AMP'S SUBMISSION ON THE ISSUES PAPER: REVIEW OF THE FINANCIAL ADVISERS ACT 2008 AND THE FINANCIAL SERVICE PROVIDERS (REGISTRATION AND DISPUTE RESOLUTION) ACT 2008

1. Do you agree that financial adviser regulation should seek to achieve the identified goals? If not, why not?

The purpose of the legislation is primarily occupational regulation; it is centred on compliance as opposed to consumer outcomes. We believe a change in emphasis is required to place the consumer more centrally to the legislative objectives.

The framework misses the point that most "advice" that a customer receives is at the point of sale, rather than through engagement with a financial adviser. The framework does not contemplate transactional (i.e. sales) situations, which means that customers don't necessarily understand what they are getting (i.e. the definition of advice is so broad that it covers what are sales engagements). Accordingly it is difficult to promote trust where the nature of the transaction from a consumer perspective is not clearly defined.

The framework also needs to address the provision of *quality* advice. Financial advice should not only be accessible, the consumer should be confident that when they are actually receiving advice, as opposed to being sold to, that they are receiving good quality advice.

2. What goals do you consider should be more or less important in deciding how to regulate financial advisers?

In order to promote consumer confidence in the financial markets, regulation must make it easier for the consumer to understand the service they are receiving; therefore we believe that informed decision-making must be the primary objective in determining how to regulate financial advisers.

As a general comment, we believe that in order to make it easier for customers to understand the service they are receiving the regime must be simplified. The current model creates undue complexity for the consumer, both in terms of adviser type (AFA, RFA, QFE adviser), advice type, and product categorisation. The different categorisations and adviser obligations undermine the FMA's aim of ensuring that sales processes and advisory services reflect the consumer's best interest, by driving differing standards of advice, disclosure, conflict management etc. This makes it difficult for consumers to assess the quality and suitability of advisers and their advice. It also creates the situation where consumers need more than one adviser in order to meet their financial needs.

Therefore, we propose a future state that:

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1. Removes the current distinction in adviser categories (RFA, AFA, QFE advisor) and applies the same standards/requirements to all advisers (relevant to the adviser's scope of service).

2. Removes the current product classes and requires any person providing financial advice to be appropriately qualified for the products that they are advising on.

3. Removes the current distinctions between personalised and class advice, and replaces it with a simplified sales v advice model which focuses on ensuring the customer understands what type of service they are receiving from the salesperson/adviser.

We have discussed each of these in further detail in our responses below.

3. Does this definition adequately capture what financial advice is? If not, what changes should be considered?

The current definition of 'financial advice" is too broad, in particular the term "class advice" captures transactional situations which we believe in most circumstances is actually a sales process, rather than advice. The definition needs to be revisited to distinguish between "financial advice" and a "sales process".

Sales Process

A "sales process" would cover situations where a staff member or sales agent (e.g. bank teller, call centre staff, independent mortgage broker) is speaking to a customer about their employer's/agent's product. The salesperson provides the customer with information about the product for the primary purpose of selling the customer that product, and does not take into account the customer's personal situation. An appropriate health warning would need to be given to customers in sales transactions in order for the customer to clearly understand the limitations of the engagement and the conflicts that might arise. The product provider would need to be able to demonstrate to the FMA that their products meet certain suitability requirements, and all salespeople would have to be appropriately accredited by the product provider for the products that they are selling.

The sales process would not extend to situations where the customer already holds another provider's product, because any transaction which involves switching a customer from one product to another should include consideration of the customer's personal situation, and the relative benefits/risks of each product need to be explained to the customer so that they can make an informed decision about whether to switch products. If a salesperson becomes aware that the customer already holds another provider's product then they would be required to refer that customer to an appropriately qualified adviser for financial advice.

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Financial Advice

"Financial advice" would cover situations where an adviser provides a customer with a product solution from a range of different providers (including where a customer is switching products), having considered the customer's individual circumstances and needs.

Any adviser providing financial advice should be appropriately qualified for the products that they are advising on, and minimum education requirements for advisers should comprise a core syllabus for all advisers (covering such things as an advice process, conflicts, code/ ethical requirements) coupled with tailored components relevant to the adviser's scope of service, (eg risk products, insurance advice, wealth).

