31st March 2017

Ministry of Business Innovation & Employment
P O Box 1473
Wellington 6140

Submission from the Institute of Financial Advisers (IFA)

New Financial Advice Regime: The Draft Financial Services Legislation Amendment Bill and proposed transitional arrangements ("Consultation Paper")

Our submissions on the questions to the Exposure Draft are with this but the Institute also wishes to make these additional comments.

BARRIERS TO ACHIEVING OUTCOMES

In the Options Paper there were five key issues which were seen as acting as barriers to achieving stated outcomes and they were:

1. Hard for consumers to know where to seek financial advice from.
2. Consumers don't always understand the limitations of different types of advice
3. Consumers may be receiving advice from people without the right knowledge, skills and competency levels
4. Certain types of advice are not being provided
5. Certain conflicts of interest may be leading to sub-optimal outcomes for consumers

We felt it worthwhile revisiting these barriers to see if they have been removed or at least improved in the intended changes.

1. Hard for consumers to know where to seek financial advice from.

> *Many consumers would benefit from financial advice as not everyone is equipped with the knowledge and skills to make informed investment and complex financial decisions on their own. Unfortunately it is hard for consumers to know where to seek financial advice from. As a result consumers are more likely to receive financial advice from someone they already know (e.g. from family, friends or an existing provider) which might not be the best place for them to get the advice they need.*

We do not think this situation has improved at all and in our response to this question we had made reference that one of the original purposes of the FSPR was to provide the public with a searchable tool with useful information on financial services providers. There is no reference to this situation improving and in fact the information will be decreased with the

likelihood that the larger FAP's will have their advisers classified as FAR's who do not have to register.

The Institute feels that the initial survey conducted by MBIE, that had a staggering 83% of respondents who thought that consumers did not know how to find the right sort of advisers, has not been addressed at all.

We suggest that careful consideration needs to be made on the title of advisers to correctly describe whose advice is represented; we have suggested some titles in response to Q3.

We also suggest the titles be tested with consumers who represent the majority; the public, to ensure from the start consumers understand who they are approaching and what they could expect from an adviser.

2. Consumers don't always understand the limitations of different types of advice

> *Making good financial decisions is important as it affects quality of life, future opportunities and the overall wellbeing of New Zealanders. To be able to make good financial decisions consumers must be able to understand the limitations of the advice they are receiving.*

The introduction of the "financial advice representative" exacerbates this problem and there has been many comments already made on this and we address it again in this submission. At this point however we refer to Minister Goldsmith's statement at point 75 in the Final Report:

"Moreover, my proposal to clearly distinguish between "financial advisers" (who are individually accountable for their advice) and "agents" (who are not) aims to ensure consumers understand where it is the firm and not the individual who is standing behind the advice"

This supposed clarity has not been carried through into the Consultation Paper. If it was the term "financial advice representative" would never have been given life.

3. Consumers may be receiving advice from people without the right knowledge, skills and competency levels

> *For consumers to make good financial decisions they must receive advice from people with adequate knowledge, skills and competence levels. While the regime has introduced some competency requirements for some advisers, feedback through the Issues Paper suggests some consumers may still be receiving advice from some people without the right levels of competence.*

This appears to have had a weak response in the Consultation Paper and we refer to it in these initial high level comments from the Institute. The proposed *"level playing field for all who are providing advice"* would seem to be giving all advisers the previous AFA status, however without an equivalent level of competency required.

It is also clear that excluded occupations, or execution only transactions, will not help most consumers make informed decisions. We have no issue where a consumer is informed enough to make a decision. We are concerned that these clauses open the door for business models that do not put the client interest first.

4. Certain types of advice are not being provided

Consumers' advice needs and wants vary greatly from person to person. While some types of advice can be accessed with relative ease other types are largely inaccessible. This means some consumers might not be getting the right kind of advice or any advice at all.

This was a particular reference to robo-advice and it has been addressed. However we believe it is important that all advice is supported by a competency requirement. Robo-advice models have the potential to reach many people at low or no cost. It is important the advice given has been developed by a suitably qualified adviser. This talks to our point on competency. If a business model is developed that does not sell a product, then legislation needs to ensure the advice is linked back to an adviser in the business that is accountable to the Code of Conduct.

