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Corporate Law
Labour and Commercial Environment Group
Ministry of Business, Innovation & Employment
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By email: faareview@mbie.govt.nz

To whom it may concern,

Please find attached our submission to the Review of the Financial Advisers Act 2008.

Any questions regarding our submission can be directed to Cameron Watson or David Sawtell. Their contact details are provided below.

Yours faithfully
Craigs Investment Partners Limited

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Executive Summary

In this executive summary we provide an overview of the current industry structure, a list of our key recommendations and a diagram of the industry structure we believe the FAA Review should aim to achieve.

Our view of the current situation

	Authorised Financial Advisers (AFAs)	QFE Advisers (QFEAs)	Registered Financial Advisers (RFAs)
Advice allowed	Can provide both class and personalised on both category 1 (more complex) and 2 products	Can provide personalised advice only on their firm's own category 1 products, and class advice on any category 2 products	Personalised advice permitted only on category 2 (more simple) products but can provide class advice on any product
Subject to Code of Conduct	Yes	No - QFE subject to conditions of their approval	No
Subject to disclosure obligations	Yes	Yes	No
AFA qualification required	Yes	No - QFE responsible for training	No
Must be registered as a FSP	Yes	Yes - only the QFE, not the individual advisers	Yes
Estimated number in NZ	1,900	2,000 (our estimate)	6,200
Profile	AFAs are usually 'full service' financial advisers providing the full spectrum of financial advice from financial planning through to portfolio management/broking. Circa 35% of AFAs work in banks, another c35% with NZX Firms and the remaining 30% are with financial advisory groups, both large and small.	There are 56 Qualifying Financial Entities (QFEs) in NZ; mainly banks, insurance companies and fund managers. The Issues Paper lists 23,000 non-AFAs working in QFEs. This seems to be an estimate of total front line staff at banks etc and in no way reflects how many QFEAs there are providing advice in reality, in our view. Assuming there is one QFEA in each bank branch would give a total of circa 1,000 QFEAs, and then assuming the same number are working in other entities would give a total of around 2,000 QFEAs. Most QFEAs provide class advice on their firm's KiwiSaver, deposits and managed funds.	Most RFAs are involved in insurance; both life and fire and general. Others are mortgage brokers.

Our Submissions (in order of priority)

Simplifying financial advice for consumers should be a key objective of the Review

In our view, the current regulatory framework is complex and laden with jargon that consumers do not understand. An overarching objective should be to simplify the regulation, for both consumers and advisers. Steps to achieve this are outlined in the table below, including:

- Anyone providing advice must be an adviser (AFA) and subject to the Code of Conduct
- Replace the terms 'class' and 'personalised' advice, which are meaningless to consumers, with the terms 'information' and 'advice'
- Improve accessibility to advice by allowing advisers to scale the level of advice to suit the client's needs, and provide advisers with clearer guidance on the documentation required
- Remove the category 1 and 2 product distinctions, recognising that all products involve risk and that the regulation should govern advice, not products.

