



**MINISTRY OF BUSINESS,
INNOVATION & EMPLOYMENT**
HĪKINA WHAKATUTUKI



Submissions on: Regulations to support measures to address the misuse of the Financial Service Providers Register

5 September 2018

Submissions on: Regulations to support measures to address the misuse of the Financial Service Providers Register.

Contents

Submitter	Page #
ASB	2
Chapman Tripp.....	3
Commerce Commission	9
David Kim	15
Financial Dispute Resolution Service	16
Financial Services Complaints Limited	20
Gareth Vaughan	24
Gareth Vaughan Annex 1	27
IFSO	30
Joey Qiao.....	31
Kehlmann Berleys Captial	33
Milford Asset Management	39
NF Global.....	43
NZBA.....	47
River East Financial	50

Rose Wang

From: Jonny Le Leu S9(2)(a)
Sent: Tuesday, 15 May 2018 11:56 a.m.
To: FAA Review
Subject: Consultation on addressing misuse of the Financial Service Providers Register

To whom it may concern,

ASB Bank Limited ("ASB") welcomes the opportunity to make a brief submission by way of email to the Ministry of Business, Innovation & Employment (**MBIE**) on the *Regulations to support measures to address the misuse of the Financial Services Providers Register* discussion paper (April 2018). ASB's submission is set out below.

ASB supports MBIE's proposed regulations in relation to addressing misuse of the Financial Service Providers Register (**FSPR**). ASB applauds MBIE's efforts to strengthen controls on the use of the FSPR in order to protect the integrity and reputation of New Zealand's financial markets and legitimate New Zealand financial service providers. In particular, ASB supports the aims of ensuring that the correct entities may and are required to register on the FSPR, and ensuring that New Zealanders have access to appropriate dispute resolution schemes.

We acknowledge ASB's submission could be made publically available by being published on MBIE's website. ASB does not seek confidentiality for any aspect of this submission other than my contact details below.

If you require any further information, please do not hesitate to contact me.

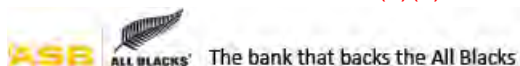
Kind Regards,

Jonny

Jonny Le Leu
Regulatory Affairs Manager

S9(2)(a)

asb.co.nz



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15 May 2018

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

FROM: Tim Williams
DIRECT: S9(2)(a)
MOBILE:
EMAIL:
PARTNER: Tim Williams
REF: 100075590/3482177.1

by email

**REGULATIONS TO SUPPORT MEASURES TO ADDRESS THE MISUSE OF THE
FINANCIAL SERVICE PROVIDERS REGISTER - SUBMISSION**

- 1 We refer to the paper "Regulations to support measures to address the misuse of the Financial Service Providers Register", issued by the Minister of Commerce and Consumer Affairs in April 2018 (*Paper*). Chapman Tripp welcomes the opportunity to consider and submit on the Paper.
- 2 We **attach** to this letter our submissions on the 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: S9(2)(a)
EMAIL:

Submission on discussion document: *Regulations to support measures to address the misuse of the Financial Service Providers Register*
Your name and organisation

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

Responses to discussion document questions

Threshold for registration and exemptions

Scenarios to be exempt / below threshold for registration

1 *Do you agree that the scenarios outlined on pages 11-14 should not be subject to registration requirements and do you agree with the reasons for excluding them from registration? If not, why not?*

Yes, we agree that the scenarios outlined on pages 11-14 should not be subject to registration requirements.

2 *In the context of the misuse issues and the changes to the territorial scope of registration requirements, are there any other scenarios that should not be subject to registration requirements/not be able to register? If so, why should they be excluded?*

We believe it would be appropriate, and not inconsistent with the purposes of registration set out on page 8 of the Discussion Document, for registration not to be required in the following circumstances:

1. Where an offshore provider has partnered with an onshore provider to provide services in New Zealand, and the onshore provider has agreed to assume liability and responsibility for resolution of customer complaints. The onshore provider will be registered and a member of a dispute resolution scheme, and consumers will have redress against the onshore provider. In these circumstances, we consider that there is little additional benefit in requiring the offshore provider to register and become a member of a dispute resolution scheme. It is likely that this model will become increasingly common, as onshore providers seek to partner with offshore providers to deliver innovative products and services, particularly in the FinTech arena. Requiring those offshore providers to register and become a member of a dispute resolution scheme may dissuade them from entering into partnerships with New Zealand providers.
2. A general "reverse solicitation" exception to the requirement to register. This type of exception is not uncommon in offshore jurisdictions, and typically provides that an offshore provider (A) does not trigger the laws of another jurisdiction (B) merely because a consumer or investor located in jurisdiction B has approached provider A on their own initiative. This exception could instead form part of the "no direct promotion" exception if that is the preferred approach, however.

3

Based on the description in scenario 2 (No promotion directed to persons in New Zealand), is it likely to be clear when a financial services provider that operates an internationally-accessible website would be required to register? Is it likely to be workable given the nature of global online advertising? (Noting that details of the scenario will be refined during the drafting any regulations.) Do you have any suggestions as to how this could be made clear?

We believe the regulations will be able to provide clarity on this point, by having two facets to the "direct promotion" definition:

1. The primary definition could be to the effect that "direct promotion" means any "activity which is specifically targeted at persons in New Zealand, or which is likely to result in persons in New Zealand receiving a communication about a service". In turn, "communication" could be defined as an email, letter or telephone call received by a person in New Zealand.
2. The second facet would include a "white list" of activities that are not "direct promotion". This list would include:
 - A website that is accessible to persons in New Zealand.
 - Where a person has "opted in" to receive communications (as set out in the Discussion Paper).
 - Advertisements received on social media in circumstances where the provider is not responsible for that advertisement.

4

Under scenario 2 (No promotion directed to persons in New Zealand), should a provider be required to register if they have a large number of New Zealand customers (e.g. hundreds or thousands), even if they do not advertise specifically to New Zealand persons?

No. In our view, volume should not be relevant where the offshore provider does not directly promote its service to New Zealand persons.

5

In relation to scenario 4 (De minimis level of services), do you agree with the manner in which the thresholds are proposed to operate? Including in relation to the time at which they are assessed as being met.

We have no particular comment to make on the manner in which the de minimis thresholds are intended to operate. We do query, however, whether having a multi-stage test is overly complicated.

In addition, is it intended for there to be a "reference point" for the purposes of these calculations? We would suggest that reference point be a provider's most recent annual financial statements.

6

In relation to scenario 4 (De minimis level of services), do you agree with the proposed levels of thresholds? If not, why not? Please suggest any proposed alternatives and the reasons for these.

The levels appear to us to be quite low, and we query whether there will be many (if any) businesses that would meet these thresholds. If they are set so low as to not be of any utility then there would be little point in having the exception in the first place. If any empirical data is available in this context we believe it would be useful for it to be considered to inform the appropriate threshold levels.

In addition:

- We wonder whether the \$5,000 aggregate is too low. For example, if an offshore provider undertakes a single transaction in a year over the threshold, it would be required to register. We would favour an aggregate revenue test and/or a per transaction test, instead of a total value of financial services test. For example, a threshold of five persons, each of whom engage in a financial service transaction having a value over a threshold to be determined, would be more sensible in our view.
- In our view, it may be more appropriate for the third threshold to be measured by revenue attributable to financial services transactions, rather than the value of the financial services transactions. It is difficult to assess how easy it would be to measure the extent to which financial services transactions “make up less than 50% of the provider’s business by value”. A revenue-based test would potentially be easier to measure.

7

In relation to scenario 4 (De minimis level of services), do you agree that providers that are deregistered for failing to meet these thresholds should be required to inform remaining New Zealand clients?

Yes, we believe this would be a sensible outcome – although we believe that a remediation period during which a provider could endeavour to meet the threshold again may be appropriate in certain circumstances.

8

In relation to scenario 4 (De minimis level of services), do you consider there are any other risks for New Zealand consumers or for anyone else from not registering providers that are below the proposed thresholds? If so, how big are those risks?

No comment to make on this question.

Limiting promotion of registered status

9

What are some circumstances in which legitimate providers may refer to their registration? (This will help us ensure that the information required by the regulations do not unjustifiably interfere with legitimate uses of registration.)

Legitimate providers may like to refer to registration and the availability of dispute resolution services in the information they make available to customers / investors, even if that is not required by law. The motivation in that circumstance may simply be to inform investors, and give them some assurance as to the credentials of the provider and the availability of the dispute resolution service.

As long as the references are not misleading and deceptive, then we see no reason why they could not be permitted, particularly when warning statements are required. There would, in our view, be adequate protection under other laws if the references were misleading and deceptive (e.g. under the fair dealing regime in Part 2 of the FMCA or the Fair Trading Act).

On a related note, we would suggest prohibiting providers from using the phrase “regulated in New Zealand”. Our experience has been that this phrase has been reasonably widely used by offshore providers as a “badge of respect” – and banning it in favour of the more accurate “registered in New Zealand” (with a warning statement) would help alleviate some of the sub-optimal behaviours we have seen in the past.

10

Do you agree with the proposed circumstances in which the regulations will apply as set out at paragraphs 46? If not, why not? Are there other circumstances in which the regulations should or should not apply?

We believe these criteria are sensible, but query whether there should be a distinction between offshore and onshore providers for these purposes. For offshore providers – where there is no place of business in New Zealand – we see the risk of pernicious use of the registration / dispute resolution “badge” being higher. In that case, the regulations should apply in the circumstances described in paragraph 46.

We are not convinced that the same logic applies to onshore providers, where for the most part we would expect that a registered provider (who is not licensed) would not have any “malice” in indicating that it is registered and a member of a dispute resolution scheme (and in this context see our comments in question 9 above regarding other statutory protections in this context).

We would therefore see some merit in limiting the scenarios where the regulations apply to offshore providers. If an onshore provider is considered to be acting maliciously, other tools in the FMCA would be available to control that (e.g. stop orders).

11

Do you agree with the proposed information to be included in advertising as set out at paragraphs 48-50? If not, why not? Please suggest any alternatives.

We do not have any specific comment to make on these proposed warnings. We do see some difficulties, at a practical level, in enforcing compliance by overseas providers advertising to overseas customers.

12

Do you consider that providers should be permitted to refer to their FSP registration number only with a hyperlink to their registration page, without providing the proposed information as set out in paragraphs 48-50?

Yes.

13

Should the regulations prescribe (1) specific wording to be used; (2) information that providers must convey using their own words; or (3) information that must be conveyed with safe-harbour wording? Please provide reasons.

We do not feel strongly about the approach taken, but on balance see merit in prescribed wording as it both promotes consistency and gives certainty to providers.

