach or persistent breaches (for example, the DRSs should be able to report a breach to the FMA).

6. Questions 2 and 5, and paragraph 39 – three sets of disclosure

6.1. Although we generally agree with providing disclosure to consumers at the three critical stages in the advice process, we are wary of there being three sets of disclosure. The volume of disclosure could mean consumers are less likely to read it.

6.2. We consider it may be helpful for the regulations to set a word-limit or page/website screen limit so that the information remains clear and concise, while remaining thorough. It would also be helpful if FAs / NRs are required to tell consumers that the reason new disclosure information is being provided is because it contains new information that is particularly relevant to the advice process stage the consumer is at (rather than the FA / NR simply handing over information for the consumer to read over later).

7. Paragraph 29 – form of disclosure

7.1. We agree that the form of disclosure should be flexible, as long as all the information required to be disclosed at each stage of the advice process is disclosed. For example, we agree it will be helpful for disclosure to set out any fees that will likely apply or be relevant to the consumer, rather than setting out **all** of the FAP's fees.

7.2. We consider it could be helpful if the regulations include disclosure templates which provide a safe harbour, but with FAPs having the ability to modify these to suit their business. However, we are mindful that there are risks in having templates because it could lead to FAs and NRs simply undertaking a 'tick box' exercise, without ensuring they have meaningfully explained the disclosure to their client.

8. Paragraph 35 – explanation of disclosure should be required

8.1. The boxed wording in this paragraph indicates that disclosure may go some way to the FA meeting the obligation to take reasonable steps to ensure their client understands the nature and scope of the advice being given. We agree, and consider FAs / NRs also need to explain disclosure to consumers in a meaningful way to aid understanding. The FA / NR may need to provide more in-depth explanation to some clients than they would for others.

Question 4

8.2. We also consider those giving advice should be required to tell consumers in advertising material that they can access general public information about the FAP and where they can access it.

9. Question 6 – penalty for presentational breach

9.1. We are not qualified to comment on what penalties should apply where a FAP contravenes presentational requirements. However, any penalty should be proportional to the breach.

10. Paragraphs 41, 44 and 45 – disclosure when using the aggregate model

10.1. With reference to paragraph 41(b), it should be considered how a FAP using the aggregate advice model proposed in the discussion paper on the Financial Adviser Code, should provide disclosure. In our view, if an aggregate model is being used, disclosure should be provided in relation to all FAs, NRs, and the FAP, involved in producing the advice in the aggregate. We suggest this could include a summary of what an FA, NR, and FAP is (for example, what qualifications an FA requires).

10.2. For example, this aligns with the disclosure required when a person seeks legal advice. A law firm's letter of engagement will outline the partner overseeing the advice, and the associates / solicitors / legal executives who will be involved in providing advice on the file. In the legal sphere, the qualifications of all those providing advice is not always disclosed, however, the public has a general understanding that each person dealing with the matter is a lawyer or a registered legal executive. Conversely, the general public will currently be unfamiliar with the terms FAP, FA, NR, so providing an explanation of what those terms means would be helpful for consumers.

10.3. This will also ensure consumers are aware there are a number of people involved in producing the advice provided to them. In addition, it avoids conflict of interest situations where the consumer may know a person who is involved in producing the advice in the aggregate, but with whom the consumer never has any interaction.

11. Paragraph 53 and questions 10 and 11 – limited advice

11.1. With reference to the scope of advice that can be provided, we consider it is inadequate for a consumer only to be told there are limitations on the advice being provided. A consumer should be told of the consequences of receiving limited advice. For example, the consumer should be told that there may be other products in the market that the adviser has not suggested or considered that may also be suitable, or which may be more suitable.

11.2. Although some consumers would be aware this is the case, others will not be aware that the product being recommended to them may not have been considered in the context of all potentially suitable products in the market, and the consumer will assume the adviser is recommending the very best product for them.

12. Questions 18 and 20 – disclosure of material conflicts of interest

12.1. We answer yes to these questions.

13. Question 23 – disclosure of contravention of a financial advice duty

13.1. We consider FAPs should be required to disclose if they have been found to have contravened a financial advice duty by a disciplinary body, but FAPS **should not** be required to disclose a contravention of a financial advice duty finding by a DRS.

13.2. To require otherwise would undermine the DRSs' ability to resolve complaints because it may lead to FAPs taking complaints right to the end of the DRS's process to try and ensure that no adverse findings are made against them, including a breach of a financial advice duty. This will make it difficult for the DRSs to negotiate early resolutions between consumers and FSPs, which in turn would not be a good consumer outcome.