Consideration needs to be given to the situation where an adviser/salesperson is giving a presentation/seminar to an audience (and whether any limitations need to be imposed on this).

Licenced Regime

We would support the introduction of a licenced regime (more akin to the FMC Act regime) under an advice/sales model, whereby advisers operate either within a licensed entity (in today's terms, within a QFE) or as an independent licensed adviser. The applicant, whether a standalone independent or an entity, would need to demonstrate to the FMA that it meets the minimum licensing requirements in order to become licensed, for example it would need to satisfy the FMA that it has sufficient organisational capacity and competence to provide the financial adviser services covered by the licence. ASIC Guidance Notes 104 (Licensing: Meeting the General Obligations) and 105 (Licensing: Organisational Competence) are useful to consider in this respect. This would be consistent with changes introduced via the FMC Act.

In our view it is appropriate that anyone engaging in a sales or advice process has sufficient capital, or appropriate insurance coverage, to stand behind the product that they are selling or advising on. If working within a licensed entity, the licensed entity would be required to carry this.

This solution provides simplicity as it permits the removal of the AFA and RFA designations. Rather, all advisers would be subject to the same minimum requirements, and would need to able to demonstrate to the FMA that they have sufficient systems and control obligations in place to meet the requirements of the FA Act and the Code. Advisors within a licensed entity (QFE) would be able to rely on the controls (etc) of the licensed entity (QFE).

Below is a table that shows the interaction between the advice/sales model and our proposed licencing regime:

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Type of arrangement	Licenced Entity			
	Independents		QFEs	
	Salesperson	Adviser	Product Manufacturers	Other QFEs
Sales process	√	x	√	√
Financial Advice	x	√	√	√
Execution Only	x	√	√	√

4. Is the distinction in the Financial Advisers Act (FA Act) between wholesale and retail clients appropriate and effective? If not, what changes should be considered?

[AMP not providing response]

5. Is the distinction in the Act between a personalised financial service and a class service appropriate and effective? If not, what changes should be considered?

No, as mentioned in Q3 above, we believe it is more appropriate for the Act to distinguish between "financial advice" and a "sales process", with the Act including the appropriate health warnings and other protections required for sale transactions. In our view it is very unclear from a consumer's perspective the difference between class and personalised advice. It is very simple for a consumer to understand a health warning related to a sale; in these situations a concise oral, and written, disclosure would remove existing ambiguity.

6. Is it appropriate to have different requirements on advisers depending on the risk and complexity of the products they advise upon?

We believe that the educational/training and ongoing professional development requirements should reflect the complexity of the products/scope of service that the adviser is providing. The same requirements should apply to all advisers. Accordingly, whilst we propose a single designation of "adviser", advisers would only be able to sell those products, or supply services, on which they were appropriately trained and qualified. We would expect this to be recorded on the FSPR and a term of the license would be restricted to the products/services on which the advisor is qualified. We understand a similar practice is adopted by the medical profession.

7. Does the current categorisation system accurately reflect the level of complexity and risk associated with financial products? If not, how could it be improved?

We do not believe the current product categorisation (Category 1 "complex" products v Category 2 "simple" products) provide the customer with the appropriate protections, and should be removed. We believe that the current product distinctions wrongly assume that that risk products are less complex, which is not always the case – in some circumstances the advice process will be very simple, but in others the customer's personal circumstances

will be complex, which requires a greater degree of expertise from the adviser and a more complex product solution e.g. a key man risk in a business or a personalised risk cover, where there are ex-partners and children shared across multiple families. Similarly, the purchase of KiwiSaver by a 21 year old entering the work force for the first time is not a complex advice situation, yet under the current product classifications is assumed to be more complex.

We believe that the complexity of the customer's needs, rather than product categorisation, should determine the scope of the customer engagement.

8. Do you think that the term Registered Financial Adviser (RFA) gives consumers an accurate understanding of what these advisers are permitted to provide advice on and the requirements that apply to them? If not, should an alternative term be considered?

No, as a general comment we believe that having different types of adviser categories creates consumer confusion. In particular allowing advisers to use the term "Registered Financial Adviser" may mislead the consumer into thinking that they are getting advice from an adviser who is more qualified than they actually are.

