Options Paper Review of the Financial Advisers Act 2008 – Southern Cross Health Society Response

No.	Question	Submission
1.	Do you agree with the barriers outlined below? If not, why not?	The Society agrees with the barriers outlined.
2.	Is there evidence of other major barriers not captured here? If so, please explain.	No.
3. & 4.	Which options will be most effective in achieving the desired outcomes and why? What would the costs and benefits of the various options be for different participants (consumers, financial advisers, businesses)?	On balance we consider option 2 is the most effective option. Principally because it should improve consumer access to appropriately qualified/licensed advice, without imposing unrealistic burdens/costs on industry participants. However, there are certain aspects of Option 2 that we consider should have demonstrable evidence of net benefits to consumers and industry participants or be removed from that package. Namely imposing new ethical obligations on all advisers and disclosure of remuneration for QFE advisers when advising on their own products. Ethical obligation - The conduct obligations under sections 33 etc of the Act, while largely untested in terms of FMA or Court action over the last 5 years, do impose a reasonable duty of care on advisers. There is no evidence to suggest that test does not work. While different participants may interpret that obligation differently, absent case law or regulator evidence of the current conduct obligations not meeting the purposes of the Act, it is difficult to see what a new ethical obligation would add or what problem it is trying to address. A new obligation would also create additional uncertainty (discussed below). Disclosure of QFE adviser remuneration – where the QFE advisor sells only its employer's products and services we are unsure what the benefit to consumers would be of disclosing employee salaries and benefits, or put another way there is no actual or perceived conflict. There is no inference or perception that a QFE adviser is independent of the QFE where it is selling its branded products. We consider this is the heart of the conflict issue – a perception that advisers are independent and objective from third party product providers, when third party commissions may be driving product

		recommendations. QFE adviser remuneration disclosure is also likely to be meaningless, without disclosure of the employee benefits as often the two interact. However, where a QFE adviser sells products and services that are not the QFE's we agree there should be greater transparency of commissions / remuneration as there should be for all advisers. Option 1 - does not address the shortfalls that exist for both consumers and product providers in the current 'registration only' approach to RFA's. Creating financial advisers and expert financial advisers as set out in Option 2 and base requirements should resolve those issues. Option 3 - In our view, the changes put forward for Option 3 would cause too much disruption, create consumer confusion and complexity (with another tier of adviser). The distinction between Salespeople and Advisers will be difficult to operationalise in businesses that have both types of adviser or where advisers advise on internal and external products. Training, monitoring and process changes to accommodate such changes would be extensive and fraught. Any product suitability obligation would negate any potential benefit to the QFE, at least for simple to average complexity products because financial advice obligations essentially consist of providing a suitable product recommendation that meets the customer needs. We also note there would be significant increased complexity in such a scenario from retaining a distinction between RFA salespeople and advisers. While the concept of QFE salespeople would appear to be an easing of compliance responsibilities, Option 3 may also weaken the benefit of the QFE status itself, i.e. the entity tasking responsibility for its 'advisers'. Finally it is unclear what consumer benefit the distinction provides. We generally support the proposal of more meaningful language i.e. like removing confusion around class and personalised and focusing on providing the most suitable product that fits a consumer's needs. This could include the removal of category 1 & category 2 and aligning to 'expert adviser and adviser, i.e. easier for consumers to identify who would be required to have potentially more expertise on complex products. This change should be aligned to competency and educational standards to ensure that expert advisers meet a certain level of competency.
5.	Are there any other viable options? If so, please provide details.	While noting that elements of option 2 e.g. re-categorising class and personalised advice and category 1 and 2 products are supported the benefits should not be over stated – they are unlikely to result in large/tangible benefits. Therefore if less industry disruption is sought under Option 2, we consider