5. Certain conflicts of interest may be leading to sub-optimal outcomes for consumers

For financial advice to facilitate good outcomes for consumers, either advisers should place consumers' interests above their own or consumers should be able to understand where this is not happening. There is currently no across-the-board requirement to put consumers' interests first or to disclose conflicts of interest to consumers, which may be leading to suboptimal outcomes. This includes consumers being churned between insurance policies and sold replacement products, when this is in the interest of the adviser rather than the consumer.

This particular barrier has had intense debate around the issues of where it should sit – in the Code or in the Act along with its definitions and we answer that question in favour of the Code in this submission.

The specific mentioned in this barrier of insurance churn is given an introductory comment in the Consultation Paper of *"The quality of financial advice may be sub-optimal"* and we would hope that there are some rules introduced soon that addresses this issue. The other "replacement" issue of course is KiwiSaver transfers which number in the 000"s and have very little adviser involvement. The new KiwiSaver Guidance Note frees up the ability to make transfers easier in our opinion and the proposed limitations on advice could well be tested here.

Since the Introduction of the Financial Advisers Act the FMA monitoring reports have attested to the fact that the principle based Code of Conduct has worked in relation to AFA conduct. We question why this aspect of the existing structure needs to be altered, when it could simply be extended to bind all participants.

We are cautious of the withdrawal of a separate Financial Advisers Act. We had recommended in our options submission that QFE advisers be under the FMCA. This was with a view that financial advice has evolved considerably over the last three decades. We expect it will evolve further in the coming years to a point that there may be a complete de-linking of advice for fee and product sales. While this would be difficult to achieve where an adviser operates in a product provider, the adviser not integrated into a product provider could easily make the transition. Our caution is borne from the need to ensure the development of a Financial Adviser profession is enabled.

SALES VERSUS ADVICE

Whilst there are intended limitations, controls, processes to be introduced with this new regime we do not think that a clear line has been drawn between "Sales and Advice"
The November 2015 FMA Sales and Advice Report had some things to say about "sales practices" and we felt it worth repeating them here. Whilst the wording refers to cross – selling situations to a consumer they will still **be sold** a product on which they will say they they were **advised** to purchase.

The same care and attention is given to sales practices as it is to financial adviser services, to minimise the risk of customers being mis-sold financial products.

Example: We are aware of cases where customers have been sold a product such as life insurance or KiwiSaver, when their original intention had been to organise a different product, such as a credit card or home loan. In some cases there has been little, if any, awareness by the customer that the agreement to acquire the secondary product has been finalised.

Our view: In our response to the Options Paper we suggested the Code Committee be empowered to identify where the line between sales and advice is. This may be a moving line and we believe an opportunity is lost if the Code is not able to respond because legislation is slow to adapt. The sale of products such as insurance and KiwiSaver can be problematic when the focus of the interaction with the customer has been another product. The secondary sale often has much less care or attention or time committed to it. The firm and their staff are conflicted when their performance is measured on volume and there is not a corresponding requirement to ensure all products meet suitability requirements, or are in the best interests of the customer.

Advisers and salespeople should pay particular attention to this type of scenario to ensure customers' best interests are not compromised in the cross-selling process.

A LEVEL PLAYING FIELD OF ADVICE

The IFA has some 670 practitioners of which 640 are AFA's under the current regime and 370 of that number also hold an international mark of either CFP^{CM} – Certified Financial Planner or CLU_{CM} – Chartered/Certified Life Underwriter, backed by Massey University qualifications.

We have always had a career path membership system where members are encouraged to continue to up-skill and attain higher educational levels. Before the introduction of the current FAA there was a strong and growing attraction of advisers to study. Massey University had students, the IFA was mentoring and assessing CFP and CLU candidates and membership numbers of the Institute were far higher than today.

The introduction of the AFA status saw many existing advisers and members accept this minimalist route and use the legislated status as their "qualification".

However, even this AFA status did not see the expected 5,000 to emerge and circa 2,000 will have been the best total achieved. This number of course has shrunk since then.

FAA - Purpose of Act

"The purpose of this Act is to promote the sound and efficient delivery of financial adviser and broking services, and to encourage public confidence in the professionalism and integrity of financial advisers and brokers."

Now fast forward to 2017, neither this clause, nor similar wording, is to be found in the Exposure Draft and to have clearly stated in the "Objectives" of the new regime that an objective is to have:

"Public confidence in the professionalism of advisers" then this is a glaring omission!!.

