How to have your say

Submissions process

The Ministry of Business, Innovation and Employment (MBIE) seeks written submissions on the questions raised in this document.

- Submissions on the questions in Part 3 of this paper (relating to the Financial Service Providers Register) are due by **5pm on Friday 29 January 2016**.
- Submissions on the questions in Part 1 and Part 2 of this paper are due by **5pm on Friday 26 February 2016**.

Your submission may respond to any or all of these questions. We also encourage your input on any other relevant work. Where possible, please include evidence to support your views, for example references to independent research, facts and figures, or relevant examples.

Please include your name, or the name of your organisation, and contact details. You can make your submission:

- By filling out the submission template online.
- By attaching your submission as a Microsoft Word attachment and sending to ***faareview@mbie.govt.nz***.
- By mailing your submission to:

  Financial Markets Policy
  Ministry of Business, Innovation & Employment
  PO Box 3705
  Wellington
  New Zealand

Please direct any questions that you have in relation to the submissions process to: ***faareview@mbie.govt.nz***.

Use of information

The information provided in submissions will be used to inform MBIE's policy development process, and will inform advice to Ministers on the operation of the Financial Advisers Act 2008 and the Financial Service Providers (Registration and Dispute Resolution) Act 2008.

We may contact submitters directly if we require clarification of any matters in submissions.

Submissions are subject to the Official Information Act 1982. MBIE intends to upload PDF copies of submissions received to MBIE's website at ***www.mbie.govt.nz*** and will do so in accordance with that Act.

Please set out clearly with your submission if you have any objection to the release of any information in the submission, and in particular, which part(s) you consider should be withheld, together with the reason(s) for withholding the information under that Act.

If your submission contains any confidential information, please indicate this on the front of the submission, mark it clearly in the text, and provide a separate version excluding the relevant information for publication on our website.

MBIE reserves the right to withhold information that may be considered offensive or defamatory.

The Privacy Act 1993 establishes certain principles with respect to the collection, use and disclosure of information about individuals by various agencies, including MBIE. Any personal information you supply to MBIE in the course of making a submission will only be used for the purpose of assisting in the development of policy advice in relation to this review.

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Chapter 3 – Barriers to achieving the outcomes

1. Do you agree with the barriers outlined in the Options Paper? If not, why not?
   NZX agrees with the barriers noted. The barrier in relation to consumers' lack of understanding of the limitations of certain advisers has been identified as adversely impacting each of the three key outcomes sought and need to be addressed as part of the current review.

2. Is there evidence of other major barriers not captured in the Options Paper? If so, please explain.
   The outcomes are all consumer focused. It is appropriate to have this as the main focus but the supply side of the equation also needs to be considered. The regime needs to encourage appropriately qualified and skilled people to provide financial advice, and therefore it needs to be commercially viable to do so. The regime currently drives providers of financial advice services primarily towards the provision of sales related services. It appears that many financial advisers choose not to seek or maintain AFA status given the complexity and costs of doing so and therefore instead choose to be either RFAs of QFE advisers, as reflected in the relative numbers of advisers in each status category.

Chapter 4 – Discrete elements

3. Which options will be most effective in achieving the desired outcomes and why?
   No single option will be sufficient to address the issues with the current regime because they are targeted at resolving different problems. However, the regime needs to be simpler for both consumers and suppliers of financial advice so that the regime can be understood and so that financial advisers can understand and meet compliance obligations. Removing some of the current distinctions in relation to categories of financial advice, categories of products and the different treatment between entities and individuals under the current regime, is necessary. Ensuring that consumers understand the limitations on any advice they are receiving will also be crucial (i.e. addressing the distinction between sales and advice) so disclosure will be an important aspect of the updated regime. It is pleasing to see that the updated regime will accommodate the provision of robo advice because this is likely to have a significant impact on the outcomes sought.