14

How much time do providers need after the regulations are made to make sure they comply with these changes? E.g. ensure website material is compliant. Please provide reasons.

We have no comment to make, other than it will be necessary to take into account industry feedback on this point. We believe six months should be the minimum period, in any event.

Information to be supplied by applicants and providers

15

Do you agree with the proposed information and manner of providing information described in the table under paragraph 62 on page 23? If not, why not?

We broadly agree with the proposal in paragraph 62, but note that some of the information suggested could take some time to compile (e.g. total value of transactions, percentage of transactions in New Zealand etc). We would therefore favour a minimum period for the provision of the information, with an ability for the Registrar to extend the period if circumstances require that.

16

Do you agree with the proposed additional information to be provided at the time of annual confirmation as set out in the table under paragraph 63 on page 24? If not, why not?

We see merit in this proposal, although as a process matter we would suggest the Registrar explore integrating this process with the equivalent annual return process for companies under the Companies Act.

17

Is there any other information or manner of providing information that we should include to help provide reassurance that the provider is providing financial services to persons in New Zealand?

No comment to make.

18 May 2019

Financial Markets Policy
Building, Resources and Markets
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By Email Only – faareview@mbie.govt.nz

Commission's response to discussion paper on regulations to support measures to address the misuse of Financial Service Providers Register

1. Thank you for the opportunity to comment on the consultation document relating to proposed regulations to support measures to address the misuse of the Financial Service Providers Register (**FSPR**).
2. We have serious reservations about what is proposed. We anticipate that, if adopted these reforms would reduce consumer protection, complicate enforcement and create an unequal playing field consumers. The threshold/exemption approach seems to prioritise the risk of misuse, and assumedly, the risk of undermining the credibility of NZ financial markets over full and equal consumer protection for all borrowers. That balance should be carefully considered.
3. We have responded to questions 1 to 8 in the consultation paper. We are happy to discuss any of these matters with you or provide you with further information if that would be helpful. We have not responded to questions 9 through 17 because we do not consider that these are matters that will significantly affect the Commission's enforcement of the CCCFA or they flow from acceptance of the threshold for registration.
4. In the context of the Commission's enforcement of the Credit Contracts and Consumer Finance Act 2003 (**CCCFA**), the provision in the Financial Services Legislation Amendment Bill (**Bill**) that persons who are in the business of providing a financial service are required to be registered on the FSPR if their financial services are provided to a **person in New Zealand** is an improvement on the current position where only lenders with a place of business in New Zealand are able to register. The amendment will:

- 4.1 allow borrowers (and potentially vulnerable borrowers) who borrow from overseas lenders to receive the protections afforded by dispute resolution schemes; and
 - 4.2 ensure that there is a level playing field as between overseas and New Zealand based credit providers; and
 - 4.3 give regulators some visibility of overseas lenders who are lending into New Zealand.¹
5. We have concerns, however, that the introduction of the thresholds and exemptions set out in the regulations will undermine these benefits.

Question 1 – Do you agree that the above scenarios should be subject to registration requirements and do you agree with the reasons for excluding them from registration?

6. We do not consider that there should be a threshold for registration on the FSPR for providers of consumer credit to New Zealanders and the introduction of thresholds and exemptions undermines the benefits set out in paragraph 3 above. In our view, all users of consumer credit in New Zealand should have access to dispute resolution schemes and providers of consumer credit in New Zealand should all be subject to the same rules and obligations. In addition, the consumer protection objectives of the CCCFA can best be pursued if all lenders into NZ can be readily identified.
7. The introduction of thresholds or exemptions for registration:
- 7.1 reduces consumer protection;
 - 7.2 introduces complexity in enforcement action relating to a lenders registration status;
 - 7.3 creates an uneven playing field for lenders.

Reduced consumer protection

8. If the proposed thresholds are adopted, some borrowers of consumer credit will (lawfully) not have access to a disputes resolution scheme. Whether or not they do will depend on the characteristics of the lender, rather than on the characteristics or needs of the borrower. The thresholds will also remove access to dispute resolution schemes for some borrowers who have access to them at the moment. We do not think that the size of the lender, whether it has overseas customers and where it promotes its services should determine New Zealand borrowers' ability to access a dispute resolution schemes.
9. It is difficult to gauge the number of borrowers that will be affected as it depends on the number of lenders who fall below the registration threshold or meet the criteria for exemption. However, we suggest that even a small number is not acceptable. All

¹ This is consistent with a key original objective of the registration regime discussed in MBIE's paper *Financial Service Providers (Registration and Dispute Resolution) Act 2008 – Part 2: Registration*.

New Zealand borrowers of consumer credit should have access to dispute resolution schemes. To this extent, we agree entirely with the sentiments expressed at paragraph 26 of the Discussion Paper.

Complexity in enforcement action

10. The Commission will face practical difficulties in obtaining information from overseas lenders about whether or not they meet the thresholds. The Commission has no formal powers under the CCCFA (such as are contained in s98H of the Commerce Act) to require people carrying on business in Australia to provide information and documents. Practically this means the Commission may not be able to investigate whether overseas lenders providing credit to New Zealand should be registered if they are not.
11. The introduction of thresholds also will require the Commission to obtain additional information from lenders, in seeking to ascertain for the purposes of s17 and 99(1B) of the CCCFA whether a New Zealand lender:
 - 11.1 has complied with its initial disclosure requirements in respect of its obligation to disclose its registration status and disputes resolution number;
 - 11.2 is able to enforce its contracts pursuant to s99(1B).
12. This will add complexity and, potentially, delay to the Commissions investigations.

Uneven playing field

13. The proposed thresholds for registration will mean that providers of consumer credit will not be operating on a level playing field. Lenders who do need not register may have a competitive advantage over New Zealand lenders because they will have fewer restrictions on enforcing their contracts than New Zealand lenders and fewer compliance costs (including registration costs and costs associated with being members of a dispute resolution scheme). In addition, if providers of consumer credit are not required to register on the FSPR, they do not need to disclose details of their registration and membership of a dispute resolution scheme under s 17 of the CCCFA. Any providers of consumer credit, that are required to register and do not, are prevented from enforcing the credit contract under s 99B of the CCCFA. If a lender falls within any of the proposed thresholds/exemptions and is not required to register on the FSPR, they will not be subject to these provisions under the CCCFA.
14. While we do not think there should be any threshold for registration on the FSPR for providers of consumer credit to New Zealand, we consider the proposed thresholds in described in scenarios 2 and 4 are of greater concern than those in scenarios 1 and 3.

Question 2 – In the context of the misuse issues and the changes to the territorial scope of registration requirements, are there any other scenarios that should not be subject to registration requirements/not be able to be registered? If so, why should they be excluded?

15. We suggest that all providers of consumer credit to persons in New Zealand should be registered.

Question 3 – Based on the description in scenario 2 (No promotion directed to persons in New Zealand) is it likely to be clear when a financial service provider that operates and internationally accessible website would be required to register? Is it likely to be workable given the nature of global online advertising? (Noting that details of the scenario will be refined during the drafting of any regulations.) Do you have any suggestions as to how this could be made clear?

16. We do not think this proposal would provide clarity as to who is required to be registered, or be workable. In our enforcement of the CCCFA this exemption is likely to create an additional evidential burden that we may not always be able to meet. We would have to demonstrate that a lender had "directed their promotion to persons in New Zealand" in any situation where we are considering enforcement action that relates to a failure to be registered.²
17. Since the introduction of targeted advertising via algorithms and search engine marketing the concept of advertising has been revolutionised. Advertisements are not necessarily 'placed' where New Zealanders are likely to view them or 'sent' to persons in New Zealand. Instead advertisements are automatically produced based on digital profiles (which may or may not use geographical location) and a bidding system driven by algorithms. Many companies do not solely use advertising in the traditional sense. Instead they utilise tactics to ensure their website appears high on lists of results returned by search engines.
18. We are concerned that it may be difficult to determine whether a lender had directed promotion of their services to persons in New Zealand and whether they are required to be registered.
19. We are concerned that any attempt to specify what "promotion directed to New Zealanders" meant would encourage lenders who do not wish to be registered to be more ambiguous in their promotion and adopt methods captured by the proposed exemption regulation. For example, if regulations specified that any lender that provided credit to NZ that used a .nz top level domain name, was required to register, lenders who wanted to avoid being registered could amend their domain name accordingly. There are already lenders providing credit to New Zealand borrowers such as Gold ATM that use a .com domain names.

² As suggested at page 12 of the Discussion Paper, the fact that a lender actually provided credit to a New Zealand borrower may not be sufficient proof of "promotion directed to persons in New Zealand".

Question 4 (No promotion directed to persons in New Zealand), should a provider be required to register if they have a large number of New Zealand customers (e.g. hundreds or thousands), even if they do not advertise specifically to New Zealand persons?

20. Yes - we consider the focus on whether a provider can and will be required to register should be on whether they provide services to New Zealanders not whether they promote services to New Zealanders. This is consistent with the provision in the Bill and the purposes of the registration system outlined in discussion paper.
21. This proposal would also alleviate our concerns around the proposed threshold exemption providing an opportunity for credit providers to argue that they were not directing any promotion to persons in New Zealand although they had a significant New Zealand customer base.

Question 5 In relation to scenario 4 (*De minimis* level of services) do you agree with the manner in which the thresholds are proposed to operate? Including in relation to the time at which they are assessed as being met.

22. We do not consider there is a way in which the *de minimis* threshold could operate that would adequately address our concerns outlined in paragraph 5.

Question 6 In relation to scenario 4 (*De minimis* level of service), do you agree with the proposed levels of thresholds? If not, why not? Please suggest any alternatives and the reasons for these.

23. We do not consider any consumer borrowers should miss out on access to dispute resolution simply because they have chosen to obtain finance from a particular credit provider.

Question 7 In relation to scenario 4 (*De minimis* level of services) do you agree that providers that are deregistered for failing to meet these thresholds should be required to inform remaining New Zealand clients?

24. If the thresholds proposed in the discussion paper are accepted we agree that consumers should be made aware that they no longer have access to a dispute resolution scheme which is an inevitable consequence of deregistration.

Question 8 In relation to scenario 4 (*De minimis* level of services), do you consider there are any other risks for New Zealand consumers or for anyone else from not registering providers that are below the thresholds? If so, how big are those risks.

25. We are concerned that the proposed threshold will reduce consumer protection, create an uneven playing field for lenders and introduce a complexity in enforcement action relating to a lenders registration status. Details of these risks are outlined in paragraphs 6 – 11 of this letter.

26. We propose that if the contemplated thresholds are considered necessary, that they apply in cases other than those of consumer lending. In cases of consumer lending, all lenders should be required to register and, if required by the FSPR registrar, produce evidence that they are providing consumer credit to New Zealanders.