	Submission	Detail	Referred to in questions
1.	Require any person providing financial advice to have AFA status and be subject to the Code of Conduct	Lift the quality and credibility of the advice sector by requiring any person providing financial advice (including lawyers, accountants, QFEAs and RFAs) to be registered as a financial adviser (AFA) and be subject to the Code of Conduct. Recognising banks and insurance companies (QFEs) are an important source of financial advice for consumers, they should be provided a transition period to assist their RFA and QFEA staff move across to AFA status. QFEs should remain. RFA status should be removed. All firms providing advice should be licenced and there should be more equalisation between QFEs and non-QFE firms in terms of governance and AFA liability. QFE Advisers should be subject to the Code while non-QFE firms should have similar supervisory obligations as QFEs.	1, 8, 9, 11, 20, 21, 23, 32, 35, 43, 45, 56, 57, 62, 63
2.	Improve accessibility to advice by providing advisers with more guidance on required documentation	Accessibility of advice is a key issue that should be addressed by this Review. Enable the Code Committee to provide clearer guidance to advisers on the required documentation for different levels of advice. This does not mean the format of documents should be prescribed, but clear guidance provided on required content. This will remove the uncertainty advisers currently face and therefore raise the accessibility of advice for consumers.	1, 5, 34, 42, 44, 53
3.	Clarify types of advice to enhance consumer understanding	'Class' and 'Personalised' are meaningless term to consumers. We recommend replacing these terms with 'Information' and 'Advice'. Within advice we recommend advisers being able to scope the appropriate level of advice and scale this to suit the client's needs, with the advice being required to clearly explain to the client the limitations and nature of the advice provided. Perhaps there could be three levels of personalised advice; general (view on specific investments), limited (time-bound, situational) and comprehensive. As noted above, clearer guidance for advisers should be provided by the Code Committee on required documentation for each level of advice so they have more confidence providing limited personalised advice. We believe this would improve accessibility to advice for consumers.	1, 5, 13, 34, 35
4.	Simplify Disclosure Statements	Disclosure information is ineffective for consumers – it is confusing and having multiple levels of disclosure is difficult to manage by advisers. Have one disclosure statement that clearly states whether the advice is independent or restricted with respect to whether products and services recommended are issued by the adviser's employer, how the adviser is remunerated, their area of specialisation (in terms meaningful to the consumer, e.g. investment, insurance, financial planning) and what they can and cannot provide advice on, as well as their qualifications, experience and any disciplinary issues.	1, 10, 16, 17, 24, 35, 36, 37, 38, 39, 40

5.	Make better use of the Adviser Register	Improve the Adviser Register to be more like the Australian register so consumers can search advisers on the information provided in disclosure statements, e.g. area of specialisation, independence, experience, qualifications etc.	1, 35, 39, 64, 65, 68, 76
6.	Allow limited discretion for management of corporate actions	It would be very helpful in the management of direct portfolios if a limited and specific level of discretion is allowed to manage corporate actions, such as rights issues. At times, not acting on these events due to a lack of response can disadvantage clients. In our view, retail clients who do not wish to use a DIMS service or a managed fund should not be disadvantaged with respect to corporate actions. We submit the FAA allow a limited form of discretion (e.g. negative consent) to manage corporate actions as an exemption from the DIMS regime.	14
7.	Raise educational requirements for new entrants	The current educational requirements are adequate but we recommend raising the requirement to a bachelor degree level over time. This will help lift the credibility of the advice industry and help attract people to the sector.	1, 42, 57
8.	Allow AFA trainees to provide advice under supervision	While large firms such as ours have the ability to subsidise new advisers joining the industry while they gain their AFA, we expect this would be more difficult for smaller firms. It would be a positive step for the industry if some form of supervisory period be permitted to allow trainee advisers to offer advice while they are studying for their AFA, as long as they are fully supervised by an AFA.	47, 57
9.	Remove category 1 and category 2 product distinctions	These categorisations would become redundant if all advisers were required to be AFAs. We also believe all products involve risk and it is advice that should be regulated, not products. We also submit that investment property, excluding the family home, should be defined as an investment by the FAA. For clarity, the term 'financial advice' does not, in our view, refer to the products used, but to the consumer's financial situation.	1, 3, 7, 35, 45
10.	Remove Adviser Business Statement	We see little value in the ABS for advisers or consumers, especially if the disclosure statement is improved and includes some of the key elements around how an adviser operates. The FMA survey can be used to collect other relevant information on the structure of an AFAs business. A licensing system would remove the need for an ABS and the content would become the terms of the license.	12

Recommended Industry Structure - post FAA Review

We believe if our submissions are implemented it would result in a more consumer-friendly advice industry and for advisers, a clear, robust and professional regulatory structure, as outlined in the table below.

	Key area	**Detail**
1.	Estimated number of advisers	Perhaps 7,000, assuming QFEAs gain AFA status and 3,000 RFAs move across to AFA regime
2.	Disclosure	All advisers subject to same disclosure obligations – disclose whether advice is restricted or independent in respect to the products and services recommended, the adviser's area of specialisation, conflicted remuneration, qualifications, disciplinary issues etc
3.	Register	All individual advisers must be registered and qualified
4.	Code of Conduct	All advisers subject to Code of Conduct
5.	Class v Personalised Advice	Replace with Information v Advice (and enable advisers to scale their advice to suit the needs of their clients by having three different levels of advice; general, limited and comprehensive, with clear documentation standards for each)
6.	Documentation	Remove adviser uncertainty and therefore build accessibility to advice for consumers with the Code Committee / FMA providing clear guidance to advisers on required documentation for differing levels of advice
7.	Integrity of industry	Only qualified AFAs can provide financial advice. No leakage with RFAs or incidental advice for lawyers, accountants etc.

