We thank you for the opportunity to make a submission.

We wish to make four initial points

First we are very disappointed that officials and Government have not seen fit to make a clear separation between sales and advice. We reiterate our statements in other venues that in our view, this legislation will give carte blanche to the institutions to "sell" their own products under the guise of "advice".

We can summarise this view no better way than by quoting the words of retired Australian Chief Justice Sir Anthony Mason speaking about Australian regulation to the SPAA in 2009:

> *"Our system of regulation proceeds on the footing that the adviser may be a product seller. Indeed, our system enables the product seller to adopt the disguise of a financial adviser and endows that disguise with the aura of legitimacy by calling him a "licensed" financial adviser".*

Change the last three words, and we think this clearly concisely and effectively summarises our view of the philosophy that underpins this NZ regulation.

Second we are not going to submit anything on the topic of whether "financial advice representative" is or isn't the correct title. In our view, it's not what these people are called that matters, it is what they are allowed to do.

Third we note that there are still major elements of the regulatory scheme that need to be determined that will shape the final outcome; these include

- Disclosure
- The procedure for applying for a full licence, including the conditions regarding
    - Whether the licensee can appoint financial advice representatives
    - Whether the licensee will be allowed to have private own entity alternative competence skills and knowledge requirements to the default provisions of the Code
- The Code – both with respect to any changes for Authorised Financial Advisers and new rules to be applicable to other advisers.

Fourth the authors of this submission have no expectation that anything we submit about will have any effect on the final outcome. We think this consultation is merely part of a "tick box' process. We raised with our membership whether we should even make a submission. While they understood our point , they were swayed by a common view expressed elsewhere that "if you don't submit, then you will have no right to grizzle about the final outcome."

We now turn to the specific questions in the consultation document. We offer no comment on a number of the questions.

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?
   No comment

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?
   No comment

3. Do you have any other feedback on the drafting of Part 1 of the Bill?
   No comment

Part 2 of the Bill sets out licensing requirements

4. Do you have any feedback on the drafting of Part 2 of the Bill?
   No comment

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 think this thinking is totally misguided.

   The only examples given (top of p20) relate to the situation when a FA or FAR is deciding whether or not to give advice or whether to provide Information only.

   Taking the first situation (whether or not to give advice), an adviser must be free to decline to give advice for whatever reason the adviser decides, without running the risk that ex post some other body determines that the potential client "deserved" to be given advice.

   In the second situation, Information Only is specifically excluded from "advice" (and therefore "regulated advice") under the proposed Bill, so it seems illogical to want to regulate it under the Act. If you think advisers should be able to be second guessed in hindsight about a decision to provide Information only, then we think it would be preferable that Information Only should be totally banned.

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?
   If the basic scheme of the regime remains as it is in these documents, we think that there should be a total prohibition on incentives from financial advice providers to their financial advice representatives. FARs will be severely limited by their employers as to what advice they can give their customers.

   However, given that it is unlikely that you will ban all incentives, we further submit that any volume incentive should be prohibited. Volume based incentives are in our opinion most likely to result in the bad behaviours that you are worried about most.

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 think that wholesale only entities should be either completely in or completely out of the regime. It doesn't make any sense to us to not require a wholesale entity to be licensed, but then make them subject to some but not all of the duties that apply to licensed entities'

   Otherwise, why shouldn't we ask you to extend some of these duties to spruikers of residential property who are also not required to be licensed under this legislation.

However we would consider it to be logical if a wholesale firm was required to be licensed, but there was a differentiation between the duties that the entity owed to a wholesale client as compared with the duties it owed to a retail client.

8. Do you have any other feedback on the drafting in Part 3 of the Bill?
We wish to give positive endorsement of the thrust of the Duty to Put Client's Interests First as set out in proposed clause 431H of the FMCA but with two amendments (see below)..

We have seen the submission of the Code Committee but we oppose that submission for three particular reasons

1.we do not think a statute is the place to raise "aspirational" obligations (par 24 of their submission);
2. nor de we think it is good drafting practice to impose a statutory duty in a form that does not lend itself "to be strictly enforced in a court of law" (par 24)
3. In the 8 years that the Code has been in development or in force, the Code Committee has never identified what it thinks Code Standard 1 actually means.

The first amendment to cl 431H is that we would like to see the conflict with " any other person" qualified to "any other person associated with the adviser". We note the Code Committee specifically supports this amendment (par 29).