Yours sincerely,

Dot Benson
Deputy General Counsel - Credit

Rose Wang

From: David Kim S9(2)(a)
Sent: Tuesday, 15 May 2018 7:20 p.m.
To: FAA Review
Subject: Feedback

1. I think FSP/FMA recent activities are over accelerated without proper reason.
2. I understand the purpose of FMA/FSP is `Register by those seeking to take advantage of New Zealand's reputation`. However, if we express more accurately, Newzealand has no very special reputation to use. NZ is one of the countries in the world and there are many reason people have a business base on Newzealand.
3. If FSP/FMA regulations purpose ` to protect NZ reputation` is honestly real, it can be possible with control complaints from the customers through Dispute Resolutions.

Therefore, I think current FMA/FSP regulation s are almost the level abuse of authority.

Regards

Submission on discussion document: *Regulations to support measures to address the misuse of the Financial Service Providers Register*

Your name and organisation

Name	Trevor Slater
Organisation	Financial Dispute Resolution Service

Responses to discussion document questions

Threshold for registration and exemptions

Scenarios to be exempt / below threshold for registration

1 *Do you agree that the scenarios outlined on pages 11-14 should not be subject to registration requirements and do you agree with the reasons for excluding them from registration? If not, why not?*

I do. My only concern would be in relation to consumers who purchase into a holiday timeshare whilst overseas. For example, it's not uncommon for New Zealand citizens to be sold interests in holiday timeshare whilst in locations such as Fiji or other Pacific islands. These timeshare providers are usually based in Australia. Some are registered in New Zealand and I would not like to see such providers to New Zealand citizens not registered or in a dispute resolution scheme.

2 *In the context of the misuse issues and the changes to the territorial scope of registration requirements, are there any other scenarios that should not be subject to registration requirements/not be able to register? If so, why should they be excluded?*

Not that I can think of.

3 *Based on the description in scenario 2 (No promotion directed to persons in New Zealand), is it likely to be clear when a financial services provider that operates an internationally-accessible website would be required to register? Is it likely to be workable given the nature of global online advertising? (Noting that details of the scenario will be refined during the drafting any regulations.) Do you have any suggestions as to how this could be made clear?*

I agree this is a difficult scenario and I think that consumers will struggle to understand whether or not a company making products or services available to New Zealand citizens is or is not registered. I would also imagine that a consumer in New Zealand purchasing financial products from any provider would expect some form of protection.

Further, it may be difficult to enforce that an overseas financial service provider clearly informs consumers that if they purchase a product or service from them that they are not registered or a member of a dispute resolution scheme in New Zealand.

	At Financial Dispute Resolution Service we have had a couple of situations in the foreign exchange area where consumers have purchased services and subsequently wish to make a complaint. One particular company who was eventually deregistered refused to deal with any complaints from New Zealand consumers. The only way we could assist with this was to insist that in the disclosure documents and on their website the foreign exchange dealer provided clear information that a client could not access our scheme.
4	<i>Under scenario 2 (No promotion directed to persons in New Zealand), should a provider be required to register if they have a large number of New Zealand customers (e.g. hundreds or thousands), even if they do not advertise specifically to New Zealand persons?</i>
	Yes, most definitely.
5	<i>In relation to scenario Error! Reference source not found. (De minimis level of services), do you agree with the manner in which the thresholds are proposed to operate? Including in relation to the time at which they are assessed as being met.</i>
	Yes. However, it is something that should be monitored to ensure the levels are correct.
6	<i>In relation to scenario 4 (De minimis level of services), do you agree with the proposed levels of thresholds? If not, why not? Please suggest any proposed alternatives and the reasons for these.</i>
	Yes, they seem reasonable but as mentioned above they need to be monitored to ensure they are effective.
7	<i>In relation to scenario 4 (De minimis level of services), do you agree that providers that are deregistered for failing to meet these thresholds should be required to inform remaining New Zealand clients?</i>
	Yes, although enforcing that could be very difficult.
8	<i>In relation to scenario 4 (De minimis level of services), do you consider there are any other risks for New Zealand consumers or for anyone else from not registering providers that are below the proposed thresholds? If so, how big are those risks?</i>
	There are risks associated with this proposal although I do think they are minimal. The challenge will be to ensure as far as possible that the exemptions for minimal levels of service are not abused by a financial service provider. For example, using multiple numbers of companies providing the same product each under the thresholds.
Limiting promotion of registered status	
9	<i>What are some circumstances in which legitimate providers may refer to their registration? (This will help us ensure that the information required by the regulations do not unjustifiably interfere with legitimate uses of registration.)</i>
	In the disclosure documents for financial advisers. Under the proposed legislative changes a financial advice provider will be licensed. However, a financial advice representative will not. Therefore in my opinion a financial advice representative should be allowed to refer to their registration.
10	<i>Do you agree with the proposed circumstances in which the regulations will apply as set out at paragraphs 46? If not, why not? Are there other circumstances in which the regulations</i>

	<i>should or should not apply?</i>
	Yes I agree.
11	<i>Do you agree with the proposed information to be included in advertising as set out at paragraphs 48-50? If not, why not? Please suggest any alternatives.</i>
	I do, but I have concerns about enforceability in relation to overseas providers with no place of business in New Zealand. As mentioned previously we have had experience with foreign exchange dealers who despite repeated requests will not comply with the requirements. In such cases the legislation must provide a penalty of prompt deregistration for those that fail to comply.
12	<i>Do you consider that providers should be permitted to refer to their FSP registration number only with a hyperlink to their registration page, without providing the proposed information as set out in paragraphs 48-50?</i>
	Yes.
13	<i>Should the regulations prescribe (1) specific wording to be used; (2) information that providers must convey using their own words; or (3) information that must be conveyed with safe-harbour wording? Please provide reasons.</i>
	The regulations in my view should prescribe specific wording to be used. To not do so will allow less reputable companies to argue that their own words or similar words are sufficient. This will make it challenging to enforce limitations around advertising as being registered. Having prescribe words will provide clarity and certainty.
14	<i>How much time do providers need after the regulations are made to make sure they comply with these changes? E.g. ensure website material is compliant. Please provide reasons.</i>
	I don't believe there needs to be a lengthy lead time. Websites can be changed in very short periods and compliance should be required within a very short time. For example, one month. Compliance for printed documents should be no more than six months. However, in any printed material an insert could be provided to meet the requirements almost immediately.
Information to be supplied by applicants and providers	
15	<i>Do you agree with the proposed information and manner of providing information described in the table under paragraph 62 on page 23? If not, why not?</i>
	Yes.
16	<i>Do you agree with the proposed additional information to be provided at the time of annual confirmation as set out in the table under paragraph 63 on page 24? If not, why not?</i>
	Yes.
17	<i>Is there any other information or manner of providing information that we should include to help provide reassurance that the provider is providing financial services to persons in New Zealand?</i>
	See response in other comments.

Other comments

There is no doubt that there will always be overseas and local organisations that try to use the register and membership of a dispute resolution scheme as a means to claim they are a legitimate business and of good character.

The key in my view to minimising the opportunities for this to occur is to make the deregistration process far more simple and I think the proposed changes go a long way towards this. Providing information in clear terms about the deregistration process to applicants who wish to be on the register may also helped to deter the application in the first place.

I also feel that making the application process for overseas companies harder than it currently is will also help reduce the misuse of the register.

One of the concerns that has arisen from our experience of financial service providers abusing the register is the use of persons in New Zealand as directors of overseas providers. We have seen individual persons become directors of multiple companies simply to meet the legislative requirements.

In my view the regulations could include a restriction on individuals on the number of directorships they hold for overseas-based companies that wish to be on the financial service provider register.

I acknowledge that the new proposed changes may reduce this problem as a company will need to better demonstrate they are providing genuine services to New Zealand citizens. However, I think it will still be an issue that needs to be addressed.

One other suggestion that I think is worth considering is for the Registrar to have a formal memorandum of understanding with the dispute resolution schemes that facilitates exchange of information when one of the schemes becomes aware of a potential misuse of the register.

This information could be covered or included as part of the Registrar's "at any other time" ability to investigate a particular provider to ascertain whether they have been or are continuing to provide legitimate financial services to persons in New Zealand.

Trevor Slater
Client Director

Financial Dispute Resolution Service

11 May 2018

Submission on discussion document: *Regulations to support measures to address the misuse of the Financial Service Providers Register*

Your name and organisation

Name	Susan Taylor
Organisation	Financial Services Complaints Limited (FSCL)

Responses to discussion document questions

Threshold for registration and exemptions

Scenarios to be exempt / below threshold for registration

1 Do you agree that the scenarios outlined on pages 11-14 should not be subject to registration requirements and do you agree with the reasons for excluding them from registration? If not, why not?

Yes, we are in general agreement, subject to our further comments below.

With reference to paragraph 20, it should be made clear in the definition of “financial service” that it includes a financial service provided to persons who are currently resident in New Zealand, but who may be travelling overseas when using the service - for example, a person using a travel card sold in NZ or a travel insurance policy sold in NZ.

2 In the context of the misuse issues and the changes to the territorial scope of registration requirements, are there any other scenarios that should not be subject to registration requirements/not be able to register? If so, why should they be excluded?

No comment.

3 Based on the description in scenario 2 (No promotion directed to persons in New Zealand), is it likely to be clear when a financial services provider that operates an internationally-accessible website would be required to register? Is it likely to be workable given the nature of global online advertising? (Noting that details of the scenario will be refined during the drafting any regulations.) Do you have any suggestions as to how this could be made clear?

We think it is not likely to be clear when a financial services provider that operates an internationally-accessible website would be required to register. With global on-line advertising and through social media channels, many companies have a worldwide audience and potential customer base, including customers in NZ, even though the target audience may not be NZ. Provided the provider meets the de minimis service levels, why should they not be required to register?

4 Under scenario 2 (No promotion directed to persons in New Zealand), should a provider be required to register if they have a large number of New Zealand customers (e.g. hundreds or

thousands), even if they do not advertise specifically to New Zealand persons?

Yes, otherwise overseas providers have an unfair advantage in terms of escaping compliance and the associated costs of compliance (registration and dispute resolution scheme membership) compared with NZ based providers. Further, consumers of overseas based providers are left without protection and access to redress in the event of a complaint. The suggestion that a provider would not need to register even if they have a large customer base as long as they don't direct promotion of their services to New Zealanders, is concerning. We think it will be clear for large well-known organisations (for example, Barclays Bank will have a number of NZ based customers), that the organisation is not regulated in New Zealand. But for less well-known companies, NZ based consumers may be under the impression that the company is regulated in New Zealand. In addition, if there is a large NZ customer base then there may be constructive advertising in NZ because the NZ based customers may promote the company by word of mouth.