Consumers cannot gain confidence in a regime that they don't understand. If a consumer cannot understand the difference between the various types of adviser then they cannot make an informed decision about what type of adviser to use.

As set out in our response to Q3, we promote the removal of a distinction in adviser categories. In our view the focus of the legislation should be on the consumer, and consumer protection. Ensuring that advisers are appropriately qualified and capable to provide advice on the areas that they specialise in must be a legislative goal as part of this. Therefore, under our proposed model someone who is currently an "RFA" would only be licensed to provide advice if they can demonstrate they have sufficient organisational capacity and competence to provide the financial adviser services covered by the licence (this would include meeting minimum training/education requirements for that product type, in addition to having competency in the advice process and an understanding of their professional and ethical obligations. The adviser would also have to demonstrate ongoing competency (in respect of both the product type and their scope of service) by meeting continuing professional development requirements in order to retain their accreditation). No one could use the term "adviser" without demonstrating this competency and capacity. An RFA who is unwilling to assume these greater responsibilities would be a financial product sales person under our model.

Under this model it is clear that where a consumer is receiving advice, they are receiving it from a person competent to give it.

We would also like to see more transparency in the levels of training/competency that an adviser has attained by requiring this information to be recorded on the adviser's FSP registration.

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9. Are the general conduct requirements applying to all financial advisers, including RFAs, appropriate and adequate? If not, what changes should be considered?

We consider that the general conduct requirements set out in the FA Act are broadly appropriate. We believe that all adviser conduct requirements should be contained in the Code, which should apply to all advisers (regardless of what products they are accredited to provide advice on).

We also support the principle that there is flexibility within the Code to change/introduce new standards/requirements as required.

10. Do you think that disclosing this information is adequate for consumers? Should RFAs be required to disclose any additional information?

[AMP not providing response]

11. Are there any particular issues with the regulation of RFA entities that we should consider?

See response in Q8 above.

12. Are the costs of maintaining an adviser business statement justified by its benefits? If not, what changes should be considered?

Yes, we support the retention of an ABS. Anyone operating as a QFE or an independent adviser must be able to clearly articulate their business (regardless of whether they are operating under a sales or advice model).

13. Is the distinction between an investment planning service and financial advice well understood by advisers and their clients? Are any changes needed to the way that an investment planning service is regulated?

Investment planning services are an outworking of product/advice categorisation. Therefore, under our proposed model (where the complexity of the customer's needs, rather than product/advice categorisation, determines the scope of the customer engagement) if an advice process is required to be fit for purpose for that customer's needs (based on an agreed regulatory standard), then a separate categorisation for investment planning services should not be required.

14. To what extent do advisers need to exercise some degree of discretion in relation to their clients' investments as part of their normal role?

DIMS has not been around long enough (in its current newly regulated form) for us to comment on this.

15. Should any changes be considered to reduce the costs on advisers who exercise

some discretion, but are not offering a funds management type service?

See response to Q14 above.

16. Are the current disclosure requirements for Authorised Financial Advisers (AFAs) adequate and useful for consumers?

Our thoughts on disclosure generally are set out below.

As mentioned above in Q8, we promote the removal of a distinction in adviser categories and the different disclosure standards that currently apply. We believe that the same disclosure requirements should apply to all advisers, and needs to be appropriate for the type of service being provided by the adviser.

All advice disclosure needs to be simplified and meaningful to the consumer. The disclosure documents today are too lengthy and contain too much boiler plate information. We would support mandating maximum document length.

Further, all information should be contained in one document, other than remuneration disclosure (specific to the advice being provided by the adviser), which should be captured in the Statement of Advice (rather than a separate remuneration disclosure). We believe if a payment (e.g. soft commission) cannot be adequately and simply disclosed by an adviser that it should not be paid.

As set out in Q2, we also believe that disclosure needs to be mandated for all sales arrangements to ensure that the consumer understands what service they are receiving from the salesperson. This would comprise an initial verbal disclosure by the salesperson advising the customer of the limitations of the sales service being provided by that salesperson and how the salesperson may be compensated for the sale, followed up by written disclosure. This is consistent with other recent consumer protection legislation eg CCCFA and uninvited direct sales. Sales disclosure should be standardised so it can be comparable (to this end we note the direct comparability of information received for on road costs in the sale of a motor vehicle regardless of seller or vehicle type), and must be clear and concise so that the consumer can compare product offerings across various providers in a no-advice model.

