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The Ministry of Business, Innovation and Employment (MBIE) seeks written submissions on the issues raised in this document by **5pm on Friday 31 March 2017**.

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

  Financial Markets Policy
  Building, Resources and Markets
  Ministry of Business, Innovation & Employment
  PO Box 1473
  Wellington 6140
  New Zealand

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

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The information provided in submissions will be used to inform the development of the Financial Services Legislation Amendment Bill, decisions in relation to the outstanding policy matters, and advice to Ministers.

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

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### Part 1 of the Bill amends the definitions in the FMC Act

1. If an offer is through a financial advice provider, should it be allowed to be made in the course of, or because of, an unsolicited meeting with a potential client? Why or why not?

   We submit that, whilst this provision is in essence carried over from the current legislation, it requires further analysis and consideration. We are of the view that the exception should not be included.

   As noted in the Consultation Paper, the current exception is limited to an AFA or QFE adviser. The change to "financial advice provider" is for the purposes of updating the wording to be consistent with the new legislation, however, the change in effect has the potential to significantly broaden the exception. In light of this, we maintain concerns that consumers who have little or no experience with, or previous exposure to, financial products or financial services industry and accordingly are not otherwise equipped to understanding products, may be sold unwanted or complicated products by the financial advice provider. It is our understanding, on the basis that a financial advice provider is most likely to be a business/entity, that either a financial adviser or a financial advice representative will make the offer for the financial advice provider under this exemption. Clearly, this group of potential offerees has been significantly widened, and is no longer limited to just the most qualified financial advisers (AFAs). It will now be possible under this exemption for a representative with no personal liability to offer a financial product to someone whom they have never met and may have no knowledge of the financial markets industry or products. We acknowledge this scenario is extreme, but maintain it is possible under the current proposed drafting of the

exemption. We note that controls, policies and processes will likely be put in place by the financial advice provider, and whilst these may be extensive, it is very difficult to impose controls on an 'unsolicited meeting'. Our response is no, an offer through a financial advice provider should not be allowed in the course of, or because of, an solicited meeting a potential client.

2. If the exception allowing financial advice providers to use unsolicited meetings to make offers is retained, should there be further restrictions placed upon it? If so, what should they be?
   In the event the exception is retained, we do agree that it should be limited to existing clients, as those existing clients would, in the very least, have received disclosure documentation and have some understanding of the financial service provider, financial advisers and financial advice representatives. We do question however, the ability for a financial advice provider to have an 'unsolicited meeting' with an existing client. We submit this would be a nonsense. Accordingly, we question why the exemption has been carried over in the new legislation.

3. Do you have any other feedback on the drafting of Part 1 of the Bill?
   We submit that the term 'financial advice representative', whilst an improvement on the originally proposed 'agent', continues to be confusing. A clear focus of the amendments is to provide clarity for the consumer, however, it is our view that a consumer will not readily be able to, nor see the need to, differentiate between 'financial adviser' and a 'financial advice representative'. We submit that this is in part due to the use of the 'financial advice' terminology in both terms and suggests to the consumer that both are providing and able to provide the same level of advice. We note the further advice in relation to this matter in the FAQs released by MBIE dated March 2017 ("FAQs – March") and in particular the limitations to which the financial advice representative will be subject and the lack of any personal liability or external discipline (see further notes in our submission on this). We submit that the difference between the two needs to be unequivocally clear from the outset, there can be no expectation on the consumer to take any action with respect to identifying or understanding a difference between the two. Further, we note the reference in the FAQs – March on p3 to the financial advice representative 'essentially acting as a conduit' between the financial advice provider and the client. We submit that the term for those that are financial advice representatives needs to clearly reflect this proposition. Following consideration, we submit that the term should be limited to 'representative' with the ability to include the name of the financial advice provider in the title, for example the licensed financial advice provider is FNZC, and those that are employed by FNZC in a representative capacity be referred to as 'FNZC representative'. This alternative makes it clear that the representative is just that, a representative of the provider. We submit that the term 'broker' in part 1 has historical connotations and accordingly has created confusion in the marketplace for some time. We are of the view that the term to be used needs to be reflective of the role undertaken. We submit that an alternative 'custodial service' more accurately reflects the services provided. See also response to questions 9 and 10.

