

19 June 2024

Financial Markets Team  
Small Business, Commerce and Consumer Policy  
Ministry of Business, Innovation & Employment  
PO Box 1473  
Wellington 6140

By email: FinancialMarkets@mbie.govt.nz

Tēnā koe Financial Markets Team,

### **Securities Industry Association submission: Consultation paper – Effective financial dispute resolution**

I have attached the submission prepared by the Securities Industry Association (**SIA**) in response to the Consultation paper – *Effective financial dispute resolution* (May 2024). We thank you for the opportunity to present our comments on this consultation paper.

#### **About SIA**

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

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

#### **Key points**

Our key points in response to this consultation are outlined below and addressed in more detail in the submission document attached:

1. The Financial Service Providers (Registration and Dispute Resolution) Act 2008 (**the Act**) requires financial services providers that provide services to retail clients to join a dispute resolution scheme. SIA members are members of Financial Services Complaints Limited (**FSCL**). They are satisfied with how the scheme currently operates and believe it is an effective service for resolving disputes should it be required.
2. We support good customer outcomes, including making it easy for customers to find information to resolve a problem or dispute with their financial service provider. As licensed Financial Advice Providers (**FAPs**), SIA's members already have clear and significant disclosure obligations via the Financial Markets Conduct (Regulated Financial Advice Disclosure) Amendment Regulations 2020, which includes disclosing their complaints handling and dispute resolution process. This typically consists of clear and prominent communication of the complaints process written in plain English, including the firm's and dispute resolution scheme's contact details, made available in disclosure materials and on publicly available websites.

We do not believe any further regulation of firms is required in that regard. We note the Government Centre for Dispute Resolution's best practice principles provide a framework for assessing whether a scheme is fit for purpose and consistent with best practice, including its responsibilities toward promoting and accessing the scheme. The schemes may choose to undertake a general awareness campaign to support those principles.

3. Any changes to regulation to enhance oversight and accountability of dispute resolution schemes should consider the cost-benefit of such changes and consider whether there will be unintended consequences, such as a flow-on effect to members and consumers, for example, any additional costs to fund new regulation.

Some SIA member firms may submit individually based on issues specific to their business. Those issues and views may not be reflected in this submission. No part of this submission is required to be kept confidential.

Please get in touch should you have any questions about this submission or require further information.

Nāku noa, na

Privacy of natural persons

Bridget MacDonald

**Executive Director**

**SECURITIES INDUSTRY ASSOCIATION**

Privacy of natural persons

**Submission on discussion document: *Effective financial dispute resolution***

**Your name and organisation**

<b>Name</b>	Bridget MacDonald
<b>Organisation (if applicable)</b>	Securities Industry Association
<b>Contact details</b>	Privacy of natural persons

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## Responses to discussion document questions

### Issue 1: Consumer awareness of and access to dispute resolution

1

*Do you think there is a problem with low consumer awareness and access to dispute resolution?*

*Research shows most FAPs have clear complaints processes*

As licensed Financial Adviser Providers (**FAPs**), SIA's members already have significant disclosure obligations to ensure customers are aware of key information relating to complaints. The Financial Markets Conduct (Regulated Financial Advice Disclosure) Amendment Regulations 2020 require a firm to disclose the following:

- the licence they hold and certain duties that they are subject to;
- the financial advice services that they can provide, the range of products they can advise on, and any limitations on the advice;
- the applicable fees and costs associated with the advice;
- the commissions, incentives and other conflicts of interests that could impact the advice;
- the complaints handling and dispute resolution process;
- any previous disciplinary history, and certain criminal convictions or civil proceedings;
- in the case of financial advisers, bankruptcy proceedings within four years of the date of discharge.

We support good customer outcomes, including customers having easy access to information to resolve a problem or dispute with their financial service provider. This typically consists of clear and prominent communication of the complaints process written in plain English, including the firm's and dispute resolution scheme's contact details, made available in disclosure materials and on publicly available websites.