17. Should any changes be considered to improve the relevance of these documents to consumers and to reduce the costs of producing them?

[AMP not providing response]

18. Do you think that the process for the development and approval of the Code of Professional Conduct works well?

[AMP not providing response]

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19. Should any changes to the role or composition of the Code Committee be considered?

[AMP not providing response]

20. Is the Financial Advisers Disciplinary Committee an effective mechanism to discipline misconduct against AFAs?

There have been few decisions emerging from FADC. The initial policy intention of FADC being an efficient means to resolve disciplinary issues have arguably therefore not been realised, as there have clearly been far greater number of breaches than have been taken to FADC for consideration.

We are concerned with the complexity and formality of the FADC process, which seems more akin to a court process rather than the process adopted by comparative disciplinary tribunals (eg NZMDT and the NZICA disciplinary tribunal). We are concerned that FADC has not delivered useful precedent to the advisor community to assist that community in understanding the metes and bounds of the legislation. Given the sparcity of cases it has also not provided an effective deterrence mechanism.

21. Should the jurisdiction of this Committee be expanded?

In our view having a meaningful, but efficient, disciplinary process is desirable. See our comments in Q20 above – we would focus on resolving these issues.

22. Does the limited public transparency around the obligations of Qualifying Financial Entities (QFEs) undermine public confidence and understanding of this part of the regulatory regime?

From a consumer perspective the key issue is that the QFE is responsible and accountable for the actions of its QFE advisers, and that FMA has conferred QFE status on the entity because it is satisfied that the QFE meets the required standards.

Because the QFE takes responsibility for its QFE advisers we consider that this is the best model for ensuring consumer protection, as the QFE entity has the capacity to invest in infrastructure and resources to ensure its QFE advisers meet their requirements (relative to the consumer interaction that the adviser is undertaking). The model also allows the FMA to use its resources more appropriately.

We consider it would be useful for the FMA website, and perhaps individual QFE's websites to clearly articulate what it means for consumers to receive advice or have product sold by advisors within the QFE.

However, we do note that term "QFE" is not meaningful for the consumer and would support changing the name to something that better reflects the role/purpose of the entity,

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such as a “Licensed Advice Organisation”. This would reflect the obligations of the entity more meaningfully.

23. Should any changes be considered to promote transparency of QFE obligations?

[AMP not providing response]

24. Are the current disclosure requirements for QFE advisers adequate and useful for consumers?

See our response to Q16 above.

25. Should any changes be considered to improve the relevance of these documents to consumers or to reduce the costs of producing them?

See our response to Q16 above.

26. How well understood are the broker requirements in the FA Act? How could understanding be improved?

[AMP not providing response]

27. Are these requirements necessary and/or adequate to protect client assets? If not, why not?

[AMP not providing response]

28. Should consideration be given to introducing disclosure requirements for brokers? If so, what would need to be disclosed and why?

[AMP not providing response]

29. What would be the costs and benefits of applying the broker requirements in the FA Act to insurance intermediaries?

[AMP not providing response]

30. Are the requirements on custodians effective in reducing the risk of client losses due to misappropriation or mismanagement?

[AMP not providing response]

31. Should any changes to these requirements be considered?

[AMP not providing response]

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32. Is the scope of the FA Act exemptions appropriate? What changes should be considered and why?

[AMP not providing response]

33. Does the FA Act provide the Financial Markets Authority (FMA) with appropriate enforcement powers? If not, what changes should be considered?

[AMP not providing response]

34. How accessible and useful is the guidance issued by the FMA? Are there any improvements you would like to see?

[AMP not providing response]

35. What changes should be considered to make the current regulatory regime simpler and easier for consumers to understand? For example, removing or clarifying the distinction between AFAs and RFAs.

See our response to Q3 above.

36. To what extent do consumers understand that some financial advisers' primary roles may be selling financial products, rather than solely acting as an unbiased adviser to their clients?

See our response to Q3 above.

37. Should there be a clearer distinction between sales, information provision, and advice? How should such a distinction be drawn? What should or should not be included in the definition of financial advice?

See our response to Q3 above.