		these aspects could be deleted or phased in later. Southern Cross believes the issues relating to RFAs, transparency of third party interests and robo/online advice platforms and tools are more pressing and as such should be prioritised.
6.	What implications would removing the distinction between class and personalised advice have on access to advice?	We consider this will lead to some simplification for industry participants largely around disclosure processes, though only if disclosure requirements are tailored to the change. The focus should be on the needs analysis / suitability of product for the consumer and ensuring that high quality advice is provided based on needs. However, if disclosure requirements become overly onerous for what were previously class services then any (minor) benefits would be immediately lost. Finally, we note there is little if any consumer appreciation of/interest in the issue under either status quo or change.
7.	Should high-risk services be restricted to certain advisers? Why or why not?	If different qualifications and requirements exist / will continue to exist for advisers, then high-risk services should be restricted to certain advisers. This is because consumers will assume an adviser is appropriately qualified to sell - unless regulation prevents them from doing so. Potential issues as a result of less regulation of high risk or complex products could reflect badly on both government and the financial services industry generally. (The perception post-GFC is such regulation/consumer protection exists today). Higher risk complex products sold by advisers with higher competency requirements will also help to promote a better education / ethical / regulatory standard throughout the industry.
9.	What ethical and other entry requirements should apply to advice platforms?	We believe this should be kept simple so as not to stymie innovation in this area. Nonetheless base requirements of such platforms should be regulated. We consider this can be achieved via entities/persons providing robo-advice platforms and tools: - being registered FSPs, with minimum requirements including on management/directors, insurance and membership of an approved dispute resolution scheme. This should provide customers with suitable redress for reliance on advice platforms and tools, and have confidence they are appropriate entities to deal with.

		- the content and processes on their platforms should be subjected to the same base conduct obligations advisers face, i.e. to take care and be diligent, be clear and not deceptive/misleading towards consumers. - via their FSP status and conduct obligations, falling directly under the supervision and enforcement of the FMA.
10.	How, if at all, should requirements differ between traditional and online financial advice?	Standardised disclosure should suffice. It should be reasonably prominent and be provided to consumers at point of advice. It should advise of the ownership of the platform, dispute resolution scheme details, commissions or benefits/tied arrangements. Advice platforms should be required to clearly point the general limitations of advice platforms and any specific limitations relevant to that platform or service, e.g. data or methodologies used. Platforms and other tools should also be able to substantiate the recommendation made. i.e. demonstrate that the most suitable product has been provided based on the information and the consumers' needs.
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?	Although there is absence of case law and analysis on existing FAA obligations, we consider the existing obligations in section 33 of the FAA would if tested/enforced protect consumers, i.e. what would a reasonable adviser be expected to do in the circumstances. We consider it would be productive if the FMA led consultation with the industry to produce detailed guidance (or principles) on its expectations in respect of those conduct obligations, so that participants could comply in substance with that guidance – rather than second guessing a new and potentially novel legal test that would need fresh time to embed and in any event then need to be tested and enforced. FMA guidance in such areas could also be given some sort of quasi-regulatory status (similar to prudential guidelines issued by the RBNZ.) As a mutual Southern Cross strives to put its members interests first (both collectively and individually). However, we expect consumers by and large remain realistic and assume advisers will act reasonably and fairly in the circumstances ,but an obligation to always put consumer's interests first is likely to be both unexpected and unworkable for many (especially for companies obligated to

		act in the shareholders' best interests). There may also be many situations where such a high threshold maybe inappropriate, impose unnecessary costs relative to benefits and or no harm would result in a lower more suitable standard being enforced. As such we do not support the proposed new best interests approach.
13.	What would be some practical ways of distinguishing 'sales' and 'advice'? What obligations should salespeople have?	For the reasons set out in response 3 we consider this distinction undesirable, complex and likely to cause unnecessary/unhelpful interpretation issues for providers, advisers and consumers. Unless a business can compress its activities either side of the line, the uncertainty and complexity required to segment business activities, roles and services along a bright, but nonetheless highly artificial, line will likely generate greater rather than fewer compliance costs in the short and long term, than the status quo or other options. As outlined above we consider the focus should be to ensure high quality financial advice is provided to the consumer. If a sales person is "selling a financial product" then they should still be focused on the consumer's needs.
14.	If there was a ban or restriction on conflicted remuneration who and what should it cover?	A ban would be difficult to enforce, as such we do not support an outright ban. Meaningful information to consumers is more important. We therefore strongly support transparency at a consumer level on <u>third party</u> commissions paid to advisers <u>by</u> providers <u>by</u> the affected product line. This should enable consumers to make an informed choice/decision.
15. & 16.	How can competency requirements be designed to lift capability, without becoming an undue barrier to entry and continuation in the profession? 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?	As noted, there should be minimum standard of competency for all advisers, depending on the level of skill required i.e. advisor vs. expert advisor. The level of competency should be appropriate to the level of understanding required for the product/s being advised on. For example, there could be some benefit considering a QFE as a provider of minimum standards of competency, (and being able to demonstrate this i.e. a QFE that sells one product type).
18.	What suggestions do you have for the roles of different industry and regulatory	As noted in response 12, more detailed guidance and standards produced by the FMA would be