SIA does not believe that the problem regarding low consumer awareness has been effectively identified and, as such, is not a systemic issue across all financial service providers. For example, the FMA's *FAP Monitoring Report Insights* (30 May 2024) does not present this as an issue. It states:

*"Many FAPs we reviewed had publicly available disclosures that were easy to locate. They were prominently displayed on their websites and were clearly labelled as disclosure. We found most FAPs had clear information on their complaints process and dispute resolution scheme (DRS), and sufficiently covered possible fees and expenses. We also saw advisers reviewing their disclosure to ensure it met the requirements, including dates and version control."*

While they observed only some gaps, they further state:

*"Overall, we observed that the disclosure given when a complaint is received was satisfactory, and was provided to the complainant within two working days, in line with the FMC Regulations. We were pleased with this, as it is crucial that complainants know how their complaint will be handled and what steps they can take if they are not satisfied with the outcome."*

The key recommendation in the report was to suggest that FAPs review disclosures against the applicable regulations to ensure they meet the requirements and are consistent.

*What is meant by “further and consistent requirements”?*

We support providing clear information on complaint and dispute resolution processes to consumers. However, the consultation document seeks “further and consistent requirements” to improve consumer communications regarding complaints processes and dispute resolution, i.e., information is provided clearly and prominently. We are unsure what “further” means, as customers are already receiving clear and prominent information regarding complaints processes in disclosure documents, which are publicly available on providers' websites using plain English.

SIA believes the focus should be on clearly and consistently communicating existing regulatory requirements and ensuring the broader sector meets those best practice standards rather than creating new obligations. A targeted approach may be needed for any parts of the sector identified as not meeting these requirements.

*Customer understanding of the entire complaints process and options*

We recognise the importance of dispute resolution schemes as the second option to achieving a resolution should it be required; though ideally, for the best customer outcomes, firms should use best-practice internal processes to resolve issues quickly in-house. The importance of robust and transparent inhouse processes and customer communications may need to be reinforced as it should be clear to customers that the first port of call to resolve an issue with the financial services firm and that in the circumstances should an issue not be resolved then the dispute resolution service is available.

We do not believe any further regulation of firms is required in that regard. We note the Government Centre for Dispute Resolution's best practice principles provide a framework for assessing whether a scheme is fit for purpose and consistent with best practice, including its responsibilities toward promoting and accessing the scheme, which the schemes themselves may choose to undertake a general public awareness and education campaign to support those principles.

2

*Do you think the recent increase in the volume of disputes indicates better awareness and access to the schemes?*

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3

*What are the barriers for consumers in accessing financial service providers' internal complaints processes?*

SIA members support the current legislation's requirement to provide easy-to-find information in disclosure documentation and websites that lays out the details of the complaints process, key contact information, and options for the customer, including details of the dispute resolution scheme should it be required.

We suggest if the majority of consumers are satisfied with financial products and services, then immediate knowledge or recollection of an external complaints/dispute resolution

scheme process is not likely to be top of mind at all times, so if an issue arises then you would expect that the customer would look for the information.

What is important is that information is part of the disclosure made available to a customer at the beginning of a relationship with the provider, and they can easily find information about the policy and process should they ever want to make a complaint.

4 *What are the barriers for consumers in accessing dispute resolution schemes?*

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5 *Do you have any specific examples or case studies of situations where consumers have experienced issues accessing a financial dispute resolution scheme?*

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## Issue 2: Enhancing scheme effectiveness through improved oversight and accountability

6 *Do you think that current oversight and accountability mechanisms are sufficient to ensure schemes' effectiveness? Why/why not?*

SIA believes the current oversight and accountability measures are sufficient for the scheme services we receive. Therefore, there is no apparent or immediate need for increased oversight and regulation of dispute resolution schemes, as existing processes are generally effective.

Increased oversight and accountability requirements would likely just add cost and complexity without clear benefits. However, it could be useful to have streamlined and consistent rules across dispute providers and the schemes operating with best practice guidance.

Consideration needs to be given to any changes, such as introducing new scheme regulation, as they would come at a cost, and the cost could be passed onto scheme members or their customers.