38. Do you think that current AFA disclosure requirements are effective in overcoming problems associated with commissions and other conflicts of interest?

See our response to Q16 above.

39. How do you think that AFA information disclosure requirements could be improved to better assist consumer decision making?

See our response to Q16 above.

40. Do you support commission and conflict of interest disclosure requirements being applied to all financial advisers? If so, what requirements are appropriate for different

adviser types?

Yes, the same disclosure requirements should apply to all financial advisers. The type/method/amount of disclosure should reflect the service being provided, and not the different adviser types.

41. Do you think that commissions should be restricted or banned in relation to financial advice, and if so, in what way? What would be the costs and benefits of such an approach?

Commissions are a complex issue with a range of competing stakeholders, and changes would have broad market impact across manufacturers, distributors and consumers. Any legislative changes that limit or ban commissions accordingly need to be considered from all sides. AMP is a major supporter of the FSC sponsored "Trowbridge like" report. We consider that these findings, when available, should be carefully considered as part of the commission's debate.

It is important that the structure supports suitable reward and does not create undue conflicts for the adviser. In respect to existing commission structures in NZ, NZ is an international outlier. Initial commission levels of 180% - 200% of first year premium, with on-going renewal commission of 6% - 10% are standard in NZ, with levels of up to 230% initial commission being commonly seen. This compares to standard commission levels of 120% initial/10% renewal in Australia (according to the Trowbridge report). Our calculations indicate that premiums are inflated by up to 30% in NZ compared to Australia, largely we believe as a result of higher commission levels. With commissions at these levels we have little sympathy for those in the industry who raise the cost of compliance as arguments against regulation. The current standard of advice regulation is lower than that applying internationally in circumstances where NZ "advisers" are earning significantly higher premiums than their international peers. It should be made clear to a consumer that those unwilling to invest in compliance systems and controls are not advisers, they are salespeople, and the consumer does not have the same safeguards.

In our view, the current commission model in NZ is driving high cost and risk and thus limiting affordability and accessibility to the detriment of insurance adequacy for consumers. According to the "World insurance in 2014: back to life" report published by Swiss Re (*sigma* No 4/2015), life insurance premiums per capita in 2014 in NZ were USD$401 compared to USD$2382 in Australia, and life insurance premiums as a % of GDP were 0.9% for NZ compared to 3.8% for Australia (which is lower than most in the OECD). In contrast, the picture is completely different for non-life/general insurance where both premiums per capita and as a % of GDP are higher in NZ than Australia.

Our analysis shows that the adoption of a flat 20% commission model as is standard in the general insurance sector, would allow prices to be 10% cheaper than current. And this is before allowing for the potential consequent impact of reduced churn, which would allow prices to be pitched even lower.

We promote a move over time to a "fee for service" (FFS) model. We believe that payment of fees promotes professionalism, and appropriately recognises the value that an adviser delivers.

The remuneration model must also promote access. We believe product cost (e.g. insurance premiums) will come down if significant upfront commission payments are removed, enabling an appropriate FFS to be negotiated depending on the complexity of the engagement. The current remuneration model inappropriately allocates risk – all insurance clients' bear the cost to serve but the benefit is allocated to the distributor.

42. Has the right balance been struck between ensuring advisers meet minimum quality standards and ensuring there is competition from a wide range of providers (and potential providers)?

Whilst adviser standards have improved since the introduction of the FA Act, we believe that there is still scope for education and quality standards to be raised over time.

The minimum education requirements should comprise a core syllabus for all advisers (covering such things as an advice process, conflicts, code/ ethical requirements) coupled with tailored components relevant to the adviser's scope of service, eg risk products, insurance advice, wealth. ASIC Guidance Note 146 is useful to consider in this respect.

43. What changes could be made to increase the levels of competition between advisers?

We don't believe that regulation has significantly reduced consumer access to financial advice; the issue is more about consumer education i.e. the consumer understanding when they should get advice. In our view those persons in NZ who today have difficulty accessing advice would have had similar difficultly prior to regulation and it relates to the business model of the advisor providing advice to low net worth clients.

NZ has significantly higher adviser numbers per head of population relative to other markets. In the insurance space, where NZers are known to be underinsured, these relatively larger advisor numbers are not penetrating the uninsured population, rather they are writing new business for customers who already hold insurance.