5 In relation to scenario **Error! Reference source not found.** (De minimis level of services), do you agree with the manner in which the thresholds are proposed to operate? Including in relation to the time at which they are assessed as being met.

Yes.

6 In relation to scenario 4 (De minimis level of services), do you agree with the proposed levels of thresholds? If not, why not? Please suggest any proposed alternatives and the reasons for these.

Yes, but we question how the term "financial transactions" will be defined. For example, in the case of an insurance policy, does the word "transaction" relate to the amount of cover under the policy and/or the amount of the premium paid by the consumer and/or the commission or brokerage earned by the adviser?

7 In relation to scenario 4 (De minimis level of services), do you agree that providers that are deregistered for failing to meet these thresholds should be required to inform remaining New Zealand clients?

Yes.

8 In relation to scenario 4 (De minimis level of services), do you consider there are any other risks for New Zealand consumers or for anyone else from not registering providers that are below the proposed thresholds? If so, how big are those risks?

There will always be a risk to the consumer as consumers will no longer have access to a dispute resolution scheme, but general reputational risk to the financial markets would appear to be low.

Limiting promotion of registered status

9 What are some circumstances in which legitimate providers may refer to their registration? (This will help us ensure that the information required by the regulations do not unjustifiably interfere with legitimate uses of registration.)

In their disclosure documents, promotional material and websites.

10 Do you agree with the proposed circumstances in which the regulations will apply as set out at paragraphs 46? If not, why not? Are there other circumstances in which the regulations

	<i>should or should not apply?</i>
	The scope of the regulations would appear to very limited.
11	<p><i>Do you agree with the proposed information to be included in advertising as set out at paragraphs 48-50? If not, why not? Please suggest any alternatives.</i></p> <p>Yes. However, we see the possibility for consumer confusion as many consumers will not understand the difference between being “licensed” and being “registered”. Some further explanation of what it means to be “licensed” may be required We think there is possible ambiguity because the discussion paper says that the warnings would not need to be given by lenders, which are required to disclose that they are registered and members of a scheme, under the CCCFA. However, many lenders are not actually licensed to lend. They may be regulated by the Commerce Commission, but this is not active regulation by way of licensing. However, then the discussion paper says under paragraph 46 that the warnings need to be provided by providers which are registered but not licensed in New Zealand – which appears to apply lenders? We think this is relevant because although most lenders are not the types of providers that these regulations are attempting to ‘catch’, there might be some small pay day or mobile truck companies that could abuse the system. However, at the moment it reads that if they provide their CCCFA disclosure that they are registered and with a scheme, then the warning requirements do not apply?</p>
12	<p><i>Do you consider that providers should be permitted to refer to their FSP registration number only with a hyperlink to their registration page, without providing the proposed information as set out in paragraphs 48-50?</i></p> <p>No, because consumers may not follow the link. We think warning statements should appear on the provider’s website.</p>
13	<p><i>Should the regulations prescribe (1) specific wording to be used; (2) information that providers must convey using their own words; or (3) information that must be conveyed with safe-harbour wording? Please provide reasons.</i></p> <p>We prefer option (3) as this allows the provider some flexibility, but still provides guidance in the form of the safe-harbour wording.</p>
14	<p><i>How much time do providers need after the regulations are made to make sure they comply with these changes? E.g. ensure website material is compliant. Please provide reasons.</i></p> <p>We think 3 months is a sufficient period to comply with the changes.</p>
Information to be supplied by applicants and providers	
15	<p><i>Do you agree with the proposed information and manner of providing information described in the table under paragraph 62 on page 23? If not, why not?</i></p> <p>Yes.</p>
16	<p><i>Do you agree with the proposed additional information to be provided at the time of annual confirmation as set out in the table under paragraph 63 on page 24? If not, why not?</i></p> <p>Yes.</p>
17	<i>Is there any other information or manner of providing information that we should include to</i>

help provide reassurance that the provider is providing financial services to persons in New Zealand?

No comment.

Other comments

With reference to paragraph 26(b) – it can be more difficult for the DRSs to obtain redress for complainants when the provider is based overseas. However, if a provider does not pay a complainant compensation awarded by FSCL, we would initiate deregistration. This can be a major deterrent to providers not paying compensation – and legitimate businesses will usually accept paying the compensation rather than be deregistered.

With reference to paragraph 32 and clear communication to consumers – we question how that communication will be made and by whom? Further guidance on how to communicate may be needed.

Submission on discussion document: *Regulations to support measures to address the misuse of the Financial Service Providers Register*

Your name and organisation

Name	Gareth Vaughan
Organisation	Interest.co.nz

Responses to discussion document questions

Threshold for registration and exemptions

Scenarios to be exempt / below threshold for registration

1 Do you agree that the scenarios outlined on pages 11-14 should not be subject to registration requirements and do you agree with the reasons for excluding them from registration? If not, why not?

***My submission is included as a separate attachment to the email this form was sent in on. Also see 'other comments' at the bottom of this document.**

2 In the context of the misuse issues and the changes to the territorial scope of registration requirements, are there any other scenarios that should not be subject to registration requirements/not be able to register? If so, why should they be excluded?

3 Based on the description in scenario 2 (No promotion directed to persons in New Zealand), is it likely to be clear when a financial services provider that operates an internationally-accessible website would be required to register? Is it likely to be workable given the nature of global online advertising? (Noting that details of the scenario will be refined during the drafting any regulations.) Do you have any suggestions as to how this could be made clear?

4 Under scenario 2 (No promotion directed to persons in New Zealand), should a provider be required to register if they have a large number of New Zealand customers (e.g. hundreds or thousands), even if they do not advertise specifically to New Zealand persons?

5 In relation to scenario **Error! Reference source not found.** (De minimis level of services), do you agree with the manner in which the thresholds are proposed to operate? Including in relation to the time at which they are assessed as being met.

6 In relation to scenario 4 (De minimis level of services), do you agree with the proposed levels

of thresholds? If not, why not? Please suggest any proposed alternatives and the reasons for these.

7 In relation to scenario 4 (De minimis level of services), do you agree that providers that are deregistered for failing to meet these thresholds should be required to inform remaining New Zealand clients?

8 In relation to scenario 4 (De minimis level of services), do you consider there are any other risks for New Zealand consumers or for anyone else from not registering providers that are below the proposed thresholds? If so, how big are those risks?

Limiting promotion of registered status

9 What are some circumstances in which legitimate providers may refer to their registration? (This will help us ensure that the information required by the regulations do not unjustifiably interfere with legitimate uses of registration.)

10 Do you agree with the proposed circumstances in which the regulations will apply as set out at paragraphs 46? If not, why not? Are there other circumstances in which the regulations should or should not apply?

11 Do you agree with the proposed information to be included in advertising as set out at paragraphs 48-50? If not, why not? Please suggest any alternatives.

12 Do you consider that providers should be permitted to refer to their FSP registration number only with a hyperlink to their registration page, without providing the proposed information as set out in paragraphs 48-50?

13 Should the regulations prescribe (1) specific wording to be used; (2) information that providers must convey using their own words; or (3) information that must be conveyed with safe-harbour wording? Please provide reasons.

14 How much time do providers need after the regulations are made to make sure they comply with these changes? E.g. ensure website material is compliant. Please provide reasons.

Information to be supplied by applicants and providers

15	<i>Do you agree with the proposed information and manner of providing information described in the table under paragraph 62 on page 23? If not, why not?</i>
16	<i>Do you agree with the proposed additional information to be provided at the time of annual confirmation as set out in the table under paragraph 63 on page 24? If not, why not?</i>
17	<i>Is there any other information or manner of providing information that we should include to help provide reassurance that the provider is providing financial services to persons in New Zealand?</i>

Other comments


My submission, in the form of an article published on [interest.co.nz](https://www.interest.co.nz), is attached with my email response. (It can also be found here

<https://www.interest.co.nz/opinion/93163/gareth-vaughan-takes-look-mbies-latest-plans-clean-nzs-problematic-financial-service>).

My argument is that New Zealand no longer needs the Financial Service Providers' Register. I argue the reasons cited in the discussion document explaining why we have it simply don't stack up.

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“ My main opposition to it stems from the fact that the Government's putting taxpayer money at risk when it will have little control over the outcome. ”

David Hargreaves
112



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Gareth Vaughan looks at MBIE's latest plans to clean up NZ's problematic Financial Service Providers' Register & reiterates his earlier call for the Government to abolish it

Posted in [Opinion](#) April 14, 2018 - 09:32am, Gareth Vaughan



By Gareth Vaughan

So here we go again.

The Ministry of Business, Innovation & Employment (MBIE) this week issued a discussion paper entitled; [Regulations to support measures to address the misuse of the Financial Service Providers' Register \(FSPR\)](#).

This heralds the Government's latest attempt to clean up the problematic entity known as the FSPR, with previous attempts having run on and off over the past few years.

Here's a simple explanation of the problem from Commerce and Consumer Affairs Minister Kris Faafoi; "Some mainly offshore-controlled entities have been 'free-riding' off New Zealand's reputation for sound financial markets regulation by using their registration to imply that they are actively regulated in New Zealand when that is not the case."

Regular interest.co.nz readers will know the FSPR is something I've written about ad nauseam. So rather than once again delving into the problems with, victims of and background to the FSPR in detail, there are a couple of articles outlining all this [here](#) and [here](#).

In 2016, during a previous round of MBIE consultation on how to clean up the stain on New Zealand's name caused by the FSPR, I submitted that the Government should [simply abolish it](#) because NZ no longer needs it.

Why we have it

In terms of the latest discussion paper, and for the purposes of this article, let's take a look at why, according to MBIE, we need the FSPR in 2018. Then I'll assess whether these are good enough reasons to keep it.

Anyone who is in the business of providing a financial service is required to be registered on the FSPR. This means both individuals and companies.

The current purpose of requiring registration, according to MBIE, generally includes:

a) Allowing the identification of all those in the business of providing financial services in New Zealand. Identification assists the Financial Service Providers/Companies Registrar and other regulators with carrying out their regulatory functions. The public can also search the FSPR for a provider to see whether the entity is



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registered, what financial services they are registered for, any relevant licences they hold and the financial dispute resolution scheme they are a member of.

b) Assisting NZ meet its obligations under the Financial Action Task Force (FATF) recommendations. The FATF is a global anti-money laundering overseer. FATF's recommendations include requiring the licensing or registration of all financial institutions to ensure effective monitoring is in place to confirm financial institutions are meeting their anti-money laundering and countering financing of terrorism obligations.

c) Facilitating the financial dispute resolution system which provides an avenue for consumers who have a dispute with their provider to seek redress in a quick, efficient and cost-effective manner. While this is not an explicit purpose of registration as set out in the Financial Service Providers (Registration and Dispute Resolution) Act, or FSP Act, dispute resolution membership is linked to the registration system. Under the FSP Act, all financial service providers who provide services to retail clients are required to be members of an approved dispute resolution scheme (DRS). The DRSs will only accept members that are registered on the FSPR. Amongst other things, this allows the DRSs to rely on checks completed by the Registrar that the provider meets the minimum requirements to provide financial services in NZ.