We suggest that any changes to regulation to enhance oversight and accountability of dispute resolution schemes should consider the cost-benefit of such changes and consider whether there will be unintended consequences such as a flow-on effect to members and consumers, such as any additional costs to fund new regulation.

7 *Do you think that the schemes are as effective as they could be? Why/why not?*

SIA members are members of Financial Services Complaints Limited (**FSCL**). They are satisfied with how the scheme currently operates and believe it is an effective service for resolving disputes should they be required.

Best practice guidance on dispute resolution exists via the Government Centre for Dispute Resolution. The principles for assessing whether a scheme is fit for purpose and consistent with best practice include:

1. User focussed and accessible
2. Independent and fair

3. Efficient
4. Effective
5. Accountable.

The principle of 'User focussed and accessible' includes the scheme provider's responsibilities of 'Awareness and promotion', i.e., How is the scheme promoted and awareness of it raised? What media is used to promote it (e.g., online, posters, television)? Is information about the scheme easy to find and understand? Is the promotion material consistent across the different media and entry channels?), and 'Access' (e.g., How easy is it for users to enter the scheme? Are there multiple channels of entry? Are there any barriers (real or perceived) for particular users? Is there a user fee? If so, is it reasonable and appropriate given the nature and value of disputes?).

While members of the scheme promote the details of the scheme in their customer complaints policy and process information, there may be scope for the schemes themselves to raise the profile of their services through public awareness campaigns, such as promoting the message to 'talk to your service provider if you are not happy with the service and if the issue is unable to be resolved then talk to us to work with you and your service provider'. Conveying the correct steps of the customer complaints process is important.

8 *Do you agree with these criteria for assessing the options? Why/why not?*

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*Status quo: Retain existing model and monitor the impact of aligning the schemes' rules*

9 *Do you think that the new regulations will be sufficient to achieve the objectives set out above?*

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*Option to address issue 1: Supporting consumer access and awareness of schemes*

10 *Which of the options we have described above would be most effective to support consumers to resolve issues with their financial service provider?*

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11 *What are the likely costs of implementing these options?*

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12 *Should these options be led by government, or the schemes themselves?*

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13 *Are there any other approaches that would improve consumer access to and awareness of dispute resolution options?*

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*Option to address issue 2: Enhancing scheme effectiveness through improved oversight and accountability*

**14** *Do you think that there is a need for dispute resolution schemes to be more accountable?*

SIA support the current reporting mechanisms. Please refer to our response to question 6.

**15** *Do you think there are issues with the performance or effectiveness of the schemes?*

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**16** *Do you think there should be consistency in how the schemes carry out independent reviews? What would be the best approach for achieving this consistency?*

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**17** *Do you think government should set further scheme rules? If yes, what areas of the scheme rules should be set by government?*

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**18** *Do you think it is necessary for government to make changes to ensure effective and impartial governance of the schemes? If yes, what changes would best meet this aim?*

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**19** *Do you think the schemes should have to report against performance targets or standards? If yes, how should these standards be reported, and what metrics should be used?*

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**20** *Are there any risks or unintended consequences associated with the options we are considering?*

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**21** *Will any of these proposals result in significant additional costs for the schemes, scheme participants and/or consumers? If yes, please describe the magnitude of these costs.*

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**22** *Are there any other ways to improve schemes' accountability and effectiveness?*

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*Other options*

**23** *Do you agree that the impact of regulations to align scheme rules, along with any other improvements proposed in this document, should be assessed before considering changes to the current scheme model? Why/why not?*



SIA believes it is prudent to assess the impact of any additional regulatory requirements, such as undertaking a cost-benefit analysis that considers the broader flow-on effect of any compliance or cost burden that may be passed to scheme members and their customers.

24

*Are there any other areas and options for change that we should consider that have not been addressed in this discussion document?*

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### Other comments

SIA thanks MBIE for the opportunity to submit on this consultation and welcomes the opportunity to discuss our submission or provide further information if required. In the first instance, please contact:

Bridget MacDonald, Executive Director,  
Securities Industry Association

Email: [bridget@securities.org.nz](mailto:bridget@securities.org.nz) Mobile: 021 345 973