FAA Review Submissions – OM Financial Limited

Role and regulation of financial advice

Submissions

When providing your comments, we would particularly appreciate information about the relative benefits, costs (financial or otherwise) and any other impacts of these proposals on businesses, consumers or other stakeholders. This information will help us more fully understand the effects of the current regulation.

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

We don't agree that consumer education is necessarily important as a goal:

- The technical understanding required to distinguish between different types of advisors or products is too complex for most consumers, and its unnecessary when it can be dealt with by the regulator.
- Trust is also a key factor with consumers, and unfortunately it has negative and positive consequences[1]. Consumers tend to assume that anyone in business is appropriately licensed/qualified, and will make their choice of an advisor based on matters they can understand, such as cost, and perceived security.
- Given there are finite regulatory resources available, we would rather see available resources applied to matters such as investigation and enforcement rather than consumer education.
- Making the regulator responsible for enforcing licensing categories also has the added benefit of creating an environment of establishing trust and confidence in the regulator by the consumers.

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

Need to focus resources on investigation, enforcement and industry participant (not consumer) education. This will achieve the goal of enhancing public confidence in the industry.

There appears to be undue caution from the industry in applying the new regulations and laws. While this is understandable with new rules, the regulatory regime requires robust and efficient

[1] [redacted]

application of the rules, which means greater understanding and awareness between the various parties (regulators, advisors, participants, consumers).

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

"Advice" and "advisor" should be expanded to cover educational and training services, and those persons in an advisory capacity referring work to other providers. Those providing educational services, and/or then referring work to selected providers, are generally doing so as agents or advisors of the client, and should be subject to the same fiduciary and disclosure obligations as other financial advisors.

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?

Yes, but the FAA and FMCA definitions need to be reconciled.

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?

It's appropriate, but the distinction is very unclear and needs more clarity for it to be effective – largely by greater education and information. Particular changes:

- The name "class" is not descriptive of the definition. **Class** suggests that it cannot be one-on-one, which is incorrect and thus confusing. "General" would be a more accurate description.

- Further, we consider the distinction is unclear because of the same "advisor" title given to class and personalised advisors. Personalised advisors should retain that advisory title, and carry higher fiduciary and conduct obligations as a result. Class advisors focus on the product not the client, so should be called something different, e.g. dealer– so that clients are not confused about the difference between the two. An advisor is clearly acting for a client – a dealer (or agent, broker, salesperson etc.) is more likely, and obviously so, acting independently or for a provider.

- All advisors, by whatever title, should be subject to the Code of Conduct.

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

Yes, but on a sliding scale, not by such an arbitrary categorisation as "Cat 1" and "Cat 2". It is artificial, and creates confusion for little apparent benefit. The better approach is to treat all advisors in the same way – but have a sliding scale of competency and qualifications depending on the specific product and the service, not by an artificially contrived creation of Category 1 and Category 2 classes.

In other words, rely on the current general obligation for all advisors that they need to be competent to provide advice – and rely on the regulator and industry to enforce that.

It should also be handled at an industry and regulator level – rather than involving the consumers.

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?

Apart from anything, describing them as Category 1 and Category 2 is unhelpful. Many people would possibly regard level 2 products as more complex than level 1 when in fact the opposite is true.

More importantly, it is essential to differentiate advisors based on the class of products. It is vitally important that advisors be competent in their respective fields of expertise and product. That doesn't need change at a legislative level- but needs change at a Code of Conduct level by introducing more product based distinctions within AFA accreditation categories and training requirements. E.g. AFA Derivatives Advisor, AFA Insurance Advisor.

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, not at all. Many consumers may even consider "registered" to be higher than "authorised" – few if any would understand the difference between the two correctly.

RFA should not be a defined term at all – nor should it be accorded any status as such. It is a record of registration only, and any suggestion that it is more than that, such as having a degree of licencing, is misleading and counter-productive to the stated goals of the financial services regulation.

There is no benefit in maintaining the RFA classification – the regulatory regime works better without it. The term should be banned. If reference needs to be made to this "class" a broader generic reference to "financial advisors" should suffice.