Currently those who hold the AFA mark have the recognition under section 20B of the FAA allowing protection for the use of the term "financial planner" allowing this to be used alongside the AFA designation.

This is not evident in the Exposure Draft.

Losing these elements with further erode the quality of advice and advisers in New Zealand.

A new Financial Advice Regime.

The new regime aims to improve access to high quality advice for all New Zealanders. The changes represent a shift away from the current regime which sought to professionalise a subset of advisers, towards a regime which establishes a level playing field for all who are providing advice.

Current AFA's will initially become Financial Advisers alongside the RFA's in the new regime and many will retain that designation once licencing is complete but a level playing field will surely only emerge when all advisers who provide advice attain what this subset of advisers

(AFA's) had to do? The proposals as they stand actually lower the current standards and degrade the effort and expense previously incurred and required by existing AFA's.

This appears to undermine the standards of learning that AFA's had to prove.

This "level playing field for all who are providing advice" does place a huge and challenging task for the Working Group of the Code Committee in regards to competency and qualifications.

Finally it is certainly not the intention of the IFA to appear elitist, there are some 1,200 AFA's who are not members of the Institute, but also the majority of current RFA and QFE advisers who we know will have similar feelings. We are proud of the work we do for our clients, have the potential to financially improve many lives, which contributes to a caring, balanced and productive society.

Yours sincerely

Michael Dowling, Chair
Institute of Financial Advisers

Fred Dodds, Chief Executive
Institute of Financial Advises

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?

Such offers if allowed should have relevant and clear customer warnings and that advice should be sought if the customer has any queries.

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 addition to the comments in Q 1 it may also be "putting the interests of the client first" by providing a free look period, as with Life Insurance contracts. During this time period, the customer should be able to have the option of not proceeding with the offer.

3. Do you have any other feedback on the drafting of Part 1 of the Bill?

Yes

The Key Terms – financial adviser and financial advice representative

The definitions of both categories of advisers and products under the current version of the Act in our opinion have not been successful, because the titles have not given consumers any indication of the differences. The differences between the terms 'Registered' and 'Authorised' are not easily understood by the average consumer. Titles should be easily understood to avoid consumers entering into agreements and not being able to withdraw due to misunderstanding or embarrassment.

The decision to remove the three existing types of financial advisers and have them replaced has not been a smooth process.

From QFE /AFA/RFA to the first iteration of:

Financial Advisers, Agents and Financial Advice Firms

now to Financial Advice Providers – Financial Advisers and Financial Advice Representatives.

The one constant in all of these is at least a Financial Adviser still exists but their supposedly clear distinctness is just not there.

The muddied and confusing term – "financial advice representative" provides no clarity on that role, and limitations, processes and controls will do little for the public to differentiate between a FAR and a FA and we believe this will not address the area of consumer confusion about who to approach.

The importance of a quality financial advice regime – as detailed in the Cabinet Paper **"Improving Access to Quality Advice"** talks quite specifically and correctly on points of:

- Access to quality advice
- Confidence to invest and make informed financial decisions
- And – "buying a financial product is not like buying a TV. It is crucial that consumers can access quality advice and trust it when making decisions."

The word "advice" in the FAR title will not give clarity. A reasonable consumer would assume that a FAR title means that such persons are advisers and that they are giving financial advice.

A reasonable question to, and answer from, a consumer would be:

1. What does a financial advice representative do? – Provide financial advice?
2. What does a financial adviser do – Provide financial advice?

This surely needs change therefore and Financial Provider Representative as a minimum would be more sensible as it is closer to the reality of what these people do – "provide the firms - advice". We have used the word "firm" as whilst the FAF – Financial Advice Firm suggestion from last year has gone we feel that to provide an even clearer distinction would be achieved by renaming FAR's to "Financial Firm Representative".

In addition to changing the FAR title we also feel that the "true" Financial Advisers also need to have their title more clearly defined with a result that clearly separates who they are and more importantly what they do.

There is more to this than just a name!!

Currently there is confusion between AFA's and RFA's and not to enter into debate on that – AFA's are going but perhaps if the true Financial advisers were clearly separated with "Registered" added to the title that alone would in the publics eyes have a simple resonance as they are already conditioned to Registered Master Builder, Registered Nurses, Registered Medical Practitioners etc.