Role and Regulation of financial advice

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

We understand the identified goals are: consumers have information to find and choose a financial adviser, financial advice is accessible and public confidence in the professionalism of financial advisers is promoted. We absolutely agree, and recommend the following improvements to the Act to achieve these goals:

1. Consumers have information to find and choose a financial adviser

- Make the Financial Services Register more user friendly for consumers so it can be used easily to search for advisers. Increase the depth of information recorded against each adviser, available in order of importance to consumers, such as areas of specialisation (perhaps with formal AFA categorisations, e.g. investments, insurance, derivatives etc) qualifications, experience and any material disciplinary issues. Each adviser's disclosure statement should also be available on this register.

- Consolidate the adviser disclosure statements into one shorter and more meaningful disclosure that has a schedule informing consumers of area of specialisation, whether the advice provided is restricted or independent and a clear disclosure of any conflicted remuneration. This will help address the asymmetric risk facing consumers in terms of 'not knowing what they don't know'.

2. Financial advice is accessible

- The FAA has reduced accessibility to advice because of the cost of providing personalised advice and the regulatory risk advisers feel exposed to when providing anything other than comprehensive personalised advice.

- We submit this could be solved by ensuring the Act can allow the Code Committee / FMA to provide clearer guidance to advisers on the required documentation required for different levels of advice. This will remove the uncertainty advisers currently face and therefore raise accessibility for consumers to advice.

- Alongside this clearer guidance, we also recommend clarifying the types of advice. The terms 'Class' and 'Personalised' are meaningless to consumers. We recommend replacing these terms with 'Information' and 'Advice'. Within advice we recommend advisers being able to scope the appropriate level of advice and scale this to suit the client's needs. Perhaps there could be three levels of personalised advice; general (view on specific investments), limited (time-bound, situational) and comprehensive. As noted above, the Code Committee / FMA should provide clearer guidance on required documentation for each level of advice.

3. Public confidence in the professionalism of financial advisers is promoted

We see this as a key issue as the credibility of the whole industry and is negatively impacted by any unacceptable behaviour of a few errant advisers. We believe three steps should be considered to help lift the credibility and professionalism of financial advice, namely:

1. The industry should be simplified for consumers and there should be a higher standard of quality across financial advisers. Financial advice should only be permitted to be provided by qualified financial advisers (i.e. AFAs). This means RFAs, QFEAs, lawyers and accountants who wish to provide financial advice are required to become AFAs. With the proliferation of lightly regulated high-risk investment schemes, such as peer-to-peer lending, crowd-funding and property syndicates we believe it is becoming more important that consumers receive quality financial advice. At present we see anecdotal evidence that this advice is often undermined by these product promoters. The terms RFA and QFEA should be removed and there should be one term (AFA) that covers all financial advisers. Recognising

banks and insurance companies (QFEs) are an important source of financial advice for consumers, a transition period should be provided to assist them move their RFA and QFEA staff to AFA status.

2. Remove category 1 and 2. All financial products have inherent risks. No product should be carved out of the advice regulation. Advice regulation should never be product based. This would not stop a bank teller providing information about simple products such as term deposits. However, they should not provide advice on investing in term deposits. A range of complex issues need to be addressed when considering investing in an inherently simple product like term deposits, such as inflation, interest rate risk and strategies such as diversification, credit risk and laddering.

3. Raise the educational standards for financial advisers. The current requirement for the National Certificate in Financial Services is adequate but we recommend a gradual lifting in educational requirements, implemented over time. New advisers should be required to hold a relevant bachelors degree, followed by a period of work experience. We contend that rather than discouraging people to become AFAs, higher educational standards will help attract people to the industry. New advisers should be able to provide limited advice under supervision whilst completing their qualification.

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

Public confidence should be the first priority given the other goals become irrelevant if consumers have no confidence in financial advisers.