The same is true of QFE advisors, QFEAs, QFEs and FSPs.

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

They are appropriate, but they're inadequate as they don't address all the duties owed by financial advisors, specifically fiduciary duties. It is unclear why adviser's fiduciary duties are not addressed, either in the legislation or by the Code Committee. All advisors (both RFAs and AFAs) have fiduciary obligations, which exceed those statutory obligations prescribed in the FAA. Those fiduciary duties have not been negated or codified by the FAA, and remain in existence as a matter of common law.

It is a fundamental issue that must be corrected. The failure to record and address fiduciary duties is creating a lot of confusion and misinformation, and inevitably neutering consumers' remedies against advisors, and lowering advisors' standard of care and conduct.

The confusion is exacerbated in particular by three regulatory measures which ignore the prevailing fiduciary duties of advisors:

- Parliament, in setting out the general conduct of all advisors in the FAA (s. 33) essentially codified a lower tortious standard to “exercise reasonable care", which is mainly based on negligence, and often included as part of an advisors fiduciary duties. Codifying some, but not all, of advisors duties, suggests that those other duties no longer apply.
- The Code of Conduct establishes a standard of "client interests first and acting with integrity". This is similar to fiduciary but different, and with no precedent value, and a stated intention from the Code Committee not to adopt “best interest” or fiduciary principles[2].
- Parliament has seen fit to prescribe fiduciary obligations (to act in the client’s best interests and to act equitably) for MIS Managers (s.143 FMCA), for DIMS licensees (s.433 FMCA), and for DIMs advisors (s.39 FAA). However, these obligations do not extend to financial advisors generally.

Fiduciary duties are complex and well beyond the ambit of this submission. However, by their complexity and by the many years of judicial interpretation and consideration they are a valuable source of law for determining advisor’s duties. At the very least they need to be addressed by the FAA and the Code Committee. Alternatively, if indeed it’s Parliaments intention that fiduciary duties be replaced by the statutory FAA obligations this needs to be expressly stated.

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

No, it’s not adequate. RFAs, in order to meet their fiduciary obligations, need to disclose their terms of remuneration, and any conflicts of interest. This is particularly pertinent to those RFAs receiving 3rd party commission.

At a minimum they should have the same disclosure obligations as AFAs.

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

No comment.

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

No. It is unnecessary and doesn’t add anything to consumer protection. Adequate disclosure to the consumer is achieved via the Disclosure Statement and SOA.

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?

[2] In response to submissions on the Code of Conduct in July 2010 the Code Committee stated *“The ‘client first’ concept remains, as it provides a clear obligation that is easily understood. It is a standard that has been adopted in numerous other contexts. Requiring an AFA to act in a client’s ‘best interests’ was seen as being overly subjective, and raised a risk of AFAs being unfairly judged with the benefit of hindsight. Introducing the concept of ‘fiduciary duties’ was not considered appropriate. That concept is a legal one, arising from the basis of the specific client-adviser relationship. Attempting to impose such duties in the abstract was not considered helpful in practice.”*

No comment.

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?

No comment.

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?

No.

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

We think the primary disclosure statement can be. However, the more extensive secondary one is inadequate for what it purports to do – and accordingly obscures and legitimises the substantive issues.

a) Disclosure, firstly, isn't a substitute for a conflict of interest. A conflict needs to be avoided – not merely disclosed.
b) Second, disclosing fees paid from 3rd party is only relevant if one is also disclosing what all other providers offer, even though that might not be a realistic solution. E.g., understanding that Provider 1 pays 10% is only meaningful if it is accompanied by the further disclosure that Providers 2,3,4 etc. only offer 5%.
c) There should only be one disclosure statement, and it should be more comprehensive and prescriptive in detailing qualifications and product knowledge.

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

We suggest that more templates be developed by FMA.

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

There needs to be greater emphasis on product knowledge built into the qualifications and training regimes. E.g., different accreditation for advisors dealing in mortgages, insurance, derivatives, planning etc. The approach taken in the UK, HK, Aust. and the US could be considered, which all prescribe greater diversity in training and qualification.

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

Should be greater specialist product knowledge on the Committee, e.g. derivatives.