4. What would the costs and benefits be of the various options for different participants (consumers, financial advisers, businesses)?
   It is very difficult to accurately assess the costs of the options outlined given the various combinations and permutations but in general terms the benefits to consumers in terms of the outcomes sought should be that they are able to receive the advice (sales advice or financial advice) they seek from appropriately skilled and qualified advisers. If consumers are only receiving sales advice then this should be very clear and the remuneration arrangements linked to those transactions should be simply disclosed in a standardised manner. The options should reduce the costs to advisers of providing advice under the current regime and should allow advisers to have a clear understanding of their obligations under the regime. These obligations should be proportionate. This could be achieved by removing some of the complexity with the current regime. It must also be commercially viable for advisers to provide advice so there should be value in being qualified as a 'financial adviser'. The option of entity licensing should also reduce the compliance obligations on individual advisers working for licensed entities, who should be able to benefit from the compliance framework of these licensed entities.

5. Are there any other viable options? If so, please provide details.
   The options naturally seek to build or develop upon the existing regime. This is understandable, but given the significant issues with the current regime, the changes required will be reasonably fundamental and will require a number of measures to be introduced.

4.1 Restrictions on who can provide certain advice

6. What implications would removing the distinction between class and personalised advice have on access to advice?
   NZX supports option 1. This will reduce the complexity of the current regime by removing a component of the regime which consumers are unlikely to understand currently. This will remove a barrier to accessibility. It will also remove an area of complexity for providers of advice. This should have the effect of making the provision of advice more consumer-driven. It should increase the supply of personalised advice. The regime also needs to facilitate the provision of specialist or targeted advice (i.e. limited in terms of the demands of the consumer).

7. Should high-risk services be restricted to certain advisers? Why or why not?
   Providers of financial advice should be trusted to determine when they have the appropriate skills and expertise to provide so called "high-risk services", and should be subject to an overriding obligation to provide advice only in their areas of competence i.e. NZX supports option 2. Of course there should be measures in place to ensure appropriate redress if an adviser has provided advice without the necessary skills and expertise but a two tiered regime will be difficult to construct, administer and for consumers to understand. This is one of the problems with the current regime. It will be difficult for a regulatory regime to seek to define what constitutes "high risk services".

8. Would requiring a client to 'opt-in' to being a wholesale investor have negative implications on advisers? If so, how could this be mitigated?
   NZX is not aware of the retail/wholesale distinction being an issue under the current regime but this option seems like a good idea if this is an issue.

4.2 Advice through technological channels

9. What ethical and other entry requirements should apply to advice platforms?
   These should be similar to (or the same as) the requirements for other providers of sales advice or financial advice. Disclosure requirements will be important because there will naturally be limitations on the type of information which can be provided via robo advice. The concept of

licensing is a good one and there should be redress for consumers where necessary. It will also be important to distinguish between sales advice and financial advice in this context to ensure that consumers have a clear understanding of the limitations of advice provided.

10. How, if at all, should requirements differ between traditional and online financial advice?
    It is difficult to see why requirements should differ but disclosure of the limitations of any financial advice will be crucial. The distinctions between sales advice and financial advice will also be important in this context.

11. Are the options suggested in this chapter sufficient to enable innovation in the adviser industry? What other changes might need to be made?
    Option 2 under this question will be too limiting for the provision of robo advice. There can be accountability without this step. If consumers are comfortable to receive robo advice under disclosed limitations and the advice meets their demands, it's unclear what "regulatory certainty" this would be achieving.

4.3 Ethical and client-care obligations

12. If the ethical obligation to put the consumers' interests first was extended, what would the right obligation be? How could this be monitored and enforced?
    This obligation is certainly appropriate for the provision of financial advice, but it is not clear what is meant by extending this obligation. If this relates to extending the obligation to providers of sales advice, then such an obligation will be different in that context, because a sales person or sales adviser could only put consumers' interests first in light of the constraints the adviser/salesperson is operating under (i.e. the limited product set to advise upon). It will be crucial for consumers to understand these limitations, which could be achieved via clear, concise and effective disclosure.