The challenge for policy makers is to balance public confidence with accessibility as they are potentially conflicting goals. Public confidence is important, but so is accessibility given the important role vibrant and growing capital markets play in the economy. Research suggests that a higher level of financial development – defined as deeper and more liquid financial markets – helps promote long-run economic growth[1].

[1] A primer on New Zealand's capital markets, Lauren Rosborough, Geordie Reid, Chris Hunt, RBNZ Bulletin Vol 78, No.3, May 2015.

How the FA Act works

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

The only comment we would add here is that advice should not be limited to financial products. An endless list of non-financial items can be included in investment portfolios, such as gold, art, property, historical documents, antiques etc. However, the most material issue is that property is not included given it is the investment of choice of many consumers.

We submit that the words 'financial product' be replaced with 'investment' and 'investment' be extended to include investment property. For clarity, the term 'financial advice' does not, in our view, refer to the products used, but to the consumer's financial situation.

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?

It is appropriate but the distinction is still somewhat unclear. The objectives should be to ensure that all consumers who should have the protections provided under the FAA and Code of Conduct are categorised appropriately.

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?

They are ineffective insofar as consumers have no understanding of the distinction. They appear to regard all advice as 'advice', whether class or personalised. The class versus personalised distinction is difficult to manage for advisers, especially for clients who want some advice but do not want a comprehensive personalised service.

A solution could be to remove the class and personalised distinction and replace with a distinction between information and advice. Then, within advice, advisers can manage the scale of advice provided (and documentation therefore required) depending on client demand, ranging from general advice, limited advice through to comprehensive advice.

Guidance and safe-harbours, based on case studies, should be provided to advisers on how to distinguish between the scale of advice provided. Advisers should be able to document the client limitations/requirements of the advice provided and therefore gain safe exemption from full documentation as appropriate. Providing information should be distinct from advice.

Allowing flexibility in the level of advice that is provided to a client is critical to increasing the accessibility of advice. Without the ability to access limited advice at reduced cost many consumers are priced out of the market for advice as they are not prepared to pay for comprehensive personalised advice.

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

No. The qualification and regulatory standards should be exactly the same across all advisers irrespective of products recommended, but different qualification streams should be available (as is currently the case) to suit an adviser's area of specialisation.

Advisers should have identified areas of specialisation, and their qualifications need to reflect this focus. For example, an adviser with only insurance training should not be able to provide investment advice, and vice versa. All advisers should be required to have an AFA, and then this could be complemented with the adviser's area of specialisation, such as insurance or investing. A useful analogy could be drivers licences that are then complemented with heavy traffic etc.

We believe the distinction between category 1 and 2 should be removed, as stated earlier, as should the different 'levels' of adviser. RFA and QFEA should be removed and replaced with one standard, AFA, for all financial advisers.

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?

No. This is covered above; we believe all financial products are complex and the categories should be removed.

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. See answers above. The Colmar Brunton survey completed for the Ministry and anecdotal evidence strongly suggests that consumers do not understand the terms, with some actually regarding the term RFA as superior to AFA. The term RFA can be seen to imply that all other advisers are unregistered.

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

No. There should be no distinction between any advisers. All should have the same conduct requirements, i.e. the Code of Conduct.

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

No. We believe all advisers should have the same disclosure obligations, which includes disclosure on how they are remunerated. See our answer to Q1.

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

Our view, as outlined in our answers to previous questions, is that there should be no RFAs, therefore specific regulation of RFAs is not required. All financial advisers should be AFAs.

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

No. It is superfluous and a compliance burden for AFAs and confusing for consumers. We submit the requirement to maintain an ABS be removed and some key information from the ABS be included in a simplified disclosure statement that is more meaningful and useful for consumers. The requirement for an ABS should superseded by licencing provisions as suggested.

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?

No. We see no meaningful distinction between personalised financial advice and an investment planning service. We submit it is not well understood by advisers, let alone consumers. We believe the investment planning service distinction offers no value to consumers, adds to complexity and should be removed.

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?

It would be very helpful in the management of direct portfolios if a limited and specific level of discretion is allowed to manage corporate actions, such as rights issues. At times not acting on these events due to a client failing to respond can disadvantage clients. Currently, approval is required from clients before advisers can act on a corporate action. This means that if an adviser is unable to contact clients to gain their approval, either because they are unavailable or the timeframe makes it impossible, the clients may suffer a financial loss.