44. Do you think that the Code of Professional Conduct for AFAs strikes the right balance between requiring them to understand their clients and ensuring that consumers can get advice on discrete issues?

[AMP not providing response]

45. To what extent do you think that the categorisation of types of advice and advisers is distorting the types of advice and information that is provided?

See our response to Q3 above.

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46. Are there specific compliance requirements from the FA Act regulation that have affected the cost and availability of independent financial advice?

[AMP not providing response]

47. How can regulatory requirements be made less onerous without reducing the quality and availability of financial advice?

[AMP not providing response]

48. What impact has the AntiMoney Laundering and Countering Finance of Terrorism Act had on compliance costs for advisers? How could these costs be minimised?

Reduce costs by putting the AML and AFA reporting requirements together.

49. What impact do you expect that KiwiSaver decumulation will have on the market for financial advice in New Zealand? Are any specific changes to regulation needed to specifically promote the availability of KiwiSaver advice?

As KiwiSaver balances increase, and more KiwiSaver members reach retirement age, this will drive a requirement for higher standards of advice in New Zealand, as for many New Zealanders their KiwiSaver funds will be their main source of retirement savings, therefore access to quality advice will be essential.

There is currently a perception that NZ advice standards are lower than other OECD countries. If the government wants to ensure that NZ meets international best practice standards and promote greater participation in capital markets, then it should be looking to align its advice standards to countries such as Australia. This may have implications for the qualifications that NZ advisers are required to attain.

50. What impact do you expect that the introduction of the Financial Markets Conduct Act (FMC Act) will have on the market for financial advice in New Zealand? Should any changes to the regulation of advice be considered in response to these changes?

[AMP not providing response]

51. Do you think that international financial advice is likely to increase? Is the FA Act set up appropriately to facilitate and regulate this?

Given the NZ government's desire to leverage closer economic relations with Australia across most sectors of the economy, fostering alignment with Australia on advice standards, with the goal of full mutual recognition, has the potential to unlock opportunities for New Zealand advisers (and other market participants). With Australia's total superannuation assets now approximately $2 trillion (and growing) and with a large number of New Zealanders in that market, enabling New Zealand advisers to establish or continue

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relationships with these consumers has the potential to create considerable growth for the New Zealand advice market.

52. How beneficial are the current arrangements for transTasman mutual recognition of qualifications? Should further arrangements be considered?

[AMP not providing response]

53. In what ways do you expect new technologies will change the market for financial advice?

[AMP not providing response]

54. How can government keep pace with technological developments to ensure that quality standards for advice are maintained, without inhibiting innovation?

[AMP not providing response]

55. Are the minimum ethical standards for AFAs appropriate and have they succeeded in fostering the ethical behaviour of AFAs?

We consider that the minimal standards for ethical behaviour contained in the Code are broadly appropriate. In our model these would apply to all advisers. We also support the principle that the Code can be amended from time to time as required to ensure public confidence in the professional standards of advisers.

We believe that standards have risen since the Code was introduced, as advisers become increasingly familiar with the requirements and understand how these standards apply to the financial advice that they are providing to their customers. Increasing consumer engagement and educational standards for advisers will serve to improve the ethical behaviour of advisers over time. We consider that ethics should be a key part of an adviser's training and continuing professional development.

56. Should the same or similar ethical standards apply to all types of financial advisers?

Yes, the same requirements should apply to all advisers.

57. What is the appropriate minimum qualification for AFAs?

As submitted earlier, we promote the removal of a distinction in adviser categories. In our view any person providing financial advice must be appropriately qualified for the products that they are advising on. Advisers should not be able to provide advice on any product where they do not have requisite skill/training/competency. This is true of advisors within licensed entities and those independently licensed.

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As set out in response to Q3 the minimum education requirements should comprise a core syllabus for all advisers (covering such things as an advice process, conflicts, code/ ethical requirements) coupled with tailored components relevant to the adviser's scope of service, eg risk products, insurance advice, wealth. Again we note ASIC Guidance Note 146 in this respect.

We promote raising the education standards of advisers over time. We would expect advisers to aspire towards a professional qualification. We understand this is a process that will take time. We would also like to see more transparency in the levels of training/competency that an adviser has attained by requiring this information to be recorded on the adviser's FSP registration.