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

No comment.

21. Should the jurisdiction of this Committee be expanded?

Yes, it should cover all "advisors" (whoever that may be).

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.

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

If they are doing the same work as AFAs, QFE advisors should be similarly qualified, and subject to the Code – the fact they are advising only in respect of their own products doesn't lessen the standard required for advice.

It is, generally, contrary to an advisor's fiduciary obligations to represent a provider while at the same time representing oneself as the client advisor. One cannot be both, at least not without extensive disclosure and informed consent – which needs to be more comprehensive than is currently the case. QFE's should be re-designated as salespersons, and should not be permitted to use the advisor title as it confuses the clients into thinking they are a client advisor.

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

No – at a minimum they need to disclose their fiduciary obligations that they owe to their employer, the conflict that entails, and the fact that they are not independent.

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?

OK within the industry, but not by consumers.

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

Generally inadequate. Brokers should have higher obligations than advisors given the handling of client funds. Brokers, as a minimum, should be subject to licensing, with prescribed compliance procedures, capital adequacy levels and auditing.

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

Yes – audit, insurance and capital.

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?

Yes.

31. Should any changes to these requirements be considered?

Yes, they should be extended to brokers.

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

Yes.

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

Yes.

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

Excellent. No changes required.

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.

- Remove RFA as a category
- Remove category 1 and 2 distinctions
- Clarify distinction between class and personalised advice
- Introduce sales and dealer categories (for anyone not independent or an AFA).

Key FA Act questions for the review

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?

No understanding at all. This issue, which is succinctly set out in paragraphs 118-127 of the Issues Paper, is possibly the most important issue of the FAA Review. Addressing this will simultaneously alleviate many of the other issues arising from the application of the FAA (e.g. commissions).

This question introduces a more fundamental problem in the legislation in that by making the definition of financial advisor so wide, it restricts or limits sales agents from doing their job as they are constrained by the higher obligations of being an "advisor". There needs to be a middle ground, or different category, that allows salespersons to act for an FSP employer without being treated as an advisor with the accompanying obligations that come with that.

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?

Yes. The reason it is so important to draw a distinction between sales and advice, is that advisors are fiduciaries, and have fiduciary obligations to the client. Sales people aren't fiduciaries, and don't have the same obligations, at least not to the clients (they will, conversely, probably owe fiduciary obligations to their employer, or the provider/issuer). The "leveller" being that with a salesperson, the client knows they are being sold a product, and aren't relying on or trusting that salesperson for independent advice or analysis (which is the source of a fiduciary obligation).

A salesperson/dealer/broker should still be included in the broader definition of persons "providing financial services" – just not described as an advisor.

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

No. Technically disclosure, in a fiduciary context, is about obtaining consent to the agent getting remunerated – not about disclosing the conflict of interest. A fiduciary's obligation is to avoid conflict – not merely disclose it. A fiduciary must avoid the inherent conflict in 3rd party commission by declining to act for one or the other. It is an inherent conflict which they are duty bound to avoid. They can do so easily by not representing themselves as the client's advisor.

That point aside, the use of disclosure as a tool for addressing conflicts of interest actually makes the conflict worse as disclosing a conflict appears to legitimise the conflict and pave the way for the conflicted advisor to continue to act in conflict.

There are two further issues as to the degree of disclosure;

a) General disclosure is not adequate. Needs to be exact – particularly if one is seeking the informed consent of the principal to the profiting of an agent. One cannot give informed consent to a payment if it is only disclosed generally. E.g. the difference between a perceived 10% clip on insurance premium, and an actual +200% is material.

b) If disclosing the level of remuneration from one provider – also need to disclose available remuneration from all other providers – or perhaps the industry average – otherwise the consumer can't assess the relevance of the remuneration being offered.

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

Disclosure in itself is inadequate to address this problem.

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. That is in fact already the law as it applies to RFA's under equity laws applicable to fiduciaries.

It does not however need to apply to salespersons/dealers/brokers.

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?

Fully disclosed commissions and 3rd party payments should be permitted, provided the disclosure meets the fiduciary and statutory[3] standards of informed consent. This requires more than generic knowledge on the part of the client. Specific client consent to the exact payment or rate of commission must be obtained.