14. Paragraph 78 and Questions 26 and 27 – verbal disclosure

14.1. We strongly agree that any disclosure given verbally should be supported by written disclosure. We do not agree that the regulations should anticipate that some types of disclosure could be provided verbally. In complaints we investigate, we often find that where advice or disclosure was given verbally:

- there is a difference in expectation about the scope of the advice or the disclosure, or
- the consumer says they did not receive the disclosure, leading to 'he said, she said' situations.

15. Paragraph 79 and question 28 – additional requirements on robo-advisers

15.1. We strongly support robo-advice platforms having additional requirements to advise how a robo-advice platform works. There should also be a requirement that a consumer signs or acknowledges in some way that they have read and meaningfully understood the disclosure provided to them by the robo-adviser.

16. Paragraph 81 and questions 30 and 31 – replacement of financial products

16.1. Yes, we strongly agree that the regulations should require a prescribed notification to the consumer warning them about replacing financial products. With insurance, advisers should already be filling out the 'replacement business' sections of insurers' application forms. We consider that warnings on replacement advice should be included in the statement of advice and when the final recommendation is being given.

16.2. We consider that when an adviser is recommending replacing one insurance product with another, regardless of whether this is with a new insurance provider or not, the regulations should require that the following information be provided in the financial adviser's statement of advice:

a) Product and provider differences, stating the specific reasons for the proposed replacement and why the current policy cannot adequately fulfil the consumer's objectives.

b) The key differences between the two policies (existing and recommended) relevant to the consumer.

c) The duty of disclosure.

d) Underwriting risks.

e) The costs to the consumer and revenue to the adviser and their business.

f) How the implementation of the replacement business will take place, including when to cancel the existing insurance policy (i.e. only once satisfied new policy is providing the benefits sought).

g) Indication of review dates.

16.3. With reference to question 31, we consider there should be prescribed regulations on the replacement of any financial product where there is even a very small risk that the consumer may lose benefits/features of the old product, by changing to the new product.

17. Questions 32 and 33 – existing consumers and reduced disclosure

17.1. We consider there should be new disclosure when there is a different product being advised on, (for example, when an existing mortgage client wants advice on KiwiSaver).

17.2. However, we also consider disclosure should be provided even if an existing client is seeking the same or similar advice from the same provider. We consider it is too difficult to set parameters around when it would be appropriate to rely on the original disclosure (for example whether new disclosure is only required after the passage of a certain period of time). It is easier to simply provide the disclosure again.

18. Question 34 – period to update disclosure

18.1. We consider nine months is long enough to update disclosure.

19. Paragraph 91 and questions 36 and 37 – wholesale client

19.1. Yes, we consider the regulations should require anyone who gives financial advice to a wholesale client to provide sufficient information about the consequences of that designation. In our experience, some consumers who meet the definition of a wholesale client are, in effect, in the same position as a retail client in terms of knowledge and investment experience. In our view those consumers should still be able to access the DRSs and access the other consumer protection benefits associated with being designated a retail consumer. Those consumers should also be given the opportunity to opt-out of being a wholesale client.

19.2. We consider it would be appropriate to provide information about what a wholesale client is, at the time the nature and scope of the financial advice is known, and at the recommendation stage.

If you have any questions about our submissions, please contact us.

Yours sincerely

S9(2)(a)

Susan Taylor
Chief Executive Officer

S9(2)(a)

Stephanie Newton
Case Manager

Appendix One

To what extent am I responsible for my broker's actions?

Barry was keen to purchase a business but had existing debt. He met with Janine, a mortgage broker, on 21 September to try to find a suitable lender to finance the business purchase. Barry signed Janine's scope of service which contained a condition that Barry undertook to pay *"all costs associated with and agreed, for work completed by the adviser, as stated in the scope of service."* The loan was to refinance Barry's existing mortgage of $876,000 and borrow a further $125,000 for the business purchase.

Barry and Janine's meeting only lasted 30 minutes, but there were subsequently many e-mails and phone calls to arrange finance. Janine stated at their first meeting that the fees were likely to be 'a couple of thousand', and that her fee was usually paid by the lender upon securing finance.

Because of Barry's existing liabilities, banks were not keen on lending and so, on 20October, Janine approached a third-party finance broker (Harry) to assist in securing finance. Harry's mandate stated that payment of his brokerage fee was contingent upon an offer being tabled, rather than finance being accepted (by Barry). Barry was unaware Janine had approached a third party who operated on different terms to the terms that Janine had indicated at their first face to face meeting.

Harry told Janine that the brokerage fee was 1.35% of the amount being financed. Janine asked that Harry also collect a fee on her behalf.