Do the reasons we have it stack up?

Let's now go through a), b) and c) one by one and see if they are worthy reasons for having the FSPR. Whilst doing this it's important to keep in mind that being registered on the FSPR doesn't mean a business or individual is licensed, monitored or supervised by regulators in NZ or anywhere else. This unfortunately hasn't prevented confusion from overseas investors and exploitation by the nefariously minded in the four corners of the world that registration does in fact mean regulation in NZ. For the avoidance of confusion it's best to think of the FSPR as merely a phone directory for financial service providers.

In terms of a), I don't believe this is a good enough reason to have the FSPR. The key regulator is the Financial Markets Authority (FMA). The FMA was granted powers by the Government in 2014 to direct the Registrar, currently Ross van der Schyff, to deregister companies or prevent companies from registering on the FSPR. This, I believe, is a waste of FMA staff time and taxpayers' money, which helps fund the FMA. I'd rather FMA staff spend their time overseeing the likes of KiwiSaver, superannuation schemes, the sharemarket and property investments. Areas that actually matter for New Zealanders and their money.

MBIE's new consultation paper sets out that anyone in the business of providing financial services will be required to register on the FSPR if their financial services are provided to persons in NZ. Currently the requirement is for anyone in the business of providing financial services to register on the FSPR if they live in NZ or have a place of business in NZ, regardless of where in the world their financial services are offered.

The new plan is to change the scope of registration to those who provide financial services to people in NZ from those who provide financial services from NZ. This removes the need for NZ regulators to, in theory at least, keep an eye on NZ registered entities offering financial services overseas in a language(s) of their choosing.

MBIE is also proposing threshold levels of financial services with registration requirements not applying to those who provide services below the threshold, with a de minimis level of services proposed, and exempting certain classes of providers. This looks to me like a set of loopholes ripe for exploitation, and a way for NZ regulators to waste their time and taxpayers' money trying to enforce them.

In the days of the FMA and the Financial Markets Conduct Act, most areas of financial services are now licensed. We don't need a phone directory from a regulatory perspective. And nor, in 2018, do we need one from the public's perspective when we have things called the internet, Google and social media.

On to b). The FSPR was introduced in 2010. Subsequent to that, in 2013, the Anti-Money Laundering and Countering Financing of Terrorism Act came into force. This Act is currently being extended to incorporate the likes of real estate agents, lawyers and accountants. Surely this now meets NZ's FATF responsibilities.

Next is c). The paragraph on c) from the MBIE consultation paper that I included above contains one key sentence that negates the need for the FSPR to exist to meet the requirement detailed by c). It is; "Under the FSP Act, all financial service providers who provide services to retail clients are required to be members of an approved dispute resolution scheme."

This means that by law financial service providers must register with a dispute resolution scheme when they have "ma and pa" investors. Thus retail investors don't need the FSPR. For their part dispute resolution schemes could adopt a rule that they accept members who can show they have NZ retail customers.

So rather than use taxpayers' money and our regulators' time to oversee and enforce something we don't need, and has been exploited from China to Malaysia to Poland to the United Kingdom and numerous countries in between, let's abolish the FSPR and put the taxpayers' money and regulators' time currently policing it to better use for New Zealanders, their savings and New Zealand Inc.

(You can see all our FSPR related articles here).



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- [The FMA issues warnings about NZ's troublesome Financial Service Providers Register in Chinese, Malay and Arabic & admits it's easier to get on it than be removed from it](#)
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\$

250,000

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24

Interest Rate

%

4.75

Investment Type

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Tax Rate

33▼

Interest Reinvested

Yes▼

Interest Compounded

Monthly▼

End Investment Value: \$266,430

Interest Earned After Tax: \$16,430

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15 May 2018

Financial Markets Policy
Building, Resources and Markets
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WELLINGTON 6140

Email: faareview@mbie.govt.nz



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Wellington 6143, New Zealand

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Email info@ifso.nz
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Submission on Discussion Paper: Regulations to support measures to address the misuse of the Financial Service Providers Register (“FSPR”)

Thank you for the opportunity to comment on the proposed regulations under the Financial Service Providers (Registration and Dispute Resolution) Act 2008 to implement changes to the registration regime. Generally, we support the draft Regulations and the proposal to prevent misuse of the FSPR.

Questions 1 & 2:

We agree in principle with the proposal not to require registration in some situations, especially where it would allow a financial services provider to use New Zealand registration as proof of its *bona fides* and enhance its credibility to consumers. However, in doing so, there is an inevitable conflict between providing consistent protection for consumers and preventing abuse of the registration system. In our view, the base principle should be that all consumers of financial services in New Zealand have the same protection under the law.

In terms of the scenarios in the Discussion Paper, we do not agree that financial service providers in scenario 1 should be exempt from registration. We have seen examples of groups of low income consumers being duped to buy financial products by, for example, members of their church group.

Questions 3 & 4:

We consider the suggested exemption provides an extensive loophole and that financial service providers in scenario 2 are sufficiently protected by the provision in the Bill and do not need specific cover under the Regulations.

Questions 5 & 6:

We understand the reason for including a *de minimis* exemption, however, it runs the risk of removing consumer protection for low income consumers who need it most. We also believe the proposed exemption would be difficult to manage in practice for both financial service providers and the FSPR.

In summary, we do not support the proposed exemptions in scenarios 1, 2 and 4 examples 1 and 2.

~~Yours sincerely~~

Karen Stevens
Insurance & Financial Services Ombudsman

I had a read about the questions and felt uncomfortable answering and shocked by shortsighted government comments.

The discussion is for misuse of FSPR. However it did not discuss the source and the reason for the problem.

1. Why is nz fspr misused? Why don't they misuse Australian afsl or tonga fsp or vanuatu financial license?

2. Should nz focus on its domestic financial service to nz population (4 million people with around 1 million potential clients) or should we see a bit further (6 billion people and 2 billion potential clients, which is 2,000 times in volume comparing with nz domestic)?

3. Are all misused fspr registered on their own or through agents? How much it cost average for just gain reputation from NZ and not focus on NZ customer? Does it create employment opportunity to New Zealand? Do they pay tax?

4. There are a number of companies tried or trying to use nz financial license for their business, this is potential opportunity for nz to become one of the financial center in the world; however the companies office and fma are shutting these down by deregister rather than investigate and direct these companies to follow the rules or to increase employment/ standard of leased premises and chartered account firms, auditing requirements. There were so many to be done to benefit the economy but the authorities choose the simplest one: just shut down and you go talk to high court, we just did it because we just paid to shut up. Further more, those deregistered fspr either bought licenses in Australia (I have references) or bought NFA(America none govern) or FCA (U.K.)or Cyprus financial license; countries like Lithuania and Malaysia and st Vincent and grenadines are working hard to replace New Zealand fspr while nz fspr is killing itself by rudely deregister these organizations. In many guide line for obtain supervision of licenses , fspr has been ignore while it was still hot 2 years ago, the reason is the registration office deregister the organization with no reasons and register is not stable and become useless.

5. My suggestion for this is to set a standard more complicated then the previous one only

require for local director and office; for any financial institution which wants to promote international services, it should at least employ 2 full time employees work from New Zealand, submit auditing and financial report every financial year. At the same time use the local agency to support the application; and use other agency to do investigations regarding their overseas businesses; all fspr must clearly clarify the drs and drs should let agencies know all complaints at first stage and do investigation to see if the institution breached the rules and harmed New Zealand reputations. Agents should be certified by fma or at least be interviewed by fma regarding related field knowledge such as identifying real trade or "in stock" trade, agents should have the ability to talk to the ultimate holder of the business not just fill in forms.

6. For cryptocurrency , fma should release the crypto market license asap, otherwise people will be seeking place like Singapore or Malaysia as they have more open market. It is simple to rule the crypto currency market, just put a rule that they should have at least 40% of the crypto capital is in Kiwi bank (because all other banks are Australian)otherwise license be cancelled. If their system been hacked and loss of client is not covered then automatically cancel their license.

7. As a migrant lived in nz for over 15 years I am really shamed by the banking system, I used to be national bank user and switched to kiwi bank. People in the country in charge of these seem to be more Australians than New Zealanders; by importing these financial institutions we have chance to change this situation ultimately, they can control the shares but rules has to be made by New Zealanders; and interest owned should be paid back to New Zealanders mostly.

Submission on discussion document: *Regulations to support measures to address the misuse of the Financial Service Providers Register*

Your name and organisation

Name	Jasen Hou
Organisation	Kehlmann Berleys Captial Ltd

Responses to discussion document questions

Threshold for registration and exemptions

Scenarios to be exempt / below threshold for registration

1

Do you agree that the scenarios outlined on pages 11-14 should not be subject to registration requirements and do you agree with the reasons for excluding them from registration? If not, why not?

I do not agree, because every financial service provider may provide different service. From my point of view, I read the scenarios outlined on pages 11-14, I found section 2, 3 and 4 are inappropriate.

2

In the context of the misuse issues and the changes to the territorial scope of registration requirements, are there any other scenarios that should not be subject to registration requirements/not be able to register? If so, why should they be excluded?

More details in other comments.

3

Based on the description in scenario 2 (No promotion directed to persons in New Zealand), is it likely to be clear when a financial services provider that operates an internationally-accessible website would be required to register? Is it likely to be workable given the nature of global online advertising? (Noting that details of the scenario will be refined during the drafting any regulations.) Do you have any suggestions as to how this could be made clear?

I don't agree. For example, in New Zealand, there are many self-employed people who is running their own business. They don't have website for their promotion, and only rely on previous relationship to do the business.

4

Under scenario 2 (No promotion directed to persons in New Zealand), should a provider be required to register if they have a large number of New Zealand customers (e.g. hundreds or thousands), even if they do not advertise specifically to New Zealand persons?

It does not make any sense here; the company is running their own business. About how to do business, it is their own choices. I do not think government should intervene too much. New Zealand also an immigrant counties, people come here who bring resources here, but they do not have resources in New Zealand. If they are doing business, and they bring clients from their home countries. I believe it is very good and very common way. Why do oversea clients

matter?

Furthermore, I strongly suggest NZ government/register agency encourages oversea financial businesses invest in New Zealand, and willing to register their companies here, it does not matter whether they have New Zealand clients or not. About this point, you can see more details in other comments.