## Part 2 of the Bill sets out licensing requirements

4. Do you have any feedback on the drafting of Part 2 of the Bill?
   We are concerned that there is a risk of reclassification of retail clients to wholesale clients to avoid licensing, this can be simply achieved through the self-certification process. This would remove significant layers of compliance and costs to the person/entity. Accordingly, certain clients that should be treated as retail may be treated as wholesale and are therefore excluded from the requisite retail client protections. We note that there is a deeming provision in favour of the FMA, however do not consider this to be workable in light of the size of the industry. This issue would be mitigated in the event the definition of 'wholesale' is amended as discussed in this submission. We note the definition of 'wholesale' is of critical importance.

We submit that the current drafting fails to take into account businesses that maintain multiple service offerings. A number of firms provide services to retail, wholesale and institutional clients. Further, individual advisers may provide services to retail, wholesale and institutional clients. This part of the Bill has the potential to have a significant impact on firms such as these that maintain this multiple service offering. The rationale being the 'tainting' provision within the Bill, if a service is provided to any retail clients, then that service is a retail service (even if all of the provider's other clients to whom that service is provided are wholesale clients). It is not practicable nor is it in line with the very nature of wholesale or institutional clients to treat them as retail with all the consumer protections of a retail client. For completeness, these clients are highly sophisticated, sometimes corporates, that are well aware of the nature of their services. As an aside, we note (as raised throughout this submission) the need for the definition of 'wholesale' to be revised. Further, we would like to reference the FMA Conduct Guide with respect to client care and knowing and understanding your client. It is our view that categorising all as retail when there is a multiple offering is inconsistent with the Conduct Guide and could eventuate in those firms and advisers with the multiple offering, falling foul of the FMA's expectations and guidance. Whilst it would be possible to provide the services through separate related companies to avoid this issue, it is our view that this would add unnecessary layers of complication, costs and compliance, and accordingly not be within the spirit of the changes. We submit that there needs to be provision made for those that have both retail, wholesale and institutional client services, and the offering of the retail should not taint the wholesale or institutional offerings. As a continuation of this submission, it is our strong view that the categorisation of these clients is absolutely clear. We further suggest that the retail service obligation such as 'nature and scope' does not apply to wholesale or institutional clients.

## Part 3 of the Bill sets out additional regulation of financial advice

5. Do you agree that the duty to put the client's interest first should apply both in giving the advice and doing anything in relation to the giving of advice? Does this make it clear that the duty does not only apply in the moment of giving advice?

We agree in principle with the concept of the client's interest first. However, we have concerns with the current framework for the duty. We are concerned that the duty is only applicable in the event of 'conflict'. It is our view that this introduces an element of subjectivity which naturally will be applied inconsistently across the industry.

We understand that Cabinet decided as part of the review that this duty was to extend to all advisers and be contained within legislation, it therefore needs to be clear and concise. We suggest that those with vertically integrated operations would, on current drafting, fall foul of this duty. We believe this to be unintended and would be eliminated with the removal of the 'conflict' proviso. We are of the view that the legislation needs to include clear conflict of interest provisions and these should not be limited to, or inextricably linked to, the client first duty.

In the event the 'conflict' provision is not removed we have concerns with the 'any other person' in s.43IH(1)(a) and s.43IH(2), this is far too expansive and, in effect, could encompass the world at large. This needs to be clearly restricted and 'related' or 'associated' may be an option to consider to be defined or reference to a definition included.

The term 'related to giving of advice' is too wide and could be interpreted as including matters such as FX, settlements, trading out of position and brokerage. We appreciate what is trying to be captured, but this has the ability to cast the net too wide. We suggest that either exemptions be considered or safe harbours introduced. It is our view that an unintended consequence would be advisers unsure of its application and refusing to provide financial advice, which would be contrary to the desire for universal access to financial advice, or being compelled to provide regulated financial advice. Neither is acceptable, nor in the interests of the consumer.