Our second amendment has already been covered in our answer to Question 5 above.

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?
We have always believed that using the term "broker" as it has been in Financial Advisers Act and is now being transferred to FMCA is totally confusing to the public. The term broker in the financial services industry historically has had a different meaning e.g. insurance broker – a multi-underwriter service provider who is going to get his consumer the best possible deal; sharebroker – the person who helps the consumer buy and sell shares.

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?
No. The general scheme of the regulation is that individuals can be disciplined, and that F A Ps are subject to civil penalties. This principle should be universally applied.

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. Not only do financial advice providers have to have in place processes, they have to be accountable for ensuring that their processes are followed. The considerations that are wrapped up in this idea should however be able to be pleaded by financial advice providers in

mitigation of any penalty.

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?
    Given that this provision seems to apply only to activities that are not already captured under the Act, we agree.

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

    Officials' thinking in this area is misguided.

    We can distinguish three types of advice providing entities under the present regime
    (1) retail only
    (2) wholesale only
    (3) a mixture of retail and wholesale.

    Under the proposed regime, (1) and (3) will be required to be licensed; (2) will be not.

    Your proposal affects only (3). But we respectfully suggest that you have invented a solution looking for a problem, and the result will be that very few, if any, entities will choose to continue in the third group. – there will be a withdrawal of access to some retail clients.

    Clients can be separated into two non-overlapping groups – retail clients and wholesale clients. Your solution is to say that if a service is offered by an entity to even a single retail client, then that service by that entity to all its clients (both retail and wholesale) will be treated as a retail service. This means all the retail duties will apply to every client interaction in such an entity.

    One of the consequences of these rules will be that there is less provision of retail advice. We think firms who want to be wholesale only will jealously guard that status and will therefore drop all their current retail clients. For example where a firm currently has a client who has most of her investments in a Trust that meets the wholesale entity criteria and which has not opted out but who also has a few personal investments, the firm will probably advise her as an individual retail client. Under the new regime, they will have to tell their client the impact of the Rules is that they will no longer be able to service her as a personal (retail) client.

    If you proceed with your plans, and the effect is as we have just stated, there is no way you could pass off this outcome as simply an "unintended consequence".

15. Do you have any other feedback on the drafting of Part 5 of the Bill?
    No comment

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?
    No comment

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

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

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 support the proposal

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?
    We believe that the obligations should remain as they are – i.e. the trigger for a referral should remain as a series of material breaches.

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?
    An AFA who has an authorisation to provide a personalised DIMS should be able to continue to offer personalised DIMS up until the time their present authorisation expires – otherwise Government will be taking away a right that they had been previously granted.

    Of course an AFA should continue to be able to voluntarily relinquish that authorisation prior to maturity.

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?
    We believe all the existing provisions should be carried over from the Financial Advisers Act to the new regime.

    This means that there will be a number of alternative ways of qualifying for wholesale status. We are not aware that the current definitions have caused any regulatory problems.

    It would present chaos if financial advisers had to go back to some of their current wholesale clients and tell them that since the definition had been changed, their client status was now

changed.

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?
    There should be a black letter definition of what are the requirements of Execution Only – the client herself determines what is to be bought or sold. Once that line is crossed, it's advice.

26. Are there any unintended consequences resulting from the minor amendments to the exclusions from regulated financial advice, as detailed above?
    No comment.

27. Do any of the membership criteria or proceedings for the code committee require further clarification? If so, what?
    We do not support the Chairman of the Committee having a casting vote. If the issue is so finely balanced that there is a voting tie, then we believe that the matter needs to go back to the meeting for further discussion.

    We do not understand why the criteria for consumer representatives has been extended to include dispute resolution experts.

28. Does the drafting of the impact analysis requirement provide enough direction to the code committee without being overly prescriptive?
    We understand why you might include an RIS statement as part of your process. But unless there is a process whereby that RIS might be challenged, it is from our perspective a waste of time. As a tick box element of your policy process, it passes. For any other purpose we think it fails.

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?
    Yes.

30. Should the Financial Advisers Disciplinary Committee consider complaints against financial advice providers as well as complaints against financial advisers? Why or why not?
    Definitely not. That would be double jeopardy as financial advice providers are already subject to civil penalties.