58. Do you think that RFAs (for example insurance or mortgage brokers) should be required to meet a minimum qualification relevant to the area of advice they specialise in? If so, what would be an appropriate minimum qualification?

Yes. Please see comments in Q57 above, noting we believe minimum qualifications should extend to any person providing advice.

59. How much consideration should be given to aligning adviser qualifications with those applying in other countries, particularly Australia?

As mentioned in Q52 above, given the NZ government's desire to leverage closer economic relations with Australia, one of the objectives of the legislation should be to promote the trans-tasman mutual recognition of advisers. Accordingly, looking to Australia as a matter of direction is appropriate bearing in mind that Australian policy is not always applicable in the NZ context.

60. How effective have professional bodies been at fostering professionalism among advisers?

In our view this is not the role of professional industry bodies. We believe the role of a professional body is to display leadership by adopting a clear public position on important issues facing the industry and to represent its members by lobbying and influencing government on these issues. We also see the role of a professional body is to support its members by providing them with training and professional development opportunities.

61. Do you think that professional bodies should play a formal role in the regulation of financial advisers, and if so, how.

No. There should be no role for professional bodies in the regulation of financial advisers. This creates undue complexity and seems to be suggesting a pre FAA approach, which failed because it relied on professional bodies to establish and enforce standards.

In our view the model whereby the licensed entity takes responsibility for its advisers, and the FMA directly regulates independent licensed advisers outside of a licensed entity, is the correct one.

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As a general comment, we consider there is room for improvement in the way bodies, such as the Code Committee, engage with industry. We support initiatives that would promote better industry/government engagement. The government and industry groups need to revisit how they can work together more effectively (e.g. establishment of an industry group that the government/regulator can work with on issues such as innovation, advice evolution, Code standards, consumer interests etc). In this respect the fragmented nature of the professional bodies currently serving the advice industry has probably hindered rather than assisted engagement.

62. Should any changes be considered to the relative obligations of individual advisers and the businesses they represent? If so, what changes should be considered?

We support a sales and advice model. In either model where the person is employed by, or contracted to an entity, that entity must be responsible for that person's conduct and their compliance with rules relevant to the customer engagement (disclosure obligations for example). A consumer's right of action should be against the entity, as that is the brand they are engaging with (vs the employee, eg a bank teller). The FMA, as the regulator of the entity, must have sufficient tools to deal with errant sales or advice staff, in circumstances where the entity is not adequately doing so.

Sales people/advisers working outside a licensed entity must be accountable to the consumer and FMA directly, and must carry adequate and appropriate insurance relevant to their business (and this must be prescribed in legislation).

63. Is the QFE system achieving its goals in terms of consumer protection and reducing compliance costs for large entities? If not, what changes should be considered?

Yes.

Because the QFE takes responsibility for its QFE adviser we consider this has the potential to provide a better outcome for the consumer. Because QFEs are required to meet minimum standards set by the FMA, this provides the consumer with better access to remediation (eg better complaints handling). We would support the concept of additional capital requirements being imposed on QFEs to ensure that there is sufficient capital to apply toward any advice failure.

The compliance costs of the QFE model are high, but work to reduce individual adviser compliance costs. We don't see that that these costs outweigh the benefit of providing consumers with an effective/quality advice model.

As noted in Q41 above, Australian advisers earn lower commission than their NZ counterparts and are able to operate viable business models despite being subject to higher compliance requirements (and arguably higher compliance costs). Therefore, we don't believe that the increased compliance costs associated with regulation in NZ should be used as justification for lower advice/compliance standards.

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64. Do you agree that the Register should seek to achieve the identified goals? If not, why not?

[AMP not providing response]

65. What goals do you consider should be more or less important in reviewing the operation of the Register?

[AMP not providing response]

66. Do you agree that the dispute resolution regime should seek to achieve the identified goals? If not, why not?

[AMP not providing response]

67. What goals do you consider should be more or less important in reviewing the dispute resolution regime?

We consider consumer confidence in the dispute resolution regime is the most important goal, because even if a consumer is aware of the regime and can access it, if they don't have confidence in the process then they will be reluctant to use it.