About promotions, we are in the small world. If you can use internet or social internet network, you can get clients all over the world; even you do not need website. My potential clients are 3 billion internet users in the world, why I focus in 4 million populations in New Zealand. I suggest New Zealand government should encourage businesses to attract more clients from the whole world, not only NZ clients.

I used to work like an agent a few years ago, and I got 200 clients without websites myself and one thousand potential clients, only rely on internet and my professional expertise. No one complain about my services and many clients admire me until now.

5

*In relation to scenario **Error! Reference source not found.** (De minimis level of services), do you agree with the manner in which the thresholds are proposed to operate? Including in relation to the time at which they are assessed as being met.*

I do not agree. From my own experience, For example, in section 18(1)(b) of the Financial Service Providers (Registration and Dispute Resolution) Act 2008. The provider is not in the business of providing a financial service (at any time after the expiry of 3 months after registration requires that the Registrar must deregister the provider." A company provides the service but the service need to apply to financial license under Financial Market Conduct 2013, If FMA cannot finish process a license application within 3 months, which they maybe never can. Without license, the company cannot provide any financial services. If they do, they may breach the Financial Market Conduct.

In 2016 May, I applied Dims license under Financial market conduct, and it has been almost a year, FMA still has not finish their assessment. Because of unlimited time waiting, my business partner has left business. Not only my case, if you live in NZ more than 10 years, and you will know the time deadline and budgeting just like a joke, even in government departments.

6

In relation to scenario 4 (De minimis level of services), do you agree with the proposed levels of thresholds? If not, why not? Please suggest any proposed alternatives and the reasons for these.

I believe there are must some exemptions here. Otherwise, the different laws may be contradictory.

7

In relation to scenario 4 (De minimis level of services), do you agree that providers that are deregistered for failing to meet these thresholds should be required to inform remaining New Zealand clients?

Running a business is not easy in New Zealand for such a small market, there 90% business are small business under 5 people. You cannot predict your business. For example, Imaging you are running your business, it is not successfully in first year, or you are applying for license for first year, preparing and process at least a year, or other family reasons. You have spent in business for 100,000 dollars, at the time, someone will close your business. What do you think?

8

In relation to scenario 4 (De minimis level of services), do you consider there are any other risks for New Zealand consumers or for anyone else from not registering providers that are below the proposed thresholds? If so, how big are those risks?

Running business is the risk. There are many ways to avoid risks, for example, to educate investors, only qualified persons to run the business, some security bonds for some business providers and etc. Here I cannot explain more for limited time.

Limiting promotion of registered status

9

What are some circumstances in which legitimate providers may refer to their registration? (This will help us ensure that the information required by the regulations do not unjustifiably interfere with legitimate uses of registration.)

Please see more details in other comments in next pages.

10

Do you agree with the proposed circumstances in which the regulations will apply as set out at paragraphs 46? If not, why not? Are there other circumstances in which the regulations should or should not apply?

Please See other comments in next pages.

11

Do you agree with the proposed information to be included in advertising as set out at paragraphs 48-50? If not, why not? Please suggest any alternatives.

12

Do you consider that providers should be permitted to refer to their FSP registration number only with a hyperlink to their registration page, without providing the proposed information as set out in paragraphs 48-50?

13

Should the regulations prescribe (1) specific wording to be used; (2) information that providers must convey using their own words; or (3) information that must be conveyed with safe-harbour wording? Please provide reasons.

14

How much time do providers need after the regulations are made to make sure they comply with these changes? E.g. ensure website material is compliant. Please provide reasons.

Information to be supplied by applicants and providers

15

Do you agree with the proposed information and manner of providing information described in the table under paragraph 62 on page 23? If not, why not?

Please See other comments in next pages.

16

Do you agree with the proposed additional information to be provided at the time of annual confirmation as set out in the table under paragraph 63 on page 24? If not, why not?

Is there any other information or manner of providing information that we should include to help provide reassurance that the provider is providing financial services to persons in New Zealand?

Please more comments and my research in next page.

Other comments

I strongly suggest NZ government/register encourage oversea financial businesses invest in New Zealand, and willing to register their companies here, it does not matter whether they have New Zealand clients or not. I do not understand why New Zealand cares about New Zealand clients too much.

NZ has small market with small population; most of companies are willing to register here, not for our markets. They treat NZ like a gate or spring board to open the western world. Therefore, New Zealand should have own long term vision to position NZ to become one of the most important financial centres in South pacific, like world financial centre Hong Kong, Singapore and Switzerland. New Zealand should encourage oversea financial companies register here, and willing to put money here. I know maybe there are some risks, but anything has two sides. I believe potential benefits will much bigger than the risks. As you can see, Hong Kong, Singapore and Switzerland is the world financial centre, those countries or places still have the best business reputations in the world, and there are hundreds and thousands companies register their financial companies or licenses in there. The important is those companies they do not focus on local markets; they raise funds from over the world. Therefore, from my point of view, New Zealand should learn experiences form them. We need to think about how to reduce these risks, not to close the gate. About misusing FSP to potentially destroy the NZ reputations from consulting paper, we never seek problems from ourselves, only complain the oversea companies. I believe it is not the way to try to solve the problems. As you can see, Honk Hong, Singapore, and so on, these places which have much more oversea financial companies with such smaller places and less resources, but they still has best reputations in the world. I think NZ should seize this great opportunity. It is a new potential driver for economy development. It could balance NZ economy; it is so rely on tourism, agriculture too much now.

Some local companies want to protect their own profits and market shares, and they do not want foreign companies come in and take their market share. It is wrong. More companies want to come to New Zealand, and it will attract more skilled people and more funds invest in New Zealand. It will bring more benefits, not only benefits local kiwis, but also bring more funds for local competitors.

From my research, due to unstable New Zealand policies and frequent changing, there are more and more foreign companies leaving NZ, they would rather choose Cyprus, Hong Kong, or Singapore instead of NZ. From my personal experiences, I used to have a few hundred clients which allocate a few big oversea companies providers. According new Acts, they gave up New Zealand markets and

do not accept New Zealand retail clients any more. FMA put too much power on it. This is a big share of a Cake, New Zealand does not want, and other countries will replace it!

To reduce the potential risks, we can set some barriers if overseas businesses want to set up a financial business in New Zealand, but not too much. There must be a fast way to apply for a license. For example, The Company must have a qualified director and a few employees and some amount of bonds depending on the size or type of the business. Clients' money must be put in NZ bank account.

From my calculations, I believe potential foreign financial companies will create at least 1000 job opportunities at least 2 million dollars a year tax directly for government, and gather at least 1 billion funds in the next few years if New Zealand has stable and welcome policies. I have not counted indirect income and other income. As you can see in the following;

Firstly, those companies will need physical office, legal expenses, government fees and other expenses. All these expenses are included GST. According to IRD, financial service providers cannot claim GST. This is income for NZ government. I estimated expense for an average small size company is almost 50-100,000 a year; at least they can contribute 12,000 taxes each for the government.

Secondly, it is employees' income tax. There are 2 employees in average for overseas companies for examples. They can contribute over 10,000 income taxes each company for the government. It is not so difficult 500 to 1000 overseas financial companies want to set office here in the next few years.

Thirdly, government can raise fees for overseas service provider who do not provide service for NZ clients, maybe doubled fees than the local service providers' fees plus security bonds or retainer. This money can be only held by government, and only buy government bonds. The entry money can be from 50,000 to 2 Million for different type of financial company. If something goes wrong, government can have the right to deal with this money. If the company terminates, then government can return this money. From my opinion, government can easily raise funds at least 1 or 2 billion funds in the next 5 years. Some overseas clients also funds should be put in NZ bank account, and it will bring more securities for New Zealand. In the long term, I estimate NZ government can raise about 10-20 billion dollars funds.

In conclusion, I strongly suggest New Zealand encourage overseas financial companies set the company here, not Cyprus, Singapore, or Hong Kong. Right now, it is so difficult to apply for a license in FMA. Register should work with FMA, a fast and simple way to apply for a license. It is not taking a year or 2 years to process. The government has many ways and power to reduce the potential risks. From my experience and my research, 99% overseas companies want to do a good business; half of them want to apply for a license. However, the super long process, unclear instructions and high barriers make it very hard to enter. The price and time are doubled than applying for a license than AU and UK, and there are no reasons people come here to apply for a license. They come here for low fees, good business environment, and the gateway to enter the western market.

In addition, I want to talk about local financial businesses. It is also very important. I suggest New Zealand government should encourage local businesses include financial service providers go out of New Zealand. It will benefit NZ. NZ has strengths, also have weaknesses. The strength is NZ is an immigrant country, and people are from all over the world. The weakness is it has a small population. We cannot only focus on less than 5 million people market. However, immigrants are so different, especially skilled, entrepreneur and investor immigrants; they have resources from their home countries. They come here, but they still have resources and connections in their home country. I believe they are better to get more clients in their home country than get in New Zealand if they are running business. One simple example is real estate agent they bring their investors from their home country; banks now have their multi language for their service, creditors, forex exchange companies.

They are based on hundreds of real examples from the research. Many local businesses are highly rely on overseas clients. As long as they run the business, they will benefit New Zealand more or less. There are too many real examples that can support my points. Here I cannot spend too much time to explain here. You can do your own research. How many percentages of overseas clients do they have? Even some licensed businesses, for example, financial derivative issuer. Do you need to deregister a licensed business if this business has 90% of the overseas clients? I also see some financial businesses (Registered FSP not authorised) have over 50 employees in NZ, and have several millions turnover a year, but overseas clients contribute over 95% revenue, even higher. How do you think this kind of business? For confidential reasons, I cannot give the names here. In the last few years, I have researched services and products for over 100 NZ financial companies and a few hundred overseas financial companies in the world. So I can say I made my points based on my research.

Notes: All these above are from my point of view based on my personal experiences and my research, due to limited time, there are may be insufficient and inaccurate calculations. I have 10 years working experience in finance, BBS, MBA in finance, AFA, PAA member, IOD member, CFA Candidate, qualifications of asset management overseas.

Submission on discussion document: *Regulations to support measures to address the misuse of the Financial Service Providers Register*

Your name and organisation

Name	Graeme Cosgrove
Organisation	Milford asset Management Limited

Responses to discussion document questions

Threshold for registration and exemptions

Scenarios to be exempt / below threshold for registration

1 Do you agree that the scenarios outlined on pages 11-14 should not be subject to registration requirements and do you agree with the reasons for excluding them from registration? If not, why not?

We are in general agreement with MBIE's proposals throughout the discussion paper and wish to limit our response to Question 16. We would however like to take the opportunity to provide some additional comments in relation to certain FSPR registration classifications (refer comments at the end of this document).