13. What would be some practical ways of distinguishing 'sales' and 'advice'? What obligations should salespeople have?
    This is a challenge because it would be difficult to draw bright line tests but the factor which most distinguishes sales and advice is the limitation on the product set of the person providing the services. For example, it would look more like sales if the provider was only able to offer a few products and/or only products of its own employer. On the other hand, you would expect a financial adviser to be able to provide advice on a broad range of financial products and that these wouldn't be linked solely to the products of the relevant employer. Sales people/advisers should be obliged to disclose the limitations on the services being provided (i.e. limited by product and/or product provider) and their qualifications, skills and expertise. Sales people/advisers should also be required to disclose their remuneration arrangements (although this should be no different in other contexts). There should be ethical obligations on salespeople e.g. disclosure of conflicts, putting the customers interests first within the constraints of the limited products they advise upon. There is an argument that similar obligations should apply to each category (sales and advice) but that meeting these obligations would be different in each context. If this approach was adopted, the limitations on the nature of the advice to be provided would need to be made clear to consumers via clear, concise and effective disclosure.

14. If there was a ban or restriction on conflicted remuneration who and what should it cover?
    There shouldn't be a ban on conflicted remuneration. It should be clearly disclosed and arrangements should be within ethical bounds.

4.4 Competency obligations

15. How can competency requirements be designed to lift capability, without becoming an undue barrier to entry and continuation in the profession?
    NZX supports options 1-3.

16. Should all advisers be subject to minimum entry requirements (Option 1)? What should those requirements include? If not, how should requirements differ for different types of advisers?
    Yes, all financial advisers should be subject to minimum entry standards. These should be guided by the industry. There shouldn't be different categories of financial advisers. NZX also supports entity licensing in conjunction with individual licensing, this will allow financial advisers working for a licensed entity to benefit from the compliance and training regime of the relevant entity, while maintaining some individual accountability and control over individuals via regulation.

4.5 Tools for ensuring compliance with the ethical and competency requirements

17. What are the benefits and costs of shifting to an entity licensing model whereby the business is accountable for meeting obligations (Option 1)? If some individual advisers are also licensed (Option 2), what specific obligations should these advisers be accountable for?
    Entity licensing alone is akin to the current QFE regime. The benefits are that this is a more cost effective way of meeting compliance obligations and there is also likely to be strong incentives on the licensed entities to ensure their advisers or sales people are meeting standards. There would also be an appropriate party to seek redress from in the case of misconduct. The costs would be that there is less individual accountability under such a regime, less value in becoming a qualified adviser, the potential for undue influence by employing entities and perhaps less benefits for sole operators.
    Entity and individual licensing is probably necessary for the provision of financial advice. The challenge is to determine which obligations should rest with the entity and which should sit with the individual adviser. However, this would provide the benefits of regulating an entity primarily (and as the front line relationship) whilst ensuring there is accountability at an individual level in appropriate cases. This would also cater for advisers operating outside of entities, allow portability of financial advisers within the regime and reinforce the value of seeking and maintaining financial adviser status.

18. What suggestions do you have for the roles of different industry and regulatory bodies?
    There are roles for these bodies in maintaining industry standards and advocating on behalf of the industry and also to provide disciplinary processes. However, care would need to be taken in providing any formal role in relation to regulation. Fragmentation of industry bodies is currently an issue in this area.

4.6 Disclosure

19. What do you think is the most effective way to disclose information to consumers (e.g. written, verbal, online) to help them make more effective decisions?
    It should be a combination of all three. However, some form of written disclosure should always be required to ensure all cases can be appropriately investigated if there are complaints.

This also allows for standardisation of disclosure, which is necessary to make disclosure clear, concise and effective.

20. Would a common disclosure document for all advisers work in practice?
    This should be the aim. It is not appropriate to have different disclosure standards for comparable services as is the case under the current regime. This appears to be contributing to driving advisers towards certain category statuses (i.e. RFA and QFE adviser status).

21. How could remuneration details be disclosed in a way that would be meaningful to consumers yet relatively simple for advisers to produce?
    Standardised disclosure practices for all sales advice and financial advice services.