In our view, retail clients who do not wish to use a DIMS service or a managed fund, should not be at a disadvantage with respect to corporate actions. We submit the FAA allow a limited form of discretion to manage corporate actions.

This exemption would need to be separate to the current contingency DIMS exemption, which is not suitable for this purpose. This exemption would be specific to purchases and sales of securities connected to a corporate action and would operate in the normal course of business. It would therefore be distinct to the contingency DIMS exemption, which can apply to any purchase or sale but is only able to be used in expected or unexpected absences.

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?

We have not identified any material changes that would assist. See our answer to question 14.

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

We believe they could be improved. They are wordy and not well-designed for consumers. They need to include shorter but include key information on conflicts of interest, qualifications, areas of specialisation. They should also follow a standard format which is clear and concise.

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

We believe it would be helpful for advisers and consumers if there was only one disclosure statement and it contained clearer information about whether advice is restricted or independent and on conflicted remuneration. Secondary disclosures would be more straightforward if the prescribed format was simplified so a more effective disclosure of fees or conflicts of interest could be made.

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

Yes. We support the process for the development and approval of the Code of Professional Conduct. The involvement of industry and consumer representation ensuring an appropriately balanced development of industry standards.

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

We support the current role and composition of the Code Committee and submit that it is vital that the Committee continue to have industry representation.

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

Yes, although we pick-up on the comment in the Issues Paper that the FADC cannot hear complaints against RFAs and QFEAs. This highlights a key problem with the current structure of the FAA that RFAs and QFEAs are subject to lower standards than AFAs, but consumers regard them as having the same or greater status as AFAs – thus lowering the quality of the entire financial advice sector.

21. Should the jurisdiction of this Committee be expanded?

Yes; To cover complaints against RFAs and QFEAs.

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?

Yes. It would be much better for the perception of the industry if only AFAs could provide financial advice.

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

There should be joint responsibility for advice, both personally by the AFA and by the AFA's employer in a supervisory capacity, across both QFEs and non-QFEs.

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

As stated earlier, we submit that all advisers should have the same disclosure obligations.

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

No comment.

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

We believe they are not well understood by consumers or others outside brokers.

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

Yes. These requirements are necessary. A properly regulated broker industry is an essential part of the provision of a financial service where client money and property is required to be handled.

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

We see limited value in this.

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

No comment

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

Key elements for reducing the risk of client losses include management supervisory processes (audit etc) and segregation of duties.

31. Should any changes to these requirements be considered?

The key issue to ensuring the protection of clients, in our view, is to have robust management procedures and policies in place, such as segregation of duties.

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

As stated earlier, we submit that anyone providing financial advice should be an AFA. To protect the integrity of the industry and to build confidence with consumers, there should be no exceptions. In our view, the incidental advice allowed by accountants and lawyers is a risk to consumers and should be removed.

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

We consider the FMA enforcement powers to be appropriate.

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

FMA guidance is readily accessible and useful. We suggest that advisers would find it helpful if the FMA could introduce additional safe harbours. This may help promote services such as limited personalised advice to investors with smaller sums to invest.

It our submission that advice be broken into different levels; general, limited and comprehensive personalised. We request that the FMA / Code Committee be permitted under the Act to provide clearer guidance for advisers on when each level of advice can be used and what documentation is required. Example template documents on discovery, statement of advice and reviews would also be helpful.

Key FA Act questions for the review

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.

A number of steps could be taken to simplify the industry for consumers. Many of these have been covered in previous answers, but in summary:

- Financial advice should only be permitted to be provided by qualified financial advisers (i.e. AFAs). RFAs, QFEAs , lawyers, accountants and journalists who wish to provide financial advise should be required to become AFAs. The terms RFA and QFEA should be removed and there should be one term covering financial advisers;
- Remove category 1 and 2. All products involve risk. And include all potential investment products in the FAA, especially property;
- Remove the distinction between class and personalised advice and replace with the terms 'information' and 'advice'. The adviser can then scale this advice to suit the client;
- Have one, clear disclosure statement with a standard format;
- Ensure the disclosure statement explains clearly if advice is restricted or independent and how the adviser is remunerated;
- Require firms providing financial advice to be licensed; and
- Improve the Advisers Register so it is searchable and contains more useful information for consumers about advisers.