Key Term: Financial Advice Product

On the subject of "financial advice products" there is still an anomaly in regards to Category 1 products that requires fixing in our view and that is where current RFA's are sitting with historical books and collecting payments from clients fund balances that they cannot provide service on – that is unacceptable. This particular issue now of course has the new KiwiSaver Guidance notes providing definitions on "what is not personalised advice" which will allow all advisers to assist customers into KiwiSaver and receive trail commission which in turn will provide the regulators with an interesting decision or the Code Committee to introduce appropriate competency levels for these financial products.

In the Institute we have discussed a number of variations, as you can see. The clarity we seek for consumers could be best expressed below.

A FA offers Financial Advice that is individual to the consumer, so we suggest the title – **Personal Financial Adviser.**

A FAR offers Financial Advice that is standardised by the FAP (XYZ), so we suggest the title – **XYZ Financial Representative, or Financial Provider Representative.**

In doing so most of the public would be able to perceive the difference of whose advice is being represented. The Institute recommends you test the options with consumers with limited Financial Literacy to assess what they perceive from the title options.

4. Do you have any feedback on the drafting of Part 2 of the Bill?

One of the key objectives in the review was to have:

"No undue compliance costs for advisers"

It is not known the effect Licencing will have in regards to costs in both monetary terms ie "real dollars" and "time dollars'.

It is also very important that the cost of entry to the profession is minimised especially for the smaller financial advice firms where succession planning needs to happen and be able to grow or these businesses will fail and the demise of this sector must be challenged at all times.

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?

Yes

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?

It is understood that representatives will have both Financial and non-financial incentives and we have no issues with that generally, however, the incentives should be restricted to or focussed on correct compliance procedures and a client first process, and rewards should not be solely for **"sales of provider's product",** that would definitely be inappropriate.

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?

We would support extending the client-first duty to all providers of financial advice, not limited to those advisers who deal only with retail clients. This would require 431J (2) to change from its current application to retail services only.

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

Yes

Our view is that the Act should have a general duty for advisers to place the interests of the client first (as it does for other duties).

The Code should be left to clarify the meaning and give substance as to how that duty should manifest itself.

The Code Committee submission points out correctly that the Exposure Draft limits putting the interests of the client first to just conflict of interest issues. We think it is broader than that.

The proposed definition in 431H is probably an easier one to meet for advisers but it will limit the Code and will fall short of being able to provide a broad view in the Code of what putting the interests of the client first actually is (which is what is in the Code now).

We therefore agree with the Code Committees comments below:

"Treating 'client first' as a black letter law obligation that only applied when a conflict of interest was in play was not the Code Committee's intention in formulating Code Standard 1, which never lent itself to being strictly enforced in a court of law. In the Code Committee's view, it is an obligation that lends itself perfectly to being expressed in a code of conduct where a disciplinary committee might be expected to take a broader consideration of a financial adviser's duties."

It would seem that the Code has in many respects operated well to date. Why drift away from this?

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?

No Comment

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?

No Comment

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?

The financial advice regulatory regime must provide for adequate checks and balances against contraventions by both individuals and organisations. If individual licensees are to face civil liability then employees of advice organisations should face similar consequences. This will help prevent "rogue advisers" within organisations. Liability should also attach to individuals in management of advice organisations where a "rogue adviser" has operated. Having procedures in place is one thing but ensuring they are effective is another. We also support the "whistle-blower" clause (section 431P) as a contribution toward providing a check against poor management behaviour within an advice organisation. However with Financial Adviser evolution following a similar path to existing professions it is expected that we will end up in similar position to the Legal and Accounting professions.

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?

No.

FAP's should not have this defence, because it is not enough to put the right processes in place, they should also ensure they have adequate controls "in use" and very much part of the culture of the business. Similar to other Acts, if harm occurs then the FAP cannot step away from the responsibility, we see this similar to Financial Health and Safety.

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 agree the designation power is appropriate

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

The "service" definition is perfectly clear. It will be up to the FMA to ensure that organisations that need not be covered by a licence are well aware of the strict demarcations and that they are regularly monitored.

15. Do you have any other feedback on the drafting of Part 5 of the Bill?

No

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?

We agree with the "tests" suggested and also agree with a short time frame for its application to take effect – no longer than 6 months.

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?

No, we do not see it adding any value. The public rarely use the FSPR now

18. Do you consider that other measures are required to promote access to redress against registered providers?

No

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?

The list seems sensible and comprehensive.

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

21. Do you have any other feedback on the drafting of Part 6 of the Bill?

No

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?