6. Do you have any comments on the proposed wording of the duty that a provider must not give a representative any kind of inappropriate payment or incentive? What impacts (both positive and negative) could this duty have?

We have concerns with the definition of 'inappropriate'. We are of the view that the definition is not sufficiently clear and may result in FAPs and FARs interpreting and applying it differently. We understand the intention is to in effect unbundle the incentives and potential incentives to ensure that the client first obligation is adhered to, in particular by the FAR given there is no provision for disciplinary measures. We submit that the definition be revised, or further detail is provided for the purposes of making the determination. One option may be to prohibit incentives that will or may eventuate in unlawful behaviour, or alternatively, incentives that would not be disclosed in accordance with the disclosure provisions, being in the interests of transparency. The basic premise being, if it is hidden it is most likely to be inappropriate. Industry integrity is paramount.

We also maintain concerns with the FAR making the determination within the controls and processes of the FAP. We submit that the FAP needs to be afforded some level of protection, a defence whereby sufficient policies and controls have been put in place, the FARs trained accordingly and the FAR elected to take action other than in accordance with the same. We note that it is only applicable to FARs, and understand that this is in part due to there being no disciplinary measures with respect to FARs (see question 8 feedback in relation to 431E below for our submission on this matter), however we submit that, following determination of a definitive, clear and concise definition for 'inappropriate incentives', the duty should be applied to all in the industry, including those currently outside of the regime. This is critical for the integrity and transparency of the industry.

7. Do you support extending the client-first duty to providers who do not provide a retail service (i.e. those who only advise wholesale clients)? Why or why not?

Yes. We submit it is in the interests of the consumer to have a consistent standard applied. As a general comment, wholesale clients should be entitled to an expectation of care, diligence and skill and client first obligations. Sophistication and experience does not negate this level of professionalism.

As noted below in our response to question 24, we have concerns with the definition of 'wholesale'. 'Wholesale' must be limited to the sophisticated and experienced investors. The current drafting in effect provides for a large group of consumers to be classified as 'wholesale' when they are in fact 'retail' and should be treated accordingly. Examples for this are those that meet the very low $1million threshold. As the licence requirements do not extend to wholesale, there is likely to be a clear temptation to reclassify all clients to wholesale, this would remove significant layers of compliance and costs to the person/entity. It follows that certain clients that should be treated as retail but classified as wholesale are therefore excluded from the requisite retail client protections. This is not in the interests of the consumer.

We note however that, as an NZX Firm, institutional clients (as defined pursuant to the NZX Market Participant Rules) and true wholesale clients will be treated differently and recommend that provision needs to be provided in legislation. The basic premise for this view is that there will be times with respect to institutional and true wholesale clients that Firm conflict management procedures will be invoked in accordance with regulatory requirements. These are clear processes.

We support extending the client-first duty to all.

8. Do you have any other feedback on the drafting in Part 3 of the Bill?

Redacted

Redacted

## Part 4 of the Bill sets out brokers' disclosure and conduct obligations

9. What would be the implications of removing the 'offering' concept from the definition of a broker?
   The implications of removing the 'offering' concept from the broker definition will, in our view, have little impact on the regulation of broking businesses. This is on the basis of our expectation that any business offering to provide the service but not in fact providing the service would not voluntarily subject themselves to another layer of compliance and cost. It is our view that the requirements should only apply to those that are providing the services. Accordingly, we support removing the 'offering' concept.

10. Do you have any other feedback on the drafting of Part 4 of the Bill, for example any suggestions on how the drafting of broker provisions could be simplified or clarified?
    We submit that the use of the term 'broker' in this draft Bill and the FMCA be revisited. The term 'broker' is widely used in the industry and accordingly has connotations, these being in our view in relation to insurance broker, mortgage broker and share broker. Accordingly, the use of the term is confusing.
    In our view, the term would be best amended to reflect what it in effect does. We suggest the

'custodial service provider' is a more accurate term.
To ensure the Regulator has a complete picture of the industry, we would recommend that true custodians (those that provide the service as their primary function) are licensed. We note that this is a large undertaking and possibly part of a larger discussion.