4.7 Dispute resolution

22. Is there any evidence that the existence of multiple schemes is leading to poor outcomes for consumers?
    NZX is not aware of any.

23. Assuming that the multiple scheme model is retained, should there be greater consistency between dispute resolution scheme rules and processes? If so, what particular elements should be consistent?
    This would make sense.

24. Should professional indemnity insurance apply to all financial service providers?
    Yes

4.8 Finding an adviser

25. What is the best way to get information to consumers? Who is best placed to provide this information (e.g. Government, industry, consumer groups)?
    This should be a combination of the options noted and others where relevant. There need to be appropriate industry incentives to provide financial advice (i.e. it needs to be commercially viable) and then industry will have appropriate incentives to provide information in relation to available services. The FSPR is not currently an effective tool; although this could be improved, it seems a long way off being a viable consumer tool. Consumer and industry bodies also have a role to play in providing information to consumers about where to find adviser services.

26. What terminology do you think would be more meaningful to consumers?
    Terminology needs to be simplified based on terms that consumers understand – terms like category 1 and category 2 are abstract for consumers. The current distinctions between adviser statuses should be removed. Distinguishing between sales advice and financial advice based on the limitations of the provider of the advice is important. For example, consideration should be given to whether salespeople/advisers should be able to refer to themselves as financial advisers. The term 'broker' within the FA Act is problematic. It does not accord with people's basic understanding of this term (e.g. the definition currently captures custodians who do not provide actual broking services, as that term is commonly understood). This needs to be addressed.

4.9 Other elements where no changes are proposed

The definitions of 'financial adviser' and 'financial adviser service'

27. Do you have any comments on the proposal to retain the current definitions of 'financial adviser' and 'financial adviser service'?
    These current definitions are fairly good. The distinction between sales and advice needs to be carefully considered in this context but has been comment on above. If sales advice was to remain within the regime as proposed, then the issue of the limitations of the provider of such services must be addressed through clear disclosure to consumers and appropriate titles for providers of sales advice.

Exemptions from the application of the FA Act

28. Are those currently exempt from the regime posing undue risk to consumers through the provision of financial advice in the normal course of their business? If possible, please provide evidence.
    NZX is not aware of concerns in this area so has no comments.

Territorial scope

29. How can the FA Act better facilitate the provision of international financial advice to New Zealanders, without compromising consumer protection? Are there other changes that may be needed to aid this, beyond the technological options outlined in Chapter 4.2?
    There will be limits to what regulation can achieve in this area. Increasing consumer awareness, particularly by government, is a good option.

30. How can we better facilitate the export of New Zealand financial advice?
    The proposal to allow robo advice should assist in this area. The update regime should also facilitate the provision of specialist financial advice because this is an area where there may be demand overseas for New Zealand financial advice. If there are limitations within foreign jurisdictions on the ability for outside advisers to give advice to local residents it may be an option to seek recognition for NZ financial advisers within those jurisdictions.

The regulation of brokers and custodians

31. Do you have any comments on the proposal to retain the current approach to regulating broking and custodial services?
    NZX is aware of concerns in relation to use of the term 'broker' within the FA Act. This does not accord with common usage.

Chapter 5 – Potential packages of options

32. What are the costs and benefits of the packages of options described in this chapter?
    Although package 1 will cost the least to implement it will deliver the least change and therefore will not address all of the key issues/barriers to the outcomes sought. The feedback received as part of the review to date confirms that there are fundamental concerns with the structure of the current regime. These should be addressed now to achieve the best outcomes. Package 2 has a number of good features but retains the complexity of a two tiered financial adviser regime given the use of complex financial advisers. The consistent feedback has been that this type of complexity needs to be removed and that such distinctions are not effective in practice. Neither option 1 or 2 address the fundamental concern with the current regime which is that consumers may not always be aware that they are receiving services more in the nature of sales than financial advice. Both are currently treated as financial advice under the

regime but different financial adviser statuses are held to different standards and this is not understood by consumers. It is driving consumers and suppliers of advice towards sales related services. This issue needs to be addressed. NZX has suggested above that this be addressed by ensuring that all advisers are subject to similar (or the same) ethical and competency obligations but that there is clearer disclosure to consumers in relation to any limitations on the nature of the advice which can be provided (including in relation to remuneration arrangements) and that the titles of advisers are appropriate in the light of any limitations e.g. the use of terms such as 'sales adviser'