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?

We do not have any formal data on this, but from our experience it would appear that many consumers cannot distinguish between sales and advice. A clear example is KiwiSaver where people receiving sales information perceive it to be advice. This is of particular concern when a customer is being encouraged to change product providers by someone with no knowledge of the customer's current product, e.g. a QFEA advising a consumer who has investment products at another QFE.

Perhaps the solution is to ensure that every adviser providing financial advice is subject to the Code of Conduct, most specifically Code Standard 1. Advisers should then disclose, in a similar way to the UK, whether they offer 'restricted' or 'independent' advice, i.e. whether the products and services recommended are issued by the adviser's employer or not.

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?

Advisers should be required to disclose the limitations of their advice, and any conflicted remuneration.

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

Even some of the least potentially conflicted remuneration structures, such as hourly charge, fixed fee, or FUM fee, can still present possible conflicts. Despite their drawbacks, disclosure remains the best way of dealing with conflicted remuneration. Disclosure documents need to be shorter, more candid and have a standard format to help protect consumers.

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

As noted in our previous answer, to be more effective, disclosure statements should be shorter and more candid.

Another possible answer to help improve consumer decision making is to make better use of the Adviser Register. We have also noted this in previous answers. This website should be revamped to be more like the Australian Register and enable consumers to search advisers by service provided, region, whether they provide restricted or independent advice and their remuneration structure.

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. We believe all advisers should be required to disclose any commission and conflicts of interest. All advisers, irrespective of their designation, should have the same disclosure obligations.

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 only one version of conflicted advice. Full disclosure is a first protection. Clearly, recent evidence would suggest that some commission structures in the insurance sector are excessive and warrant particular attention and perhaps some restriction on their value.

Banning commissions may have unintended consequences, most seriously, inhibiting access to advice and perhaps a better protection for consumers would come from having all advisers subject to Code Standard 1. The other possible consequence is a lessening of competition and independence of advice. Some advisers may migrate from being an independent adviser receiving commission from multiple product providers to being an employee who is paid salary and sales target bonuses by a single product provider. This does not necessarily reduce the conflicted nature of the remuneration models in the industry. It is also unclear if any reduction in commissions would be passed to the consumer or be retained by the product provider.

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)?

The compliance obligations, and the uncertainty and professional risk, that the FAA presents to advisers in small firms has seen many advisers who are in small firms join larger groups. This is an unfortunate outcome for accessibility, but perhaps it is an inevitable cost of raising quality standards.

We would also like to respond here to the comment in the Issues Paper that graduates do not regard financial advice as a proper profession compared to areas such as accounting or law for example. We agree with this view, to a point. We have a number of younger advisers who have joined us because they are attracted to the industry because it is dynamic, intellectually stimulating and offers the potential to provide a valuable service and genuinely help people. Most of our new recruits are tertiary qualified and some have completed postgrad study. As noted earlier in our submission, we believe raising the educational standards for advisers for new entrants to a bachelor degree or similar would actually help attract new and younger people to the industry as it would lift the status and reputation of our industry. See points made in Q's 47 and 57.

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

See answer above to Q42. The best protection of competition is to ensure that only financial advisers are able to provide financial advice and that all financial advisers should be subject to the same regulatory obligations.

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?

The distinction between class and personalised advice is, in our view, the most problematic issue in the FAA. There are many instances were a limited form of personalised advice is the most appropriate but advisers are reluctant to provide it given the uncertainty around their Code Standard 8 obligations.

As stated earlier, we believe clearer guidance on required documentation for different scales of advice would be a significant benefit to the industry and would provide an immediate boost to accessibility. The FMA and/or Code Committee should provide guidance on what documentation is acceptable under various scenarios.

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 earlier comments that we believe the product categories and the different types of adviser should be removed. Both factors are clearly impacting the quality of advice provided.

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

We have covered these issues previously. Streamlining disclosure documents, providing clearer guidance on required advice documentation and removing the ABS would help reduce costs. CPD cost is not onerous for such an important issue.

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

See earlier comments.