## Part 5 of the Bill makes miscellaneous amendments to the FMC Act

11. Should financial advisers have direct civil liability for breaches of their obligations, if the financial advice provider has met its obligations to support its advisers? Why or why not?

As referred to above in our responses to questions 6 and 8, we submit that the accountability and liability provisions within the draft Bill need to be revisited, and that there needs to be increased accountability for those providing the financial advice. We submit that financial advisers should have direct civil liability in addition to disciplinary measures for breaches of their obligations. It is our view that this liability should sit alongside the civil liability of the financial advice provider, and not only be applicable in the event the financial advice provider has proven that it has met its' obligations to support its advisers as suggested by the above question. This change would be consistent with the support for professionalism in the industry. As noted, there needs to be accountability. Following this, it is our view that financial advice representatives need to have accountability. We submit that financial advice representatives that contravene an obligation should be subject to disciplinary action. As currently drafted, a financial advice representative can move freely from one financial advice provider to another without accountability for any contravening actions. The respective financial advice representative's contravening actions could be significant, and, whilst we note that they would be subject to internal employment disciplinary measures, there is no accountability to the industry as a whole. Worst case scenario, a financial advice representative could breach conduct obligations and be dismissed from one financial advice provider, to then be re-employed by another unsuspecting financial advice provider and continue to operate in the same contravening manner. This is not in the interests of the consumer, nor the unsuspecting financial advice provider. For this purpose, there will need to be a central register of all three designations within the industry: financial advice provider; financial adviser; and financial advice representative with the ability to record any disciplinary measures undertaken.

12. Should the regime allow financial advice providers to run a defence that they met their obligations to have in place processes, and provide resources to enable their advisers to comply with their duties?

We support a defence for FAPs.
A defence from civil liability for the financial advice provider would be appropriate, particularly when an adviser has been deliberately circumventing the policies of the firm (notwithstanding that the firm may not have contracted out of this liability in the agreement with the client). That approach is consistent with the exposure draft's proposal to make both financial advice providers and their advisers responsible for the advice.

13. Is the designation power for what constitutes financial advice appropriate? Are there any additional/different procedural requirements you would suggest for the exercise of this power?

We submit that this designation power is appropriate, however we are unsure how the FMA is expected to police this. We expect it will be very much reliant on others in the industry reporting matters of concern. Further, due to there being no requirement for wholesale services to be licensed, we question how the FMA will be able to detect businesses/persons falling foul and triggering this designation power.

14. Do you have any feedback on applying the concept of a 'retail service' to financial advice services? Is it workable in practice?

Redacted

15. Do you have any other feedback on the drafting of Part 5 of the Bill?
    Please see above responses to questions 11, 12, 13 and 14.

## Part 6 of the Bill amends the FSP Act

16. Does the proposed territorial application of the Act set out above help address misuse of the FSPR? Are there any unintended consequences? How soon after the passing of the Bill should the new territorial application take effect?
    Yes, we agree the proposal will assist to address the misuse of the FSPR. We note the change to 5(1)(a), which, in effect, requires 'regulated financial advice' as defined in s431C to register. Whilst the ambit of the balance of 5 (1) is wide, we have concerns that due to the carve outs for financial advice in the FMCA clause 6 of Schedule 5, certain providers may not be required to register and this will have a detrimental impact on the industry. In particular, execution only services as carved out of the definition, but, in our view, must be registered, and whilst may be caught under another limb of 5(1), there is the potential for confusion and following that no registration. This concern remains despite the proposed category changes. We are also unclear whether FARs are mandatorily required to be personally registered. We suspect not on the basis that 6A(3) uses the term 'may' which suggests that either the FAR has the option or it is dependent on the terms of the licence. This could lead to an inconsistent approach. We submit that there needs to be change and suggest that a base line licence requirement be introduced for all FAPs to maintain a current register of FARs that is publicly available, for example on the firm website.