	bodies?	helpful to business in their understanding of the regulatory/regulator's approach to common issues. This would also help in setting best practice standards and guidance, and providing a transparent communication flow of issues or concerns between industry and regulator.
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?	Each has different advantages and drawbacks. For example verbal is usually better understood and absorbed, but equally difficult to quality control and monitor. Some form of record is therefore essential, even if by way of follow up.
20.	Would a common disclosure document for all advisers work in practice?	The rules should be common, e.g a part 1 general adviser/entity disclosure could be based on common rules. A part 2 could have common rules that led to more specific disclosures on the relevant products, remuneration, entity/adviser licensing and, for more complex products, the client's stated requirements.
21.	How could remuneration details be disclosed in a way that would be meaningful to consumers yet relatively simple for advisers to produce?	A simple way to provide data, in a way that is also meaningful, i.e. provide consumers with comparable data: - should oblige advisers to disclose all third party payments paid in relation to the product line sought that an adviser (at the time) has access to. - Require material gifts or other material consideration made by a third party to an adviser in the last year to be disclosed where an adviser is recommending that third parties' products. Formal detailed FMA guidance should be provided to advisers on third party commissions, gifts, the meaning of "material", the level of detail expected and examples so that minor benefits and small gifts are not captured and commissions and material benefits are etc. While an adviser should not need to disclose other product lines not relevant or its own remuneration for its own products, for anti-avoidance there should also be a general obligation on advisers to be clear, fair and not to be misleading or deceptive in the disclosure/presentation of third party payments.
22.	Is there any evidence that the existence of multiple schemes is leading to poor	It is unusual to in effect legislate different rules and interpretation applying to the same types of product providers and advisers for the same problems/disputes. We are unsure if anyone benefits

	outcomes for consumers?	from this approach and uncertainty. We are not aware of competition being used for dispute resolution services in similar markets (e.g. the UK and Aus) and the perceived benefits seem theoretical. In our relatively small market place we suspect it also costs industry as a whole more (than capturing the economies of scale generated via a single scheme). However, it would be difficult to say that evidence existed that multiple schemes had led to poor outcomes for consumers.
23.	Assuming that the multiple scheme model is retained, should there be greater consistency between scheme rules and processes? If so, what particular elements should be consistent?	The multiple DRS rules do however have the potential to undermine both participants and consumers/create regulatory arbitrage for FSPs. In a voluntary setting it is understandable where adhoc approaches have arisen (or as a transition to regulation as was the case in 2010). However, it would be difficult to objectively support the strategy/model as a planned regulatory approach to DRS. If a more uniform approach to rules was adopted between multiple DRS it is then questionable as to whether retaining multiple DRS has value. While no participant or consumer can reasonably expect different outcomes for the same types of cases/issues, the sole remaining argument for retaining multiple DRS would seem to be based on “service” or ”price”. Service and price differentials may be difficult to establish because (A) likely switching costs/implications will deter FSP’s from change (B) consumers don’t get to choose (C) there is no comparable service data and it may be costly (to the industry) to try to establish any.
24.	Should professional indemnity insurance apply to all financial service providers?	Noting PI would not cover criminal acts, in principle Southern Cross considers “suitable insurance” should be held by all advisers or QFEs. (E.g. at entity or adviser level depending on structure).
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)?	We consider via all participants – i.e. – government, industry, the regulators and the DRS. The intention to make it easier for consumers to source financial advice and meaningful information is key. The government and regulators could lead here, e.g. the national strategy for financial literacy in New Zealand.
26.	What terminology do you think would be more meaningful to consumers?	As noted we strongly support the terminology of ‘financial advisers’ and ‘expert financial advisers’ and overtime the reduction of terminology consumers do not need to see (i.e. the merging of class and

		personalised aspects and cat 1/ cat 2 distinctions).
33.	How effective is each package in addressing the barriers described in Chapter 3?	For the reasons noted we consider option two best addresses the barriers identified. It addresses the inconsistency of advice being currently provided between AFAs and RFA and creates a more level playing field in of the provision of advice to consumers (i.e. robo – advice and tools used by advisers). It will also remove complicated, industry / legislative wording and enable information to be more meaningful to end consumers.
34.	What changes could be made to any of the packages to improve how its elements work together?	As noted in our response to question 5 phasing less important changes, e.g. concept/terminology changes, could assist in reducing minor disruption from option 2.