Agree – it should expire on the date on which the AFA's current Authorisation to provide DIM's expires.

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

No

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?

In the interests of the greater simplicity that consistency of definitions within the FMCA would bring, and to ensure the best coverage possible of the additional protections enjoyed by retail investors, we are in favour of keeping the definition of wholesale investor the same in the FMCA

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?

The Institute is disappointed that the situation of the exceptions that exist currently in regard to those businesses (accountants, lawyers ,real estate agents) that are able to "dodge" the requirements of financial advice still exist, the same issue can exist in relation to Execution Only. This has been a contentious issue with our members for some time. We recognise that it is not feasible or likely that these businesses can be made to comply with all of the rules of the regime but feel that the exclusions from the definition of financial advice need to be additionally strengthened by "clear and effective processes and controls" in relation to this "incidental" part of their business. The existing situation for Financial Advisers in relation to giving accounting advice. We are able to provide advice in areas we are competent. The reverse situation should exist for Accountants and Lawyer, as Professionals, they should not be able to conduct business or give Financial Advice without completing the same competency requirement of a Financial Adviser. We are concerned that execution only and excluded services are not bound by the code of conduct for Financial Advisers. There is as much potential of consumer harm in an execution only transaction from not knowing the risks of proceeding or not proceeding, if an FA, FAR, FAP or excluded business or individual is not bound by the code in the case of a transaction then there is opportunity for loop holes and abuse of the Act. All of consumer's advisers should have an ethical obligation and should be competent to understand the limitations or risk a consumer faces for taking a course of action the consumer has chosen. We cannot think of another Act that allows individual to step out of their legal liability without ensuring the consumer is making an informed decision.

26. Are there any unintended consequences resulting from the minor amendments to the exclusions from regulated financial advice, as detailed above?

See comments in Q25

27. Do any of the membership criteria or proceedings for the code committee require further clarification? If so, what?

With the Code Committee to have a far wider oversight of the market of advice it would seem sensible that the Committee is made up as much as possible with not only skills and knowledge but representation from the various types of businesses who operate in the market place.

28. Does the drafting of the impact analysis requirement provide enough direction to the code committee without being overly prescriptive?

Yes – but it is most important that the Code Committee is well resourced and has sufficient time to complete this.

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?

The broader applicability of the Code will be the challenge for the Code Committee and examples of different standards for investment advice to insurance advice are already noted. Again, the current AFA's should not find this new regime challenging – they have their Level 5 and have had 6 years of complying with CPD credits.

Unless there is to be some dramatic change to the current "types of advice" an AFA is seen as competent in working in they will continue as is one assumes.

So the first challenge will be to assess how many different types of advice there are that will require their own separate standard:

- Life Insurance Adviser
- Health Insurance Advisers
- Mortgage Adviser
- Commercial Insurance Adviser

The situation of a FAP being able to run their own in house training to meet a standard does little to raise the overall qualifications of advisers unless it is linked to the NZQA standard. It is obvious that getting 26,000 current QFE advisers to Level 5 is not possible but surely those QFE employees who have client facing roles in the areas of Mortgage, Life and Health Insurance and Investment (Kiwisaver now not so much of an issue with the new Guidance Note) could be required to get to Level 5.

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. The Financial Advice Provider should not have the chance or opportunity to absolve themselves completely from complaints. If this is to happen then the licencing process will have to clearly set out the obligations here.

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?

If the FAP is what is currently a QFE then they are gaining significant benefits being able to self-regulate their advisers and we feel with this come significantly greater expectations and therefore possible greater penalties for breaches.

Thought should be given that a fine should be proportionate to the benefits gained from being a FAP based upon size. In fairness to the consumers involved in harm, if an individual adviser harms a consumer then the fine would apply, the same should be true for an FAP. However in either case if the harm event has been replicated a number of times, then the fine should reflect the increased harm, it is difficult to argue there justification for economy of scale when it comes to consumer harm.

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

No

About transitional arrangements

33. Are there any other objectives we should be seeking to achieve in the design of transitional arrangements?

Proposed transitional arrangements

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

Yes, this would support the Code Committee in rolling out the new code and allow check pints to consider unintended consequences.

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 – but perhaps end of March may be a more suitable date.

36. Do you perceive any issues or risks with the safe harbour proposal?

No

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?

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, however it does depend on just what these standards are going to be? If it is to be Level 5 then existing AFA's will be OK. If there is an intention, as we are seeing overseas, to move categories of advice further up the qualification chain then that would depend on just what that standard would be.