17. Do you support requiring further information (such as a provider's AML/CFT supervisor) to be contained on the FSPR to help address misuse?
    Yes, we support the provision of certain information, but it needs to be limited. Business specific information cannot be expected to be included. We suggest it could include information regarding the completion and status of legislatively required and its, such as AML/CFT and FMA. This will provide the consumers with transparency that the regulation has

been involved with this registrant. In the event no information is recorded, i.e. No audits have been completed, then the consumers will be on notice.

18. Do you consider that other measures are required to promote access to redress against registered providers?
    No Submission

19. Do you have any comments on the proposed categories of financial services? If you're a financial service provider, is it clear to you which categories you should register in under the proposed list?
    We note the full list of services. Please refer back to question 16 with areas of concern. We do not agree with the proposal that if the service provided is caught under the first category then it is not required to also register under the latter categories. In our view, it would be beneficial to be registered under all applicable categories. This would provide a full understanding of the business.

20. Do you support clarifying that schemes must provide information to the FMA if they believe that a provider may be involved in conduct that constitutes breach of relevant financial markets legislation?
    Yes, we agree with the clarification. However, we are aware of industry participants raising issue in the past with the FMA and there has been no action taken. It is likely this is due to a reoccurring issue, and also may be a lack of ability to take any action. We submit that in the event this proposed clarification is pursued, the resourcing of FMA is considered carefully. We suggest a response timeframe would be beneficial.

21. Do you have any other feedback on the drafting of Part 6 of the Bill?
    Comments in relation to the drafting of this part 6 are as raised above.

## Schedule 1 of the Bill sets out transitional provisions relating to DIMS and the code of conduct

22. When should an FMC Act DIMS licence granted to AFAs who provide personalised DIMS expire? For example, should it expire on the date on which the AFA's current authorisation to provide DIMS expires?
    We submit that the FMCA licence should expire on the date of the current authorisation. This is the time frame the AFA would have been working toward, but for these changes.
    We have concerns with 63(4) which provides the FMA with an unfettered power in relation to the licence. In our view, this is unacceptable and unnecessary. The Advisers to whom this is applicable need certainty for their business and their clients. The very nature of a DIMS service is that the client vests complete discretion in the Adviser and any change in the licence could have a material effect on the client. Accordingly, this power either should be removed or limited to being in the interests of the client.

23. Do you have any other feedback on the drafting of Schedule 1 of the Bill?
    See above.

## Schedule 2 of the Bill creates a new schedule to the FMC Act with detail about the regulation of financial advice

24. Should the FMC Act definition of 'wholesale' be adopted as the definition of wholesale client for the purposes of financial advice? Why or why not?
    Yes, the definition of 'wholesale' under the FMCA should apply for the purpose of financial

advice, subject to specific requirements with regard to particular offers of financial products being separated. We are of the view however, that it is critical that this definition is clear and only those that are 'truly wholesale' and institutional come under the definition. The two definitions, whilst in two separate pieces of legislation caused confusion, we expect this to intensify with the one consolidated piece of legislation. The current FAA definition is too wide and captures consumers that should not otherwise be considered 'wholesale', for example the $1million threshold in today's market is far too low. This $1 million threshold could effectively capture a significant proportion of our client base. We question the merits of having a dollar value threshold, 'wholesale' must be limited to sophisticated and experienced investors and this is not necessarily inextricably linked to wealth, in fact it is often the opposite. We need to take this opportunity to apply one 'wholesale' definition across the industry that is clear, concise and limited. We submit that this would also minimise the risk of advisers/entities re-classifying clients from retail to wholesale to avoid licence obligations. An issue which we consider to be a very real possibility with the current drafting of the regime.