Over the next ten days Janine communicated with Harry about seeking a finance offer, and with Barry about seeking further information and providing him with updates.

On 31 October at 9:30am, Harry sent Janine the mandate agreement for Barry to sign. The agreement stated a brokerage fee of 1.5% (including Janine's fee), was payable upon the broker presenting an offer of finance for at least 90% of the amount of finance sought. At 12:30pm Janine emailed Barry the mandate. In the email, Janine stated;

"He (Harry) has asked that the above mandate be signed and emailed back...The mandate spells out the amount sought and the fees so that he can look to get a formal offer in place."

Barry sent the signed mandate back to Janine. Later that day Harry emailed through the loan offer documents.

On 7 November Barry signed the loan offer and returned it, requesting settlement for 18 November. On 16 November, given some problems associated with purchasing the business, Barry asked what the fee would be if he was unable to proceed with the purchase. Janine, having contacted Harry, responded that the fee would be $15,825. Barry thought the fee was only payable if he went through with the purchase.

Barry's view

Barry said he was unaware of Harry's involvement until the mandate was signed, and he did not believe Janine's work in securing the loan offer amounted to $15,825 worth of work. Barry considered it unfair he had to pay for Harry's involvement when he was not aware Harry was acting for him. Barry believed that Janine, as the professional, should have explained the entirety of the mandate agreement to him, given it differed from the fee indication she gave at their initial meeting. In essence Barry said it was a case of "here, sign this, don't worry." Barry maintained that if Harry's fee and involvement had been explained to him, and he was aware a substantial fee had to be paid whether or not the deal went ahead, he would have made a different decision.

Barry thought the fee was unfair and he complained to FSCL.

Janine's view

Janine said she spent many hours attempting to secure finance for Barry and, while it was costlier to receive finance from a non-bank lender, it was the only option for Barry, due to his financial position. Janine also asserted that Barry's extensive business history, and the fact he had taken out a mortgage with another non-bank lender along similar terms

(but for a 1% brokerage fee) earlier in the year, indicated he should have been aware of how brokerage fees were charged. Given the mandate was a one-page document, Janine thought Barry had accepted and understood the terms when he returned the signed document.

Harry's view

Harry explained he had spent 5 weeks working on securing finance for Barry. In his eyes this constituted a significant amount of time and effort. Harry pointed to Barry's credit and business history to support an argument that Barry should have been aware of the fees and costs charged in this type of transaction. In addition, Harry said that as Barry had dealt with 20 lenders in the past 3 years and, having signed the mandate, Barry could be expected to understand that he had to pay Harry's brokerage fee.

Review

We found that the mandate was a legally binding contract which required Barry to pay Harry's fee. The mandate outlined both Harry's fee and the fact the fee was payable upon an offer being presented.

However, given Janine was Barry's mortgage adviser she should have done more to make him aware of his obligations and the consequences of signing the mandate. Although Janine and Harry pointed to Barry's business experience as evidence he understood the consequences of entering into such an agreement, Janine and Harry should not have assumed Barry had this knowledge.

Moreover, Janine gave no indication that the brokerage fee would be as high as it turned out to be. It was clear, that at the time of her initial meeting with Barry, Janine was unaware of the quantum of brokerage fees because she was yet to engage with Harry. She only confirmed this fee level after Harry's mandate and offer were provided to Barry. Janine should then have pointed out that the fee would be more than she had initially estimated.

Outcome

On the face of things, Barry was liable to pay the entire fee. However, we found that Janine contributed to Barry's mistaken assumption that the fees would only be a few thousand dollars, by failing to outline at the start of their relationship how brokers' fees work, and by not passing on the information she received from Harry about how his firm's fees were calculated when she received them, sometime before Barry signed the mandate. Janine should also have made it explicitly clear to Barry that the brokerage fees were payable once an offer was tabled.

As a result of Janine's material contribution to Barry's misunderstanding about the brokerage fee, we said that, in all fairness, the fee should be reduced by 20%.

Barry said he could not pay Harry's fee, even when reduced by 20%. Harry said he would take debt recovery action against Barry.

Key insight for consumers

When you engage a professional broker, be aware you are responsible for any obligations created by the signing of a mandate, including fees. Regardless of what your adviser or broker states, it is very important to read the contract or seek independent advice.

You will often have to pay a fee to the broker, even when you do not draw down the loan finance arranged by the broker.

Appendix Two

Are the finance terms materially different from those in the mandate?

In 2015, Caleb contacted FSCL about a complaint against his commercial finance broker. The broker obtained a finance offer for Caleb to purchase a property. Caleb intended to sub-divide and develop (the development property). The broker was seeking payment of his brokerage fee of $23,500.