Non-disclosed and conflicted remuneration/commission should be banned. However, the ban should only apply to those who represent themselves as client advisors or fiduciaries. Salespersons, or perhaps "dealers" designated as such, should be free to be paid on a commission basis.

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)?

No.

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

Distinguishing between sales and advice, and/or having advisor designations by product, would allow the consumers to more easily compare like with like. This means that within each category participants can focus on their own areas of expertise rather than being compared to and competing with participants in different areas.

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?

Code itself is fine, particularly when read with the Guidance provided for limited personalised advice.

[3] See Secret Commissions Act 1910

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?

It is necessary to have better clarity on the different classes and to introduce different rules. Importantly also – need different qualifications and training for advisors of different products (as followed in other jurisdictions).

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

Yes. This is an important concern. The QFE model is the key structure at fault here. See response to Q63 as well.

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

More guidelines, workshops, seminars etc. – generally just better industry education and interaction between industry and regulators.

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?

Not much in terms of the substantive KYC/CDD requirements. Largely these haven't changed materially from the previous best practice requirements. However, independent audits, annual review and reporting requirements have added significant compliance costs to the industry.

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?

No comment.

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?

Will provide greater certainty and a "safe harbour" for advisors dealing with providers.

FMA needs to strictly enforce laws against non-licensed operators/advisors (where applicable).

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.

Yes. As much as is feasible. It has extra-territorial effect and the legislation is relatively clear in its application to overseas parties. The difficulty in enforcing NZ laws against overseas providers needs to be considered.

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

Good. As always, any differences in trans-Tasman law are problematic to some degree. The difference between class and general advice is an oddity, as is the lack of recognition in NZ of advisor's fiduciary duties. A further point of difference is in the ***sophisticated/eligible*** investor classes which would be better if they could be aligned.

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

Unfiltered direct client access to the markets. It means that clients are able to trade without advice, which is particularly dangerous in the leveraged equities and derivatives markets.

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

Continue to apply a principles based approach.

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

No. See above comments about fiduciary obligations. Until this is addressed in the legislation and the Code of Conduct, AFAs (and RFAs) will continue to fall short of their legal obligations.

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

Yes.

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

It should vary depending on the product.

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. No general comment. Derivatives and equities advisors should as a minimum pass the following (or overseas or updated equivalents),

405N	The New Zealand Stockmarket
508N	Securities Law and Market Regulation in New Zealand
E112	Futures Markets and Trading

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

Some. In areas such as derivatives it is essential to include overseas training and qualification (including CPD) as there are few local NZ training or teaching resources that would be considered adequate.

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

Most professional bodies are lobby groups and only promote matters that accord with their own perceived self-interest. In the advisor space it appears to be very disjointed with various bodies competing for a mandate.

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

No. They are a lobby group and shouldn't have a regulatory role or influence beyond that of other stakeholders (consumers etc.).

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?

The current status under the legislation of a firm's contractual obligations to its clients, and the unlimited liability contractual obligations of individual AFAs to clients is a little unclear. It is one thing for the legislation to impose statutory obligations and fines at an individual level. It is another to discourage companies from contracting with clients to provide services (e.g. personalised services) - and to remove limited liability protection for individuals in business, particularly if that liability extends beyond the statutory penalties (e.g. contract/fiduciary). We are also unsure as to the effect of these provisions as regards PI insurance cover.

The statutory restriction on companies providing personalised advice is also unclear. Many participant terms and conditions contractually record that the personalised services are provided by the participant firm, albeit via the Participant's employees who are AFAs. Other commentators consider that only an individual can contract with the client for personalised service, in which case, do the clients have any contractual recourse against the company, or is it only against the individual AFA? Is that intended and understood?

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?

No. The QFE system undermines the entire AFA regime. The vast majority of "personalised advice givers" are not qualified, and are conflicted. QFE should be removed as a designation. It was never originally intended to operate in this fashion, and the regime doesn't cater for it.