2 In the context of the misuse issues and the changes to the territorial scope of registration requirements, are there any other scenarios that should not be subject to registration requirements/not be able to register? If so, why should they be excluded?

3 Based on the description in scenario 2 (No promotion directed to persons in New Zealand), is it likely to be clear when a financial services provider that operates an internationally-accessible website would be required to register? Is it likely to be workable given the nature of global online advertising? (Noting that details of the scenario will be refined during the drafting any regulations.) Do you have any suggestions as to how this could be made clear?

4 Under scenario 2 (No promotion directed to persons in New Zealand), should a provider be required to register if they have a large number of New Zealand customers (e.g. hundreds or thousands), even if they do not advertise specifically to New Zealand persons?

5 In relation to scenario **Error! Reference source not found.** (De minimis level of services), do you agree with the manner in which the thresholds are proposed to operate? Including in relation to the time at which they are assessed as being met.

6

In relation to scenario 4 (De minimis level of services), do you agree with the proposed levels of thresholds? If not, why not? Please suggest any proposed alternatives and the reasons for these.

7

In relation to scenario 4 (De minimis level of services), do you agree that providers that are deregistered for failing to meet these thresholds should be required to inform remaining New Zealand clients?

8

In relation to scenario 4 (De minimis level of services), do you consider there are any other risks for New Zealand consumers or for anyone else from not registering providers that are below the proposed thresholds? If so, how big are those risks?

Limiting promotion of registered status

9

What are some circumstances in which legitimate providers may refer to their registration? (This will help us ensure that the information required by the regulations do not unjustifiably interfere with legitimate uses of registration.)

10

Do you agree with the proposed circumstances in which the regulations will apply as set out at paragraphs 46? If not, why not? Are there other circumstances in which the regulations should or should not apply?

11

Do you agree with the proposed information to be included in advertising as set out at paragraphs 48-50? If not, why not? Please suggest any alternatives.

12

Do you consider that providers should be permitted to refer to their FSP registration number only with a hyperlink to their registration page, without providing the proposed information as set out in paragraphs 48-50?

13

Should the regulations prescribe (1) specific wording to be used; (2) information that providers must convey using their own words; or (3) information that must be conveyed with safe-harbour wording? Please provide reasons.

14

How much time do providers need after the regulations are made to make sure they comply with these changes? E.g. ensure website material is compliant. Please provide reasons.

Information to be supplied by applicants and providers

15	<p><i>Do you agree with the proposed information and manner of providing information described in the table under paragraph 62 on page 23? If not, why not?</i></p>
16	<p><i>Do you agree with the proposed additional information to be provided at the time of annual confirmation as set out in the table under paragraph 63 on page 24? If not, why not?</i></p> <p><i>We agree with the proposal that a licensed provider confirm their status annually. We do however foresee potential issues with requiring a licensed provider to advise changes to “directors or controlling owners”. Given that a licensed provider is under a continuing obligation to advise its regulator and supervisor (where applicable) of changes to its directors and senior managers, reiterating this advice in an FSPR annual confirmation seems unnecessary duplication. Of greater potential concern is the proposal to require advice of changes in a licensed entity’s controlling owners. With a listed entity or a licensed provider that has a broad-based and dynamic shareholding base, advising specific details of changes in ownership may impose a significant burden on the licensed provider for limited apparent benefit.</i></p>
17	<p><i>Is there any other information or manner of providing information that we should include to help provide reassurance that the provider is providing financial services to persons in New Zealand?</i></p>

Other comments

In the context of consideration of the FSPR generally, we wish to draw attention to some issues we believe exist with current registration classifications. These issues especially come to the fore in the annual registration process.

- 1. We note the very similar categories of “Participating in an FMC offer as an issuer or offeror of financial products” and “Acting as an issuer for regulated products or financial products offered under a FMC offer”. We find the continued existence of these two classifications confusing. The former appears to relate more to the previous separate Securities Act designations of “promoter” and “issuer”. Further, the explanations provided as to the meanings of the classifications are not particularly helpful in determining the application of one, other or both classifications. We have accordingly taken the conservative approach of registering in both categories, although it would be helpful to have these categories revisited.***
- 2. Sections 77B and 77U of the Financial Advisers Act define “broking service”. A broking service is broadly the receipt, holding, payment or transfer of client money or client property by a person acting as an intermediary for a client. We note the potential breadth of the definition, particularly in relation to managed investment funds and discretionary investment management services. With both of those types of financial services multiple parties could be providing a broking service in relation to a single transaction. Where***

custodians are involved and there is no direct contractual relationship between an investor and the custodian it appears likely that the custodian is acting on behalf of the fund manager or DIMS provider. Equally, it appears theoretically possible that the custodian is acting on behalf of the fund manager or DIMS provider even where there is a contractual relationship between the investor and the custodian. Given the potential for confusion, we consider this to be an area that would benefit from more clarity.

Submission on discussion document: *Regulations to support measures to address the misuse of the Financial Service Providers Register*

Your name and organisation

Name	Claude Oberto
Organisation	NF Global Limited

Responses to discussion document questions

Threshold for registration and exemptions

Scenarios to be exempt / below threshold for registration

1 Do you agree that the scenarios outlined on pages 11-14 should not be subject to registration requirements and do you agree with the reasons for excluding them from registration? If not, why not?

Please review our response in the “other comments” section.

2 In the context of the misuse issues and the changes to the territorial scope of registration requirements, are there any other scenarios that should not be subject to registration requirements/not be able to register? If so, why should they be excluded?

3 Based on the description in scenario 2 (No promotion directed to persons in New Zealand), is it likely to be clear when a financial services provider that operates an internationally-accessible website would be required to register? Is it likely to be workable given the nature of global online advertising? (Noting that details of the scenario will be refined during the drafting any regulations.) Do you have any suggestions as to how this could be made clear?

4 Under scenario 2 (No promotion directed to persons in New Zealand), should a provider be required to register if they have a large number of New Zealand customers (e.g. hundreds or thousands), even if they do not advertise specifically to New Zealand persons?

5 In relation to scenario **Error! Reference source not found.** (De minimis level of services), do you agree with the manner in which the thresholds are proposed to operate? Including in relation to the time at which they are assessed as being met.

6 In relation to scenario 4 (De minimis level of services), do you agree with the proposed levels

of thresholds? If not, why not? Please suggest any proposed alternatives and the reasons for these.

7 In relation to scenario 4 (De minimis level of services), do you agree that providers that are deregistered for failing to meet these thresholds should be required to inform remaining New Zealand clients?

8 In relation to scenario 4 (De minimis level of services), do you consider there are any other risks for New Zealand consumers or for anyone else from not registering providers that are below the proposed thresholds? If so, how big are those risks?

Limiting promotion of registered status

9 What are some circumstances in which legitimate providers may refer to their registration? (This will help us ensure that the information required by the regulations do not unjustifiably interfere with legitimate uses of registration.)

10 Do you agree with the proposed circumstances in which the regulations will apply as set out at paragraphs 46? If not, why not? Are there other circumstances in which the regulations should or should not apply?

11 Do you agree with the proposed information to be included in advertising as set out at paragraphs 48-50? If not, why not? Please suggest any alternatives.

12 Do you consider that providers should be permitted to refer to their FSP registration number only with a hyperlink to their registration page, without providing the proposed information as set out in paragraphs 48-50?

13 Should the regulations prescribe (1) specific wording to be used; (2) information that providers must convey using their own words; or (3) information that must be conveyed with safe-harbour wording? Please provide reasons.

14 How much time do providers need after the regulations are made to make sure they comply with these changes? E.g. ensure website material is compliant. Please provide reasons.

Information to be supplied by applicants and providers

15	Do you agree with the proposed information and manner of providing information described in the table under paragraph 62 on page 23? If not, why not?
16	Do you agree with the proposed additional information to be provided at the time of annual confirmation as set out in the table under paragraph 63 on page 24? If not, why not?
17	Is there any other information or manner of providing information that we should include to help provide reassurance that the provider is providing financial services to persons in New Zealand?

Other comments (our comments)

NF Global Limited is a registered FSP (since 2010) with the allocated FSP Number: 29621

NF Global Limited is a payments institution offering the ability for clients to transfer funds. The business model is simple and has worked well in Europe and the UK for the past six years and could be introduced into New Zealand. *The services offered meet the needs of companies and private individuals who need to match different goals like international business, switching between currencies, wealth management services and family wealth/financial planning (for example the creation of trusts).*

All that is required for the company to launch in New Zealand is for the company to secure client bank accounts with a New Zealand registered bank. We intend to re-pursue this avenue commencing in the near future, however, we suspect that the company will need to be regulated/licensed by either the Financial Markets Authority (FMA) or the Reserve Bank of New Zealand (RBNZ) – an avenue we have briefly explored in the past. Our experience is that the process of becoming a Non-Bank Deposit Taker (NBDT) (regulation via the RBNZ), or to establish NZ domiciled funds (regulation via the FMA) will take up to twenty months.

We understand the background and the reasons for the proposed changes to the FSP regime however, we do not believe that “one-size fits all” specifically in respect to the time line available for current listed entities to comply.

The recommended timelines noted in the discussion document appear to fall short of the twenty-month target and this would leave companies in a precarious situation with the either the Companies Office, the RBNZ or the FMA.

That said, we believe that for entities such as NF Global Limited, the AML/CFT and FATCA legislation *already* achieves what this discussion paper is wanting to achieve. The noted regulatory regimes already ensure that an entity is fully compliant and operates within the bounds of the law and various jurisdictions.

The soon to be introduced changes to the already successful AML/CFT Act (the introduction of Prescribed Transaction Reporting (PTR) and suspicious activity reports (SAR)), and the general role of the Automatic Exchange of Information (AEOI) already place considerable responsibilities on entities and further enhance the oversight monitoring. The sharing of information between jurisdictions and

cooperation allows the regulatory authorities in New Zealand to request any information in regard to entities that are listed on the FSP Register and reveal the nature and features of the business.

Consequently, for entities which operate within the same scope and business model as NF Global Limited and that are registered and already have an allocated FSP number, we request a “**grace period**” of two-years in order to comply with the proposed regulations. This would include prescribed periodic checks of the process.

This provides sufficient time for such entities to become regulated by the RBNZ as a NBDT or become regulated by the FMA as a Fund Manager.

Finally, we raise some points for debate and clarification regarding the effects of the new FSP rules:

- **We consider the threshold** of 50% of the provider’s business by value to be disproportionate for a global business;
- **We are UNCLEAR as to** what will happen to an FSP on the close of registration status (will they be required to exit New Zealand or remain as an unregistered entity?)
- **We would like confirmation** regarding transactions made by a New Zealand Trust for subjects and counterparts resident overseas, would they form part of the value threshold?