Further, we suggest that it may help smaller firms if new entrants can be allowed to offer personalised advice while they are studying for their AFA, as long as they are supervised by an AFA. At present, while large firms such as ours have the ability to subsidise new advisers joining the industry while they gain their AAFA, we expect this would be more difficult for smaller firms. It would be a positive step for the industry if some form of supervisory period be permitted.

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

We support the inclusion of advisers within the AML/CFT regulations. However, the Act has had a significant impact on compliance costs. Realme or any other government initiative that encourages a move towards the electronic verification of clients' identities would be very beneficial to the industry. Advisers and consumers often feel they are in a paper war with all the AML/CTF documentation and disclosure and advice documentation travelling between them.

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?

The Australian experience with compulsory superannuation would indicate that as KiwiSaver balances grow there will be a growing demand for financial advice from people with KiwiSaver. The large KiwiSaver providers may dominate this advice given their captive market. We see disclosure as being important as consumers need to be made aware that this advice may be restricted to the adviser's own products rather than independent. We reiterate our earlier view that the availability of KiwiSaver advice would be enhanced if advisers have clearer guidance and a safe harbour when providing limited personalised advice.

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?

Discretionary Investment Management Services (DIMS) is moving through a transition process at present. This may eventually see wider use of DIMS. We do not believe there should be any changes considered in 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?

Yes. We hope the Act post-review will be amended as needed to deal with high-risk advice from offshore.

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

We have no specific information or view to provide here.

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

Algorithm-based online advice platforms (robo advice) are one obvious new technology that is already having an impact on the delivery of financial advice overseas. It is only a matter of time before they proliferate in New Zealand.

This robo-advice may help reduce costs for financial advisers and enable the effective delivery of advice to people with smaller sums to invest. We do though believe any form of automated advice does have limitations and risk, especially when dealing with an area as complex as investment and personal financial planning.

We may see a hybrid model where robo and 'face to face' advice are combined by financial advisers who will use a robo platform to provide an efficient, and 'safe' from a regulatory perspective, means of working through the advice process but then still provide comprehensive personalised advice.

In terms of other technologies, it is impossible to predict either what may emerge or how it will impact on the delivery of financial advice. What is clear is that the trend that consumers want to be able to do more 'online' is not going to reverse. They want services delivered quickly and easily. Unfortunately, the current regulatory process for providing personalised advice makes it difficult to meet consumer demand.

Disruptive technologies are emerging across a number of industries, with retail and advertising been two obvious examples. Banking and financial services is another that may face similar disruption at some point, e.g. peer-to-peer lending. Consumers may look to overseas advice providers if New Zealand is slow to adopt these new technologies, especially if this is due to local regulatory constraints. The regulator must be aware to any regulatory arbitrage that may arise between local advisers and web-based overseas advisers. Consumers will have a much lower level of protection if they use overseas-based advisers.

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

The only answer that we can suggest is that legislation and regulation remain principles based, as significant prescription will almost certainly provide loopholes or inhibit service or innovation.

It is perhaps important to recognise that technology and innovation often move faster than regulation. Rather than have the legislation try and predict future developments, perhaps it is more prudent to ensure it is flexible and that the Ministry be prepared to react to major industry changes with adjustments to the regulation as needed.

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

We consider that the minimum ethical standards for AFAs are appropriate. We reiterate our view that the same standards should be applied to all advisers (AFA, RFA and QFEA).

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

As stated earlier, we believe all financial advisers should be subject to the same ethical standards. Any other outcome leaves the industry vulnerable to tainting by errant behaviour by unregulated advisers and will result in a continuation of the current situation where consumers have little or no understanding about the different types of advisers and regulatory frameworks that apply.

57. What is an appropriate minimum qualification level for AFAs?

As stated earlier, we believe the current AFA qualification is adequate overall. We perceive the advice process modules as being very good although overall the qualification is light on content about direct securities. The securities analysis content in the NZX Diploma is a good complement to the AFA qualification in our view. However, over time we would like to see a relevant bachelor degree be required for new entrants to financial advice. This would raise the professionalism of the industry and thus, as we have said earlier, will help attract high quality young people to the industry.

Within any qualification, advisers should specialise in particular areas, such as wealth management, insurance etc.