This raises another important point (in our view) which doesn't seem to have been addressed elsewhere. That concerns Standard 3 of the Code of Conduct for AFAs and the importance of "independent advisors". This is an important and valued class of financial advisor. More should be

made of them and it should be better recognised, encouraged and valued. If one is to accord any importance to advisors, including AFA advisors, it should be to independent advisors, not "registered" or QFE ones.

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

No. The register shouldn't be available to the public, and it's not necessary for it to be so. When originally conceptualised the register was intended to be just for regulatory purposes, and to comply with FATF requirements in that regard. That should be its only goal.

Allowing public access to the register creates a myriad of problems;

- It accords a legitimacy and degree of government/regulatory approval in the eyes of the public that isn't warranted, and in fact creates far more problems. The abuse of the system by offshore operators is a particular (but not unique) example. The register is a record of registration only, and any suggestion that it is more than that is misleading and counter-productive to the stated goals of the financial services regulation.

- For it to be effective to the public as an information base and means of distinguishing between advisors, or ascertaining if an advisor is suitable or qualified, so much information is required, and in prescribed form, that it would be too complicated for average users.

- The consumer can't be expected to have the financial knowledge and experience required to analyse the various types of qualifications in order to compare advisors, or to determine if a particular advisor is appropriately qualified.

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

Restrict it to regulator access only. This means it can be shaped to suit regulatory needs, and not be complicated by trying to design a register which also caters to the needs of the public.

Role of financial service provider registration and dispute resolution

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

Yes.

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

No comment.

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

No.

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

If the register is to remain a public record, then the minimum requirements must be raised to meet the public expectations of that registered entity, which would probably be similar to that required of licensed entities. The public do not, and are unlikely to ever, understand the difference between a registered entity and a licensed entity – therefore the two should have the same requirements (if the register is to a public record).

See further the acknowledgement in para. 274 of the Issues paper to this effect. If it's not licensed – then don't publicise it as such.

How the FSP Act works

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?

It's appropriate.

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

It should be binding on both parties with similar rights of appeal.

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?

No. Should just have one scheme.

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?

No comment.

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

No.

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

No comment.

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

No. Will be meaningless to most consumers. One would need a degree in financial literacy just to differentiate between different qualifications.

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?

Absolutely. This cannot be underestimated. New Zealand's weak, self-proclaimed "light handed" financial regulation is a flashing (welcoming) beacon to the international criminal community, and indeed to local NZ offenders.

It would be partly solved by not allowing the register to be available to the public, and prohibiting the use or claim of being an RFA or FSP.

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?

Yes – don't make the register available to the public and prohibit registrants using or advertising their registered status, including QFE status.

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

No comment.

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

No comment.

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

No comment.

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:

OM Financial Limited

84. Please provide your contact details:

[redacted]

85. Are you providing this submission:

Yes.

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? 57

Demographics

On behalf of an organisation

Please describe the nature and size of the organisation:

These submissions are made by OM Financial Limited.

About OMF

OM Financial Limited ("OMF") is a 100% New Zealand owned foreign exchange and derivatives firm providing a 24 hour financial brokerage service to clients. OMF facilitates dealing in the foreign exchange, options, equities, CFDs, futures, carbon, dairy and electricity markets, acting for both retail and wholesale clients.

OMF is a registered financial service provider (FSP15422) and must comply with obligations under the Financial Services Providers (Registration and Dispute Resolution) Act 2008 (the "FSPA") and Financial Advisers Act 2008 (the "FAA"). OMF is also a NZX Advising Firm (Equities), NZX Trading and Advising Firm (Derivatives) and an NZX Clearing Participant (Derivatives). As a Participant, OMF and its employees are subject to regulation and supervision by NZX to ensure compliance with the NZX Rules.

Authorised Financial Advisers ("AFA"s) and Registered Financial Advisers ("RFA"s) are employed by OMF (herein together referred to as Advisers). OMF is not registered as a Qualifying Financial Entity ("QFE") under the FSPA.

OMF maintains comprehensive professional indemnity insurance, and is a member of an external disputes resolution scheme in accordance with requirements under the FSPA.

We do not require this submission to be kept confidential:

Thank you for your time.