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?
    N/A

32. Do you have any other feedback on the drafting of Schedule 2 of the Bill?
    We understand the logic of financial advice representatives not being subject to FADC for matters that fall under the competency knowledge and skills standards. This is because their employer is going to have tightly defined what they can say to and what advice they must give to customers.

    However, we believe financial advice representatives should be subject to FADC for complaints about ethics, conduct and client care and continued professional development.

Failing adoption of this submission, then we subsequently submit that anytime a financial advice provider internally disciplines a FAR, it should have to both report the same to the FMA and publish the disciplinary action on a public register. We are not convinced the name of the disciplined FAR necessarily needs to name the FAR in the same way FADC does not need to name the adviser disciplined (e.g. the X case).

About transitional arrangements

33. Are there any other objectives we should be seeking to achieve in the design of transitional arrangements?
    No

Proposed transitional arrangements

34. Do you support the idea of a staged transition? Why or why not?
    We support the staged transition. You are clearly not in a position to go straight to full licensing at this time.

    However we do not support any notion that the requirement for obtaining a full licence could be staggered with different earlier deadlines for some transitional licensees. Every transitional licensee should be treated equally under the law and be free to determine when to apply – but of course, every individual transitional licensee should be able to apply earlier than the final deadline.

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.

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?
    No submission.

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?
    It depends on what the requirements for and the process of full licensing will be.

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?
    The CKS standards for AFAs were set in 2010 when the Code was first published. They have been revised twice since with respect to what does and does not count as alternative qualifications. We believe that the latest 2016 change was not well thought out (lots of unintended consequences), and we know there is concern being expressed by AFAs who were initially authorised using alternative qualifications for some Sets, which are no longer so recognised.

It would be very disconcerting for existing AFAs (who are already subject to much higher CKS standards than the other 25,000 people who will come under the 2018 Code) find that they have to effectively re-qualify for a 3rd time in a handful of years to yet another set of standards.

40. Would it be appropriate for the exemption to expire after five years? If not, what timeframe do you suggest and why?
    We think that any consideration of such an exemption should be held-over until the new Code has been developed. If the requirements for investment financial advisers remains broadly similar to the current Code for AFAs, then we do not see the need for any exemption process.

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?
    We think that the most likely outcome is that a consumer will be totally confused as to how the competency of someone holding herself out as a "financial adviser" post 28 February 2019 will have been assessed. We would be most concerned if someone who has been authorised under the FAA pre 2019 has to continue to keep proving that she remains competent.

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?
    It should be included in the Code.

43. Do you support the option of a competency assessment process for existing AFAs and RFAs? Why or why not?
    Going forward (after 28 February 2019) we think the awarding of the title "financial adviser" will be a decision made by each individual financial advice provider for its own advisers. Presumably FMA will be have to challenge any such designation through a charge against the individual financial adviser before the FADC.

    So if new entrants post February 2019 are not required to prove their competency to some external party before advising clients, then we do not see why advisers authorised pre 2019 should have to prove their continued competency to an external party to continue advising..

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?
    We do not see why there should be any minimum years of experience limit – an AFA = an AFA = an AFA..

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?
    If this option is introduced, it should be done via the Code.

Phased approach to licensing

46. What would be the costs and benefits of a phased approach to licensing?
    The cost would be in terms of lack of equity between financial advice providers. Being selected for early adoption would be like winning the lottery when the compulsory prize was 6 months hard labour in Siberia in winter.

    The only benefit would be to officialdom – who would be able to deal with a steady stream of applications over 2 years rather than a dribble followed by an avalanche/flood in the last 3 months.

47. Do you have any suggestions for alternative options to incentivise market participants to get their full licences early in the transitional period?
    The only way we believe licensees might want to be an early adopter is if you could arrange for some financial advice providers to apply early and give them such a pleasurable no stress experience that they go out and become your evangelists.

    We all talk with other firms who relate to us their experiences in obtaining other FMCA licences. We wonder whether you have had an independent researcher do a post licensing exercise and see if there are any learnings, especially from the boutiques. We know that the numbers of potential financial advice provider licensees will be heavily skewed to smaller firms.

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

Demographics

49. Name:
    SIFA Incorporated

1. Contact details:
    Robert Oddy Murray Weatherston
    REDACTED **REDACTED**

2. We are providing this submission:

    On behalf of an organisation with 58 members, mainly AFAs operating in privately owned businesses.

3.