We also reiterate our earlier comment that a transitional or stepped pathway into the industry, with appropriate safeguards such as supervision, would help reduce the barriers to entry.

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?

As stated earlier, we believe that the standards and minimum requirements should be the same for all advisers. Insurance and mortgages, two areas often serviced by RFAs can have a significant impact on a person's financial wellbeing.

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

This makes sense over the medium term. Not a huge priority in our view, but to protect the integrity of our capital markets, New Zealand standards should be no lower than in other similar countries.

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

They have had a positive influence overall, in our view. The NZX Adviser status has been positive as it covers good financial market material. The NZX Rules have also obviously played an important role in setting and regulating professional standards across NZX Firms.

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

Yes, there is a clear role, formal or otherwise, for professional bodies to play in the regulation of financial advisers. We consider the obvious role to be the one being fulfilled via this consultation, namely to contribute to the formulation of the legislation and regulation. With its industry representation, we would like to see the Code Committee continue to play a prominent role in the design and management of the regulation of financial advisers.

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?

In our view, having a balance between individual and corporate regulatory responsibility is the optimum structure to ensure quality and professionalism, as well as customer responsiveness.

Consideration should be given to whether and how compliance obligations might be simplified by allowing an adviser's firm to fulfil certain compliance functions on their behalf, but without reducing an adviser's obligations.

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?

Our firm is not a QFE. We believe the QFE system has a good governance framework but lacks the same rigour imposed on individual AFAs. We believe a better structure would be one that licences all advisory firms and requires all firms to have a combination of the supervisory obligations required by the QFE regime with the personal obligations that AFAs have.

Role of financial service provider registration and dispute resolution

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

We agree with the goals; monitor financial services providers and help consumers make informed decisions. We believe the Register has the potential to be used a lot more effectively, as noted earlier. The Australian Register is a good model to perhaps replicate.

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

The integrity of the Register should be a priority. Gaining registration should be a robust process. The quality and accessibility of information should also be a priority. As mentioned earlier, more information about advisers should be available on this Register (area of specialisation, qualifications, fee structures, independence etc) and it should be more user-friendly and searchable by consumers.

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

We agree with the goals of promoting consumer confidence and encouraging financial services providers to avoid and resolve disputes.

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

Ensuring consumers are aware they have this avenue available to them should be the first priority and then making it accessible should be the next priority.

How the FSP Act works

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

We would support any proposal to raise the quality of the registrations and to address problems or non-compliance in this area.

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

We recommend the registration requirements and standards be raised. This would improve the integrity of the register.

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

Yes. Given it applies to providers of financial services to retail clients.

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

Yes it is. We do not recommend any changes.

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

Yes it is. We do not recommend any changes.

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?

We believe so. We do though suggest that a system similar to the banking ombudsman may be a structure that could be considered for the financial services sector. A key benefit would be that it would be simpler for consumers to understand.

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?

A FSP who wishes to use the service for larger claims should be able to do so but the default maximum should remain as it stands, in our view. The majority of disputes relate to insurance claims so if there is demand from that area of the industry an insurance claims specific approach could be pursued.

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

Some level of capital adequacy or other equivalent means, such as professional indemnity insurance, could be considered at an individual and/or entity level to mitigate such risks.

Key FSP Act questions for the review

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

We have covered this previously, in essence; having more information about advisers available and then having the ability for consumers to search easily and filter this search by specialisation, qualifications, experience, disciplinary issues, independence, remuneration structures etc. All of this information should be included in an adviser's disclosure statement and be made available online in a standard format on the register.

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

Yes, and a range of other information, as per previous answer.

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?

Yes, it is a risk that undermines confidence in the integrity of New Zealand's capital markets. It should be addressed as a priority. Proposals that make it easier to exclude or remove certain entities from the register are welcomed. Additional requirements, such as local directors or licencing of financial services providers should be considered in our view.

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?

The regulator should have adequate powers to remove the current risk posed by offshore providers.

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

We have no information on this issue. No submission comment.

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

We have no information on this issue. No submission comment.

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

We understand that there is evidence that current awareness of the availability of dispute resolution services is low. Making the name of an adviser's dispute resolution scheme more readily available on the Register could be a simple way of raising the profile of these schemes.