Caleb considered the fee too high because:

a) He did not actually take up the offer of finance

b) the terms of the finance offer were not reflective of the terms he sought, as set out in a mandate between him and the broker, and

c) he considered the work undertaken by the broker did not justify a $23,500 fee.

Caleb said he was placed under pressure to sign the finance offer because it was only presented to him the day before he was due to settle on the purchase of the development property. Because the loan offer terms were different from those in the mandate with the broker, Caleb was under pressure to find an offer from another lender within a short time period. Caleb did obtain an offer from another lender on more favourable terms, although he incurred penalty interest of $4,300 on the delayed purchase.

The mandate

The mandate set out the finance terms the broker was going to seek, being:

- Finance amount: $1,440,000.
- Term – 1 year, interest only.
- Indicative interest rate of 10-11%.
- Lender's fee up to a maximum of 2%.
- Security – first mortgage on the development property, and a personal guarantee from Caleb.
- An administration fee of $2,000 plus brokerage at 1.5% of the amount financed.

The mandate also said that upon an offer of terms being presented, the full brokerage fee of $23,500 was due and payable.

The offer

- Finance amount: $1,678,000
- Term – 8 months from the date of the advance. There was an option to extend the term by 2 months, for an additional 1% fee.
- Interest rate of 12%.
- Finance fee of $65,000 due on acceptance of the offer and in the event the loan did not proceed.
- Security sought was the mortgage over the development property, and Caleb's personal guarantee. In addition, there was additional security to be taken by way of:
  - mortgages over two other residential properties Caleb owned
  - a guarantee from Caleb's limited liability company
  - a guarantee from Caleb's family trust
  - a general security agreement over all present and after acquired property of Caleb and the guarantors
  - assignment of the agreements for sale and purchase of the lots at the development property, and
  - any other such security from Caleb and his associated entities the lender may consider necessary.

The broker's view

The broker considered the full $23,500 fee was payable once an offer was presented to Caleb, and said it was not unusual for a loan offer's terms to differ from those originally sought by a borrower. In addition, the broker said that, ultimately, Caleb had signed the mandate and the offer.

The broker said he was not late in providing the offer and had worked hard obtaining the offer based on disorganised information provided by Caleb in 'dribs and drabs'. The broker felt he went the extra mile to seek an offer of finance for Caleb, including assisting in the pre-sales of four sections. In addition, the broker said he had to do more work because Caleb lacked experience in this type of deal, and because of Caleb's financial position.

The broker also said Caleb had originally sought finance of $1.4M, however in reality the finance required was close to $1.7M once lender, brokerage, and legal fees were included, which significantly increased the risk for the lender.

Our investigation

We looked at all the correspondence between Caleb and the broker. We showed that Caleb and his broker had first been in communication in late June 2015 about seeking the finance. The broker emailed Caleb and asked him for various pieces of information to enable the broker to seek the finance, including valuations, the sale and purchase agreements, contractor and supplier quotes, a statement of financial position, and the signed mandate.

On 1 July 2015, Caleb provided all the required information to the broker. There was no further contact between the broker and Caleb until 9 September 2015, when Caleb sent the broker evidence of deposits being held in relation to the pre-sales of 3 lots at the development property.

It was only on 21 September 2015 that the broker was first in contact with the lender, with settlement set for 30 September 2015.

Our view

We considered Caleb should make a contribution towards the broker's fee, based on the actual time the broker spent on securing the finance offer. Our overall view was that because the terms of the offer differed considerably from those in the original mandate, the broker had not met the mandate requirements.

In addition, because the offer was only presented the day before settlement, Caleb was placed in a stressful and difficult position.

However, we considered Caleb had to bear that the $4,300 penalty interest cost because he could have taken steps to have a back-up finance option in place.

The factors relevant to our decision were that:

a) The security sought from Caleb differed significantly from the security he originally agreed to provide in the mandate. The lender's ability to seek any further security it saw fit also seemed to be a very wide power.

b) A difference in the lender's fee of $31,440 was not insignificant.

c) The lender wanted an 8-month term, not a 12-month term.

d) Accepting the broker's argument that Caleb was inexperienced, the broker could have done more at the time the mandate was signed and between July 2015 and late September 2015 to explain that:

- there would likely be broker, legal, and lender's fees to factor in
- the security noted in the mandate was unlikely to be sufficient
- a lender may not agree to a 12-month term
- it may be difficult to find finance on the terms originally sought, in particular when it became known to the broker that the number of lot pre-sales was likely insufficient. If Caleb had known this he could have worked on securing more pre-sales.

e) Caleb had not provided information in 'dribs and drabs'; he had provided information as the broker had asked for it.

f) The broker should have been in contact with lenders to seek indicative loan offers earlier than 21 September 2015 which was only 8 days prior to settlement. There were conditions attached to the loan offer which, if obtained earlier, Caleb could have discussed with his solicitor much sooner.

g) As far as Caleb was concerned, it appeared there was no impediment to him obtaining a finance offer on the terms he sought by the date of settlement. At the same time, Caleb could have followed up with the broker between July 2015 and September 2015 to seek an update on progress.