33. How effective is each package in addressing the barriers described in Chapter 3?
    This is addressed to some extent at question 32. above. NZX considers that option 1 does not go far enough in dealing with the issues under the current regime. Although there are attractive features of both packages 2 and 3, it may be that a combination of options from within each of these packages is the most effective option i.e. based on our feedback within this paper and at question 35 below.

34. What changes could be made to any of the packages to improve how its elements work together?
    See above in relation to questions 32 and 33.

35. Can you suggest any alternative packages of options that might work more effectively?
    NZX considers the following factors need to be addressed as part of an updated regime: reduce the complexity of the current regime by removing the current distinctions between types of advisers and product categories, ensure that there are basic competency and ethical obligations which apply to all advisers, ensure that there is standardised disclosure requirements for all advisers which require clear concise and effective disclosure (this should be standardised to the extent possible and should avoid over disclosure which often leads to consumer disengagement), the disclosure regime should focus on the limitations of any advice relationship and distinguishing between sales advice and financial advice (including by the use of appropriate titles for advisers), a combination of entity and individual licensing and a role for professional bodies in setting adviser standards and imposing discipline.

Chapter 6 – Misuse of the Financial Service Providers Register

36. Do you agree with our assessment of the pros and cons of the options to overcome misuse of the FSPR?
    The relative pros and cons seem to be well identified. However, it is also appropriate to consider whether the current purpose of the register is appropriate, which we understand currently seeks to be utilised as a regulatory tool, a policy tool and a consumer tool. This seems ambitious and unfortunately it is not currently achieving any of these purposes (and is subject to potential misuse). It seems optimistic to attempt to use the register as a consumer tool given the feedback noted at pages 7-10 of the Financial Service Providers (Registration and Dispute Resolution) Act 2008 – Part 2: Registration Report. NZX suggests that MBIE should focus on ensuring that the register is reliable as a regulatory and policy tool and is not subject to misuse. It will be easier to make changes to address these narrower purposes. This will have the by-product of ensuring the register is more capable of being used as a consumer tool, but it is necessary as an initial step to ensure the register is accurate and reliable and not subject to misuse.

37. What option or combination of options do you prefer and why? What are the costs and benefits?
    NZX favours a combination of options 1 (include stronger registration requirements) and 3 (amend the territorial scope of the legislation to require a legitimate connection to New

Zealand) noted in Part 3 of the options paper. NZX considers that it will be easier to introduce measures to control entry onto the register, rather than enforcing measures for deregistration of entities that should not be on the register. There should be powers to deregister entities where necessary but this will be more difficult to do in practice so the focus should be on controlling entry to the register. There will inevitably be some cost involved in introducing these measures but this is necessary to ensure the register is able to serve a useful purpose. The benefits of this approach are that the register would be accurate and reliable (for the purposes discussed at question 36 above) and less subject to misuse. This should be more cost effective than seeking to deregister entities after they are already on the register.

38. What are the potential risks and unintended consequences of the options above? How could these be mitigated?
    The challenge would be to introduce measures which exercised sufficient control without being too costly or time consuming for those entities legitimately requiring registration. The costs associated with introducing and applying new measures could be mitigated by consulting with impacted parties before finalising any new measures and leveraging off existing regulatory processes (e.g. licensing regimes).

39. Would limiting public access to parts of the FSPR help reduce misuse?
    It's unclear whether this would resolve the current problems with operation of the register because it assumes that there may still be significant inaccuracies with the current details of the register. It is difficult to see how a register could serve any useful purpose if it is inaccurate and/or subject to misuse by parties registering for illegitimate reasons.

Demographics

1. Name:
   NZX Limited

2. Contact details:
   Redacted

3. Are you providing this submission:
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