It would seem however that this question is aimed particularly at the 6,400 RFA's and if it is set at Level 5 then two and a half years is adequate time to attain this standard. Most RFA participants would be thinking a change is possibly imminent and their time frame is effectively 4 years.

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?

This surely depends on whether or not the standard in regard to qualification is going to change.

On the basis that The National Certificate in Financial Services (Level 5) is retained as the standard then yes current AFA's should be granted this complementary exemption. The limited period of time really relates to our opening comment and if the current competency level was to remain why would there be time period anyway?

40. Would it be appropriate for the exemption to expire after five years? If not, what timeframe do you suggest and why?

See answer to Q 39

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?

No

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?

Leave to Code Working Group

43. Do you support the option of a competency assessment process for existing AFAs and RFAs? Why or why not?

We again revert back to the current AFA required level of competency – Level 5, and as they all have this and are currently assessing what they have to do in regards a "Gap" analysis for the new NZ Certificate requirement, we cannot see the need for a competency assessment for current AFA's if they have maintained their authorisation and CPD requirements.

The RFA adviser sector is somewhat different.

In the Life/Health sector proper risk programming for clients can be complex and requires more than just a general knowledge of premiums and benefits. It is the opinion of the Institute that all RFA's should attain the current Level 5 requirements. A simple competency assessment is too liberal but as with AFA's when they were required to attain Level 5 for Category 1 products there were Competency Alternatives that were recognised.

We feel that this is an area that the Working Group of the Code Committee should address.

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?

See Q 44 – A "time in the business' does not necessarily give an adviser an automatic competency grading. The recent Life Insurance replacement Report noted that 50% of the 3,700 advisers surveyed in that report had earned less than the minimum wage in 2014 which would suggest low activity levels but more importantly not exposure to the current requirements of advice in the current regime.

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?

Leave to the Code Working Group

Phased approach to licensing

46. What would be the costs and benefits of a phased approach to licensing?

See Q47

47. Do you have any suggestions for alternative options to incentivise market participants to get their full licences early in the transitional period?

Understanding the FMA's issues here and it would seem sensible to do some research and then segmenting of the adviser landscape well before licencing is due to commence to

assess the size of the problem. FMA with good research could then develop a plan with adviser segments in the months leading up to Feb 2019 as to what will be required in the licencing process. There are bound to be a good sized numbers of ex AFA's who will be more familiar with compliance and regulatory issues than the RFA sector and could therefore be identified as "low hanging fruit" in the initial stages

Another sensible aspect of course would be for the FMA to work with adviser bodies around Guidance Notes in regards licencing and work in tandem towards an orderly introduction of the new regime.

48. Do you have any other comments or suggestions regarding the proposed transitional arrangements?

No

Demographics

49. Name: Institute of Financial Advisers

50. Contact details:

Fred Dodds, Chief Executive
Institute of Financial Advisers
PO Box 5513
Wellington

Michael Dowling
Board Chair
REDACTED

Institute of Financial Advisers
P O Box 5513
WELLINGTON
Ph: (04) 499 8062
Fax: (04) 499 8064
Email: admin@ifa.org.nz
Website www.ifa.org.nz

51. Are you providing this submission?

On behalf of an organisation

Background information on the Institute of Financial Advisers

The Institute of Financial Advisers is the professional body for some 700 members, representing financial advisers in New Zealand. All members are individual members, not corporate members. We estimate that our members provide advice to some 130,000 New Zealanders each year, many of whom would be couples rather than individuals, with an overall client base of around 400,000.

Our members provide advice to their clients in the areas of insurance, investments, financial planning, work-based savings and insurance, retirement planning, estate planning and financial services generally. Their professional practices reflect the broad spectrum of New Zealand businesses – they operate as local SME's, are part of large regional or national dealer groups, are associated with strong financial organisations, services companies in banking, funds management, or insurance, work in employee benefits organisations, or sometimes practice as lawyers, accountants and other professional advisers.

The Institute reinforces compliance with a code of ethics and practice standards, runs a Professional Conduct Committee and Disciplinary Tribunal that are independently chaired, offers education pathways that can lead to professional designations and the attainment of internationally recognised adviser marks, maintains and ensures compliance with a continuing professional development programme, and provides networking, education, development, and business practice forums at a national and regional level for members.