We reviewed all the correspondence between Caleb and the broker and considered it fair and reasonable for Caleb to pay the broker for 25 hours of work at $300 per hour, being $7,500 (including about 5.5 hours of telephone calls). We formally recommended Caleb pay $7,500 in full and final settlement of the broker's fee and the complaint, and that the broker write off the remainder of his fee.

Our insight

In this complaint, the broker argued it took him well in excess of 25 hours to secure the finance offer for Caleb. A major impediment to us finding in the broker's favour was that there was a lack of file notes to prove that more than 25 hours was expended. File notes of actions taken by a financial service provider can be vital evidence if a complaint is received and investigated.

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25 May 2018

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Submission: Disclosure requirements in the new financial advice regime

This submission is from the Financial Services Council of New Zealand Incorporated (**FSC**).

The FSC represents New Zealand's financial services industry having 33 members at 30 April 2018. Companies represented in the FSC include the major insurers in life, disability, income, and trauma insurance, and some fund managers and KiwiSaver providers plus law firms, audit firms, and other providers to the financial services sector.

Our submission has been developed through consultation, and represents the views of our members and our industry. We acknowledge the time and input of all our members in contributing to this submission.

The FSC's guiding vision is to be the voice of New Zealand's financial services industry and we strongly support initiatives that are designed to deliver:

1. Strong and sustainable consumer outcomes;
2. Sustainability of the financial services sector; and
3. Increasing professionalism and trust of the industry.

We therefore agree with the five objectives identified in the consultation paper and broadly support the proposed measures. Our members agree that improved, consistent, consumer-focussed, transparent, disclosure requirements will benefit consumers and the industry.

Given the different business models, diversity and expertise of our members, there are times when there are a range of insights and views. Where this has been the case in relation to this submission we have provided a range of views for further discussion.

Implementation will be a balancing act between ensuring consumers have access to the information they need to make good decisions, and impact on the industry.

There are seven areas which we believe will address potential implementation issues and lead to better consumer outcomes. We expand on these areas overleaf.

I can be contacted on S9(2)(a) discuss any element of our submission.

Yours sincerely
Richard Klipin
Chief Executive Officer, Financial Services Council

Recommendations

1. **Principles-based approach**

   We support the move towards a principles-based environment, and the intent for the regulations to provide flexibility in terms of precisely how information is provided. We agree that this approach has the best chance of providing good consumer outcomes while mitigating the risk of undue compliance costs.

   However, under the Financial Services Legislation Amendment Bill (**Bill**), Financial Advice Providers (**FAPs**) (and others) may be liable for a contravention of the duties relating to disclosure and as such, the regulations must provide Financial Advice Providers and financial advisers certainty as to what is required.

   Certainty is particularly important in order to make disclosure flexible enough to cover a range of advice situations and delivery channels. We recommend that the regulations provide a range of sample templates for guidance, together with clear examples, that the industry can adopt or modify for use. The provision of templates and/or examples may, for some delivery channels, have the added benefit of introducing consistency for consumers, and minimising time and cost for the industry (and hence, ultimately for the consumer). As noted above, we support flexibility and therefore we do not recommend that use of such sample templates is mandatory.

   On the issue of templates, we note that paragraph 38 of the discussion paper proposes that regulations include presentation requirements to ensure consistency with the objectives. The Code of Conduct may also set requirements for how information is given to consumers. We submit that any presentational requirements are not duplicated in different areas of the regime.

2. **Phased disclosure**

   We support phased disclosure, and recommend minor improvements including:

   a) Information about licensing should be made available publicly on request, but should not be required at the time the scope is known.
   b) Acknowledgement that the disclosure of potential material conflicts of interest when the scope is known may lead to restricting scope in order to remove those conflicts.
   c) Consideration of introducing the words 'prominent' or 'easy to find', where relevant, in relation to phased disclosure requirements. For example, if disclosure is made via a website, the information should be easily found on the website, and not hidden. We note that 'prominent' may not work for all products, services or channels.

   While we support phased disclosure, we think it should be clearer that FAPs can combine disclosure/phases and therefore could place more reliance on the publicly available information, particularly where a FAPs business structure is relatively simple or straightforward.