In order for consumers to have confidence in the dispute resolution regime, the schemes must have consistent (prescribed) operating standards/requirements. Because the consumer doesn't get to choose which DRS to use, they need to have confidence that the outcome will be the same regardless of the DRS venue. We cannot have differing thresholds, as this encourages race to the bottom (e.g. encourages participants to join the DRS with the lowest claim limit).

68. Does the FMA need any other tools to encourage compliance with financial service provider (FSP) registration? If so, what tools would be appropriate?

[AMP not providing response]

69. What changes, if any, to the minimum registration requirements should be considered?

We don't believe the Register is currently fulfilling its intended role of providing consumers with easy access to useful information about advisers.

We believe there is scope for the Register to play a far greater role in the regulation of financial advisers. To be an effective tool for regulators and the consumer, all advisers need be registered on the FSPR (regardless of adviser categorisation) so that the Register provides a complete database of all advisers.

The Register also needs to include more meaningful information about an adviser, including education/qualifications and disciplinary records (more akin to ASIC's new registration process). Providing consumers with access to more detailed adviser information will provide greater transparency and improve consumer financial literacy, thereby enabling consumers to make a more informed decision about which financial adviser to use.

Independent salespeople should be registered on the FSPR (other than employee salespeople working within a licenced entity (e.g. call centre staff), who would be covered by their entity's registration).

70. Does the requirement to belong to a dispute resolution scheme apply to the right types of financial service providers?

Yes

71. Is the current framework for the approval of dispute resolution schemes appropriate? What changes, if any, should be considered?

[AMP not providing response]

72. Is the current framework for monitoring dispute resolution schemes adequate? What changes, if any, should be considered?

[AMP not providing response]

73. Is the existence of multiple schemes and the incentive to retain and attract members sufficient to ensure that the schemes remain efficient and membership fees are controlled?

[AMP not providing response]

74. Should the $200,000 jurisdictional limit on the size of claims that dispute resolution schemes can hear be raised in respect of other types of financial services, and if so, what would be an appropriate limit?

As mentioned above, standards across all DRS should be the same and jurisdictional limits should be prescribed. We would support a higher jurisdictional limit provided the insurer had the right for a matter to be resolved by the Courts where the matter is over a particular limit if there was a significant point of law.

75. Should additional requirements to ensure that financial service providers are able to pay compensation to consumers be considered in New Zealand?

Yes. We believe that any entity that employs/contracts advisers (QFE or independent adviser business) should be required to meet certain prescribed financial adequacy requirements (either via capital or insurance) to ensure that it can stand behind its advisers

in the event of advice/sales failure. This provides the best form of consumer protection against mis-selling etc. In addition, capacity and conduct, systems and control obligations would sit with the entity, which would be responsible for ensuring its advisers do not mis-sell to the consumer; that is a consumer's right of action should be against the entity rather than the individual.

Any independent adviser operating in a standalone capacity (rather than through an adviser business) would also have to meet certain prescribed financial adequacy requirements (either via capital or insurance).

CHAPTER 10 – KEY FSP ACT QUESTIONS FOR THE REVIEW

76. What features or information would make the Register more useful for consumers?

See response to Q69 above.

77. Would it be appropriate for the Register to include information on a financial Adviser's qualifications or their disciplinary record?

Yes, see response to Q69 above.

78. Do you consider misuse of the Register by offshore financial service providers is a significant risk to New Zealand's reputation as a well regulated jurisdiction and/or to New Zealand businesses?

[AMP not providing response]

79. Are there any changes to the scope of the registration requirements or the powers of regulators that should be considered in response to this issue?

[AMP not providing response]

80. What are the effects of (positive and negative) competition between dispute resolution schemes on effective dispute resolution?

[AMP not providing response]

81. Are there ways to mitigate the issues identified without losing the benefits of a multiple scheme structure?

[AMP not providing response]

82. Are the current regulatory settings adequate in raising awareness of available dispute resolution options? How could awareness be improved?

[AMP not providing response]

83. Please provide your name and/or the name of the group of people, business, or organisation you are providing this submission on behalf of:

AMP Financial Services (NZ)

84. Please provide your contact details:

18(d)

85. Are you providing this submission as an individual or on behalf of an organisation?

On behalf of an organisation.

86. If submitting on behalf of an organisation, how many people are in the organisation, or work in the organisation, that you are providing this submission on behalf of?

500+