Claude Oberto
Managing Director
NF Global Limited
Level 8, 48 Emily Place
Auckland

Submission

to the

Ministry of Business,
Innovation and Employment

on the

Discussion paper:
Regulations to support
measures to address the
misuse of the Financial
Service Providers Register

15 May 2018

About NZBA

1. NZBA works on behalf of the New Zealand banking industry in conjunction with its member banks. NZBA develops and promotes policy outcomes that contribute to a strong and stable banking system that benefits New Zealanders and the New Zealand economy.
2. The following seventeen registered banks in New Zealand are members of NZBA:
 - ANZ Bank New Zealand Limited
 - ASB Bank Limited
 - Bank of China (NZ) Limited
 - Bank of New Zealand
 - MUFG Bank, Ltd
 - China Construction Bank
 - Citibank, N.A.
 - The Co-operative Bank Limited
 - Heartland Bank Limited
 - The Hongkong and Shanghai Banking Corporation Limited
 - Industrial and Commercial Bank of China (New Zealand) Limited
 - JPMorgan Chase Bank, N.A.
 - Kiwibank Limited
 - Rabobank New Zealand Limited
 - SBS Bank
 - TSB Bank Limited
 - Westpac New Zealand Limited

Background

3. NZBA welcomes the opportunity to provide feedback to the Ministry of Business, Innovation and Employment (**MBIE**) on the discussion paper: Regulations to support measures to address the misuse of the Financial Service Providers Register (**Discussion Paper**) and commends the work that has gone into developing the Discussion Paper.
4. If you would like to discuss any aspect of the submission further, please contact:

Antony Buick-Constable
Deputy Chief Executive & General Counsel
S9(2)(a)

NZBA supports measures to address misuse of the FSPR

5. NZBA supports measures to address misuse of the Financial Service Providers Register (**FSPR**). We consider that it is crucial to protect New Zealand's reputation as a well-regulated jurisdiction, and supports the measures proposed by MBIE to achieve that.
6. NZBA would like to take the opportunity to ensure that there is no intention, through the measures proposed, to capture financial product offerings by off-shore providers under the mutual recognition regime in part 9 of the Financial Markets Conduct Regulations 2014 (or an exemption provided by the Financial Markets Authority that is substantially similar). Given the way that regime operates, we consider it unlikely that a New Zealand customer would necessarily expect that class of providers to be subject to regulation in New Zealand or within the jurisdiction of a New Zealand dispute resolution scheme.

Submission on discussion document: *Regulations to support measures to address the misuse of the Financial Service Providers Register*

Your name and organisation

Name	Scott Shofner
Organisation	River East Financial Limited

Responses to discussion document questions

Threshold for registration and exemptions

Scenarios to be exempt / below threshold for registration

1	<p><i>Do you agree that the scenarios outlined on pages 11-14 should not be subject to registration requirements and do you agree with the reasons for excluding them from registration? If not, why not?</i></p> <p>We do agree that these are reasons for exempting a company from registering, but we do not feel these requirements should apply to existing FSP's that have been registered and approved and have been conducting business under the FSPR without issues. These changes should only effect decisions moving forward. NZ has an obligation to maintain their agreements with established businesses. Any future decisions or reasons should take these issues into account.</p>
2	<p><i>In the context of the misuse issues and the changes to the territorial scope of registration requirements, are there any other scenarios that should not be subject to registration requirements/not be able to register? If so, why should they be excluded?</i></p> <p>The only exception should be existing FSP's that are not currently or in the future having any misuse issues. Current FSPs should not be subject to these new requirements. These should only be taken into account for new FSP applicants.</p>
3	<p><i>Based on the description in scenario 2 (No promotion directed to persons in New Zealand), is it likely to be clear when a financial services provider that operates an internationally-accessible website would be required to register? Is it likely to be workable given the nature of global online advertising? (Noting that details of the scenario will be refined during the drafting any regulations.) Do you have any suggestions as to how this could be made clear?</i></p> <p>Scenario 2 is inconsequential as most, if not all, FSPs do business internationally so promotions are directed on a global scale and not on a local scale to New Zealand alone. This should not be a consideration for registration requirements.</p>
4	<p><i>Under scenario 2 (No promotion directed to persons in New Zealand), should a provider be required to register if they have a large number of New Zealand customers (e.g. hundreds or</i></p>

	<i>thousands), even if they do not advertise specifically to New Zealand persons?</i>
	As a company incorporated in New Zealand, the law requires an FSP registered or not to have a New Zealand Dispute Resolution Scheme in place. Advertising to New Zealand persons or not should again not be a consideration for registration requirements.
5	<i>In relation to scenario Error! Reference source not found. (De minimis level of services), do you agree with the manner in which the thresholds are proposed to operate? Including in relation to the time at which they are assessed as being met.</i>
	We disagree with having thresholds for registration. The amount of business should not dictate whether the company should be registered or not. If a company is allowed to incorporate in New Zealand, why would you not want to register it?
6	<i>In relation to scenario 4 (De minimis level of services), do you agree with the proposed levels of thresholds? If not, why not? Please suggest any proposed alternatives and the reasons for these.</i>
	No. See answer 5.
	Companies should be looked at before they are incorporated in New Zealand as an alternate way to prevent the scenarios for offshore companies.
7	<i>In relation to scenario 4 (De minimis level of services), do you agree that providers that are deregistered for failing to meet these thresholds should be required to inform remaining New Zealand clients?</i>
	No, we do not agree, since we do not agree to the threshold to begin with.
	We feel that if an FSP is deregistered, they should be required to notify all their clients.
8	<i>In relation to scenario 4 (De minimis level of services), do you consider there are any other risks for New Zealand consumers or for anyone else from not registering providers that are below the proposed thresholds? If so, how big are those risks?</i>
	We feel that any FSP should be registered in New Zealand regardless of thresholds. The risk is greater, if an FSP is not registered, because they fall of the radar of the FSPR.
Limiting promotion of registered status	
9	<i>What are some circumstances in which legitimate providers may refer to their registration? (This will help us ensure that the information required by the regulations do not unjustifiably interfere with legitimate uses of registration.)</i>
	REF is a legitimate provider of services and as such, uses their registration to show what services we are registered to provide. This is essential for doing business with other regulatory agencies for providing other services to show that we are in compliance with the FSPR, even if we are not doing business in New Zealand or with limited New Zealand persons.
10	<i>Do you agree with the proposed circumstances in which the regulations will apply as set out at paragraphs 46? If not, why not? Are there other circumstances in which the regulations should or should not apply?</i>
	No – we do not agree.
	REF follows all the requirements currently required to be an FSP. The fact that we are

	registered and are not licensed in New Zealand is solely based on the fact that we do not market to New Zealand clients, so as not to take business from the local New Zealand businesses.
11	<i>Do you agree with the proposed information to be included in advertising as set out at paragraphs 48-50? If not, why not? Please suggest any alternatives.</i>
	Yes – we do agree. We feel that we should also be able to state that we are not licensed because we do not market to New Zealand persons.
12	<i>Do you consider that providers should be permitted to refer to their FSP registration number only with a hyperlink to their registration page, without providing the proposed information as set out in paragraphs 48-50?</i>
	No – We do agree that complete transparency is necessary to stay in compliance not only with New Zealand FSPR, but also to be in compliance of our own AML.
13	<i>Should the regulations prescribe (1) specific wording to be used; (2) information that providers must convey using their own words; or (3) information that must be conveyed with safe-harbour wording? Please provide reasons.</i>
	We believe that the FSPR should be able to issue specific verbiage that is used, but we should be able to format it along with other verbiage explaining our position.
14	<i>How much time do providers need after the regulations are made to make sure they comply with these changes? E.g. ensure website material is compliant. Please provide reasons.</i>
	The time needed to change website verbiage and marketing material should be immediate, or in a specified period as outlined by the FMA. Many of the website materials can be changed in a day or two.
Information to be supplied by applicants and providers	
15	<i>Do you agree with the proposed information and manner of providing information described in the table under paragraph 62 on page 23? If not, why not?</i>
	No – We do not agree. We feel that basing registration on thresholds is not an effective way to stop misuse of the FSPR. Registration should be based on what services will be registered by the FSP and are they in compliance of those services.
16	<i>Do you agree with the proposed additional information to be provided at the time of annual confirmation as set out in the table under paragraph 63 on page 24? If not, why not?</i>
	No - We do not agree. Once again, changes in the amount of business conducted in or out of New Zealand should not be a factor.
17	<i>Is there any other information or manner of providing information that we should include to help provide reassurance that the provider is providing financial services to persons in New Zealand?</i>
	If the FSPR wants to know if an FSP have New Zealand clients and under what circumstances those clients were acquired, they should send a formal request or require that this

information be given at specified times. It should not affect the registration outcome.

Other comments

We would hope that the FSPR and the FMA would understand that all companies that offer financial services are not the same. Understanding a company's business model is as important as insuring that the FSP is providing the services they are registered to offer. This is also why any FSP incorporated in New Zealand should be registered at least to show what services they are outlined to provide regardless as to the size, volume or clients.

Needless to say, River East Financial has dedicated much time and resources to developing a business around being an NZ incorporated company and registered business. The relationships with our partnered companies would be materially damaged by any change to our registration status, which we feel would be unfair given our continued compliance'.

River East Financial Limited does business with other companies, in countries, that are regulated by Government Regulatory Agencies such as the UK Financial Conduct Authority (FCA) and the Financial Services Authority (FSA). We believe that New Zealand should recognize these regulatory agencies as creditable and except their oversight as they would the NZ FMA. We believe these relationships with other regulatory agencies should further demonstrate that the FSP is regulated to avoid misuse of the registration.

We would suggest that New Zealand would establish a restricted Financial Service Provider (FSP) registration and licensing. This would permit the carrying on of the FSP business anywhere in the world except in New Zealand. Business may be carried on from New Zealand for clients outside the jurisdiction. This would be a restricted form of registration that allows business, to named clients, outside of New Zealand usually having some connection with other companies with recognized oversight from established regulatory agencies that the New Zealand Government would except as monitoring the activities of the FSP. This would allow New Zealand to continue to grow in the international markets and as a financial centre. Other countries have adopted this type of registration and have been very successful with it.

Licensing for services would be open to these offshore companies under the same restricted criteria. Restricted licensing would allow the FSP to do business outside of New Zealand with the same licensing oversight as a company doing business in New Zealand. This would accomplish two things. It would first allow New Zealand to continue to have revenue from the offshore FSP, as well as oversight to activities and second, it would also build the reputation for New Zealand as a country that has reputable offshore company policies and procedures for operation, which would encourage international business for New Zealand.