3. **Disclosure of how commission is calculated**

   Our members have a range of views in relation to the three options proposed in the discussion paper. These views are:

   a) To ensure good outcomes for consumers, and consistency in application, the area of commissions is one that needs to be more prescriptive than principles-based (i.e. not Option 3 in the discussion paper).
   b) Given the complexity and range of commission arrangements, we consider a principle-based approach is preferable (Option 3). Disclosure in dollar terms will incur significant compliance costs and accurate disclosure may not be possible at any particular point in time. Consumers could be led to make choices based on fees rather than on what meets their needs.

c) We support disclosure of commission in dollar terms (including use of percentage commission rates). However, this could be by way of an example or a reasonable and temporal estimate. The need to allow reasonable and temporal estimates is due to:
   - The significant operational impact (time and cost) from calculating exact commission amounts.
   - The fact that commission amounts can change throughout the application process. For example, in relation to an insurance application, commission can double if the underwriting of a customer's application results in loadings to the premium.

We are supportive of transparency for consumers, although are concerned about potential compliance costs resulting from repetitive or excessive disclosure. Our members want to work with the Ministry to find the best solution for consumers and the industry. We suggest that real-life examples are used to workshop the best approach to how commissions should be disclosed, and that further specific examples/templates for guidance then be provided.

We support the method proposed in the paper to disclosing clawback, being that those advisers who charge clawback must disclose it as a possible fee, together with dollar amounts at different points in time.

4. Soft commissions

Notwithstanding that our members have a range of views on the use of soft commissions (e.g. overseas trips, professional education and administrative support), we are aligned in our view that soft commissions should be disclosed to consumers.

Soft commission structures can be complex, multiple and varied, so simple disclosure will be difficult. Scenario 2 in the discussion paper (annex 1) is a good example of what disclosure of soft commissions could look like.

We suggest that real-life examples are used to workshop with the industry the best approach to how soft commissions should be disclosed, and that further specific examples/templates for guidance then be created. The real-life examples should include non-monetary incentives both beyond and within organisations. Any resulting guidance should provide the flexibility to make it clear there is a balanced scorecard approach for employees who sell, where payment is not purely based on sales volumes.

5. Replacement Business

Our members have a range of views on replacement business, noting that replacement business is perhaps better handled through the suitability requirements in the Code of Professional Conduct for Financial Advice Services.

Should replacement business be addressed through disclosure requirements then, in general, our members agree that replacement business should have strong disclosure requirements. Notification should include:

a) General risks of replacing a product; and
b) Specific risks to the consumer around the benefits gained and lost, including a like-for-like comparison of existing and new products.

These replacement business requirements should be scalable and depend on the risks related to the type of product. If an adviser is unable to compare products (for example due to lack of information, lack of knowledge or unique features of the product), then this fact should be made clear to the consumer.

6. **Limiting scope to manage conflicts**
   We suggest that both disclosure and managing the scope of advice are ways to manage conflict and we support the disclosure of material conflicts of interest in both general and specific disclosure.

   More scenarios, similar to those already in the discussion paper (annex 1) will help the industry provide consumers with the right information.

7. **Clearer guidance on when regulators will take action**
   Our members support the move for consistent, useful, disclosure and want the ability to innovate, but are balancing this with wariness of regulatory enforcement.

   The current Financial Advisers Act 2008 regime is largely based on criminal offences. The Bill will move enforcement to a mainly civil liability regime. As the civil standard of proof is lower than that for criminal offences, the Bill therefore makes it easier for the Financial Markets Authority to obtain redress for customers. In principle, this is a good thing.

   The wariness of regulatory enforcement may lead to conservative, legalistic, approaches to disclosure. Such approaches are likely to be unhelpful to the consumer and against the objectives set out in the discussion paper. To encourage open and effective disclosure, we recommend that the Financial Markets Authority provide guidance on their approach to enforcing sections 431N and 431O of the Act.