25. We understand that some lenders consider that they may be subject to the financial adviser regime because their interactions with customers during execution-only transactions could be seen to include financial advice. Does the proposed clarification in relation to execution-only services help to address this issue?
Yes, it is our view that execution only services are sufficiently clarified. However, as noted above, it is our view that such services should be captured in part by the regime (see question 16 above).

26. Are there any unintended consequences resulting from the minor amendments to the exclusions from regulated financial advice, as detailed above?
Yes. It is our view that the carve outs are too broad and are likely to undermine the integrity of the industry.
We submit that these changes, and the changes to what constitutes financial advice, have inadvertently failed to categorise certain advice provided within the industry. It is likely that this is a result of the evolution of advice provided under the current class/personalised regime. It is our strong view that:
a. Generic information and/or opinion about a company is not covered (and should not be considered financial advice) – it is about a specific company but is not a recommendation or opinion in relation to buy or sell.
b. An opinion about a financial product within a company such as shares of preferential nature in a company or bonds offered by a company are also not covered (and should not be considered financial advice) - it is product specific but once again not a buy or sell.
Previously, both examples would have constituted class advice and treated accordingly. It is our view that the amendments have sought to over-simplify the advice regime. As a result class advice has the potential to be treated as execution only under the exception, which in some cases, would not be appropriate for the consumer, however, the full financial advice regime could also not be appropriate.
We recommend that clause 6 be reviewed and whilst we are not advocating a return to the class/personalised distinction, we need to incorporate in to this clause the fundamental premise of class service. Advisers need to be able to continue to provide 'class' advice.
We submit that clause 7 of part 2 schedule 5 should be revisited. We maintain concerns that lawyers, accountants, real estate agents and the like have an unfettered ability to provide advice on financial matters which would otherwise be considered to be regulated financial advice. There are very limited/no controls in this area. These are persons who may be in very trusted professions and roles, but, with respect to financial advice, may (highly likely) have no training, skill or competence. It is our view that any persons providing what constitutes regulated financial advice under the legislation should be held to the same professional standards under that legislation. It would be unreasonable and unworkable to look to impose certain Code Standards, but now that the client first and care, diligence and skill duties have been enshrined in legislation, compliance with those duties should be considered. It is our view that this is clearly in the interests of the consumers.

27. Do any of the membership criteria or proceedings for the code committee require further clarification? If so, what?
    No.

28. Does the drafting of the impact analysis requirement provide enough direction to the code committee without being overly prescriptive?
    Yes, however we are concerned with the additional time that this may incur. We appreciate that establishing the Working Group at the outset is an acknowledgement in part of this additional work. We would not want to see business being hampered by undue layers of complexity and additional work requirements. In saying that, we welcome the transparency. We also wish to submit that it is our view all players in the industry need to work together, the FMA, Code Working Group, Minister and relevant stake holders to ensure a smooth and effective transition.

29. Does the wording of the required minimum standards of competence knowledge and skill which 'apply in respect of different types of advice, financial advice products or other circumstances' adequately capture the circumstances in which additional and different standards may be required?
    No formal submission, see comments above in question 26.

30. Should the Financial Advisers Disciplinary Committee consider complaints against financial advice providers as well as complaints against financial advisers? Why or why not?
    Yes. However, it is our view that the liability and accountability within the new regime needs to be changed to ensure professionalism within the industry. As noted above, it is our view that FAPs and FAs should be subject to civil liability and FARs should be subject to the disciplinary committee, in addition to FAPs and FAs. This reduces consumer risk. Following the question, it is our view that the Committee should assess all complaints on the basis that one body needs to carry out the assessment and the decision making process for consistency reasons. This would further illuminate any emerging trends/issues within the industry.

31. If the jurisdiction of the Financial Advisers Disciplinary Committee is extended to cover financial advice providers, what should be the maximum fine it can impose on financial advice providers?
    No formal submission, but we wish to note that fines need to be significant to ensure that act as a deterrent.