Submission on discussion document: *Disclosure requirements in the new financial advice regime*

Your name and organisation

Name	Lachie Gunn – General Manager
Organisation	First Capital Financial Services

Responses to discussion document questions

1	*Do you agree with the objectives that we have identified? Are there any further objectives that the disclosure requirements should seek to achieve?*
	We agree with the primary objective that disclosure should improve the transparency of and confidence in, financial advice. This will only be achieved if disclosure documents are simple, relevant and meaningful to the client.
The timing and form of disclosure	
2	*What are your views on the proposal that information be disclosed to consumers at different points in the advice process?*
	We agree that disclosure of generic and relevant information should be publicly or readily available to the consumer. More detailed disclosure to be provided at the time advice is being given. The underlying requirement is that disclosure should not involve having to provide multiple documents at different stages else it will defeat the objective.
3	*Will this approach improve the effectiveness of disclosure by increasing consumers' engagement and understanding of the information they receive? Why or why not?*
	Only if it is simple and the information is relevant.
4	*Should those giving advice be required to tell consumers that they can access general information about the provider or refer to this general information in advertising material?*
	The general information should be available in some format easily accessible. This could easily be included in the detailed disclosure in addition to being on a website or even a brochure if the adviser/business so chooses.
The form of disclosure	
5	*If the regulations were to provide flexibility on the form and timing of disclosure, how can they be drafted in such a way to provide certainty to the industry of what is required?*
	Without being prescriptive the regulations should at least provide some guidance on the format and content and that information needs to be clear and concise and in plain English. We agree that there should be word limits. The current PDS requirements are a good example.

6	*Should a person who contravenes the presentational requirements under the proposal be subject to civil liability or should it be dealt with by an FMA stop order or similar regulatory response?*
	We don't have a strong view either way on this. For minor transgressions a stop order should be sufficient. Is there any reason why the current FMC Act order of penalties could not apply.
What information do customers require?	
7	*Do you agree that information relating to the licence, duties and complaints process should be made available to consumers?*
	Yes We note that point 45 of the discussion document states; "*While we think that consumers would benefit from knowing that those giving financial advice are required to meet a standard of competence, we do not think that requiring specific qualifications to be disclosed would necessarily benefit consumers".* Under the current CWG proposals using the "in aggregate concept" it is possible that the person giving the advice has not met any competency standards and this gives no confidence to the consumer. We are of the view that everyone giving advice should via the disclosure document be required to specify their relevant qualifications and/or competency level.
8	*Do you think that the regulations should provide prescribed text for the disclosure of these pieces of information?*
	We think prescribed text for this would make sense; similar to Primary Disclosure document.
9	*Should consumers be informed of their ability to access a free dispute resolution service when making a complaint? Should this apply to all financial service providers who provide services to retail clients (in which case it might be implemented via the scheme rules rather than in regulations under the Bill)?*
	Yes they should be.
Information about the financial advice	
	Limitations in the nature and scope of the advice
10	*Do you agree with the proposal in relation to the disclosure of nature and scope of advice, as set out on page 19? Why or why not?*
	We agree that financial advice providers should disclosure any limitations on the providers and products they can consider. To that extent the type of advice and providers whose products they can consider should be publicly available information.
11	*How can the regulations ensure that consumers receive an accurate indication of the extent of the market that can (and will) be considered?*
	Some statement to the effect (if any limitation does exist) that there are other providers that have not been considered due to the limitations.
	Costs to client
12	*Do you agree with the proposal in relation to disclosure of costs to clients, as set out on page*

	20? Why or why not?
	Disclosure in how the financial service provider is remunerated eg by fees or commission of both should be part of the general publicly available information as is current with Primary Disclosure. Information on the basis of which fees are charge of commission received should be disclosed in the more detail disclosure prior to the giving of advice. This includes any expenses the client may incur should they cancel a policy. First Capital already does this in our secondary disclosure documents and we have attached a copy for reference. There should be a requirement to confirm the actual fee charged to the client prior to completion the advice/recommendation but this should be in a letter of engagement or similar. This should not form part of the disclosure documents as if so then every disclosure document would have to be individualised. This would add compliance costs and be impossible to manage.
13	*What role, if any, should the disclosure regulations play in ensuring that consumers are aware of the other fees that they might be charged should they follow the advice (e.g. bank fees, insurance premiums, management fees)?*
	All fees (other than those charged for the advice itself) should be disclosed as the are currently in the statement of advice or similar.
	Commission payments and other incentives
14	*Do you agree that commissions and other incentives should be disclosed in more general terms early, followed by more detailed disclosure later in the advice process?*
	If the general publicly available information already discloses how the FSP is remunerated eg fees/commissions, then the comprehensive disclosure should provide more detailed information.
15	*If the regulations were to include a materiality test that would determine the commissions and incentives that needed to be disclosed, what would an appropriate test be?*
	Along similar lines to current regulations – eg…a reasonably person would reasonably believe that it would materially affect the advice etc…..
	Options for how to disclose commissions and other incentives
16	*Is it necessary for the disclosure regulations to be prescriptive regarding the disclosure of commissions and other incentives? If so, why?*
	In the interest of consistency and ensuring that consumers are able to understand commission then we believe that the regulations should be prescriptive subject to our answer in 17 below.
17	*Which of the options (as set out in pages 21-22) do you prefer? What are these costs and benefits of the options?*
	Option 1 is the only workable and viable option. We already disclose this as part of our secondary disclosure requirements. Refer attachment. Option 2 would be nearly impossible to comply with, amounts vary, and, in many cases, the actual commission amount is not known until it is paid.