32. Do you have any other feedback on the drafting of Schedule 2 of the Bill?
    See above.

## About transitional arrangements

33. Are there any other objectives we should be seeking to achieve in the design of transitional arrangements?
    We submit that the transitional arrangements need to be introduced and managed in a way that provides the industry with sufficient time to make the necessary changes, at minimum cost. We wish to raise concerns with research services that a firm may provide. It is unclear under the transitional arrangements whether they continue to be able to provide the services. See response to question 8 above with respect to research services.

## Proposed transitional arrangements

34. Do you support the idea of a staged transition? Why or why not?
    Yes.

35. Is six months from the approval of the Code of Conduct sufficient time to enable existing industry participants to shift to a transitional licence?
    Yes, subject to there being open dialogue and the Code of Conduct not introducing a significant change that will have a material impact on the transitioning of industry participants.

36. Do you perceive any issues or risks with the safe harbour proposal?
    It is our understanding that the 'safe harbour' proposal in effect protects the status quo for the transitional period despite not meeting the Code of Conduct competence, knowledge and skills standards. Whilst we appreciate the rationale for this safe haven, we are of the view that there needs to be a mechanism built in whereby those that are protected by the safe harbour and accordingly fail to meet the required Code standards are to use best endeavours to achieve or at the very least take steps towards compliance with the Code standards. There needs to certain obligations during this period to provide consideration for the affording of the protection.

37. Do you think there are any elements of the new regime that should or shouldn't take effect with transitional licences? What are these and why?
    No.

38. Is two and a half years from approval of the Code of Conduct sufficient time to enable industry participants to become fully licensed and to meet any new competency standards?
    Yes, although we would appreciate further detail on the competence requirements.

## Possible complementary options

39. Do you support the option of AFAs being exempt from complying with the competence, knowledge and skill standards for a limited period of time? Why or why not?
    Yes, however this is dependent on the new requirements not being too far removed from the current.

40. Would it be appropriate for the exemption to expire after five years? If not, what timeframe do you suggest and why?
    Yes, this aligns with current authorisation timeframes. However, we need to be mindful of the level of any new proposed qualifications and the time the same may take.

41. Is there a risk that this exemption could create confusion amongst industry and for consumers about what standards of competence, knowledge and skill are required?
    Yes, there is this risk. However, communication and transparency are critical. For the consumer, they need to be assured that the industry participant meets the requirements at the date of advice. We therefore suggest that the adviser be required to confirm that they meet the requirements in accordance with the legislation/ or Code.

42. If you support this option do you think it should be set in legislation or something for the Code Working Group to consider as an option as it prepares the Code of Conduct?
    We submit that this would be best placed in legislation so it is clear to the world at large.

43. Do you support the option of a competency assessment process for existing AFAs and RFAs? Why or why not?
    In an ideal world yes, however we are concerned about additional costs. We support a

minimum standard requirement. We submit that an exemption be considered for AFAs that are currently active and have met the previous period CPD requirements.

44. Is it appropriate for the competency assessment process to be limited to existing AFAs and RFAs with 10 or more years' experience? If not, what do you suggest?
    Yes. However, we submit there needs to be CPD requirements included, that the same is up to date and completed for the previous period.

45. If you support this option do you think it should be set in legislation or something for the Code Working Group to consider as an option as it prepares the Code of Conduct?
    No submission.

## Phased approach to licensing

46. What would be the costs and benefits of a phased approach to licensing?
    No submission.

47. Do you have any suggestions for alternative options to incentivise market participants to get their full licences early in the transitional period?
    No submission.

48. Do you have any other comments or suggestions regarding the proposed transitional arrangements?
    No submission.

## Demographics

49. Name:
    Debbie Bourne, Head of Compliance, First NZ Capital

50. Contact details:
    Redacted

51. Are you providing this submission:
    ☐As an individual
    ☒On behalf of an organisation

    (Describe the nature and size of the organisation here)

52. Please select if your submission contains confidential information:

☒I would like my submission (or specified parts of my submission) to be kept confidential, and attach my reasons for this for consideration by MBIE.

Reason: Redacted