	What do consumers want from disclosure of commissions - We believe it is important to understand the end objective which is to give confidence to the consumer that the advice is in their best interests and not materially influenced by distortive or incentivised remuneration structures.
	Other conflicts of interest and affiliations
18	*Do you agree that those giving financial advice should be required to disclose all relevant potential conflicts of interest?*
	Yes we agree that any potential conflicts of interest should be disclosed. However, this is premised by the any conflicts that a reasonable person would think materially influences the advice being given. An example of a conflict that would materially influence would be the adviser participating in an incentive program by a company that he or she is recommending. An example of not materially influencing would be attend a product training course by a provider or similar briefing.
19	*Are there any additional factors that might influence financial advice that should be disclosed?*
	Not that we are aware of.
20	*Should these factors be disclosed alongside information about the conduct and client care duties that financial advice will be subject to (as discussed on page 17)?*
	Conflicts of interest should be disclosed as part of the detailed disclosure to a client prior to making a recommendation.
Information about the firm or individual giving advice	
	Details of relevant disciplinary history
21	*Do you agree with the proposed requirement to disclose information relating to disciplinary history and bankruptcy or insolvency history? Why or why not?*
	The rules that currently apply to AFAs should apply here.
22	*Should the disclosure of information relating to disciplinary history and bankruptcy or insolvency history also apply to the directors of a financial advice provider?*
	Yes
23	*Should financial advice providers also be required to disclose if they have been found to have contravened a financial advice duty?*
	Yes
Additional options	
	A prescribed summary document
24	*Do you think that a prescribed template will assist consumers in accessing the information that they require?*

	Only as it relates to the form of disclosure under question 5 but not additional templates.
25	*How could a prescribed template work in situations when advice is not provided in person (i.e. if it is provided over the phone or via an online platform)?*
	No comment.
	Requirements for disclosure provided through different methods
26	*Should the regulations allow for disclosure to be provided verbally? Why or why not?*
	No unless the disclosure is automated eg recording on phone such as is currently the practice with some general insurers or supported by written confirmation.
27	*If disclosure was provided verbally, should the regulations include any additional requirements?*
	It would make sense to have any verbal disclosure either recorded or followed up with something in writing.
	Requirements for financial advice given through different channels
28	*Should the regulations provide for any additional requirements that would apply when advice is given via a robo-advice platform or over the phone?*
	No comment.
29	*Do consumers require any additional information when receiving financial advice via an online platform?*
	No comment.
	Disclosure when replacing a financial product
30	*Should those advising consumers to replace financial products be required to provide a prescribed notification? If so, what should a prescribed notification contain?*
	For risk products and assuming that the principles of the AFA code or similar will apply then the adviser is obligated to act in the client's best interest, so this should not be necessary however we believe that good business practice is to provide notification to the client in writing of any risks of replacing a product. Ideally this is included in the Statement of Advice.
31	*Should this apply to the financial advice given on the replacement of all financial advice products?*
	Yes and in line with answer to 30 above.
	Information to existing financial advice clients
32	*Should the regulations provide for reduced disclosure requirements for existing clients? If so, in what situations should it apply and what information should consumers receive?*
	If previously disclosed information has materially changed then some additional disclosure should apply. This should also be the case if the nature of the advice is substantially different

	e.g. having an existing client for whom you have insurance business for and now is requiring a financial or investment plan
33	*Should there be a limit on the length of time that this relief would apply?*
	If the change is material then no limit.
	Transitional requirements
34	*Is it necessary for the disclosure regulations to provide a transitional period for the industry to comply with the new requirements beyond this nine-month period?*
	No.
35	*Should the regulations include specific transitional provisions for AFAs authorised to provide personalised DIMS under the FA Act?*
	No comment
	Disclosure to wholesale clients
36	*Should the regulations require the provision of additional information regarding the wholesale designation in some circumstances? If so, when would it be appropriate for this to take place?*
	Clients that meet the definition by way of wealth are not necessarily knowledgeable enough to be wholesale. Therefore, clear information should be required to determine the wholesale designation. This should take place when the nature and scope of the advice are known.
37	*Do you have any alternative suggestions for how the regulations could ensure that wholesale clients are aware of what it means to be deemed a wholesale client?*
	All wholesale clients should sign a letter of understanding, clearly outlining consequences.

Other comments