

28 August 2013

Corporate Law Team

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To whom it may concern

Financial Adviser Regulations – Discretionary Investment Management Services and Custody

Thank you for the opportunity to make some general comments on the Discussion Document 'Financial Adviser Regulations – Discretionary Investment Management Services and Custody' (**Discussion Document**). While we do not follow the submission template, I have framed the comments where possible to reflect specific questions in the Discussion Document. In addition to this general industry submission I understand that a number of our members have provided more specific individual submissions.

Consistency between FAA and FMCB regimes

A major focus for the banking sector is regulatory certainty and consistency. It is of fundamental importance that where regulatory regimes overlap, that they are aligned as far as possible to reduce uncertainty and the chance for regulatory arbitrage.

The Financial Markets Conduct Bill (**FMCB**) will allow for the granting of licences which will enable entities to provide class and personalised DIMS services under the new regime. This will overlap with the provisions of the Financial Advisers Act 2008 (**FAA**) which regulates the provision of personalised DIMS services by AFAs. As such, retail clients accessing identical personalised DIMS services will be covered by different regimes, depending on whether the product is being provided by an AFA or an employee of a licensed entity.

The Discussion Document recognises this, and NZBA supports the efforts in the Discussion Document to align the two regimes. However, NZBA notes that the Discussion Document states that the regimes will be aligned 'where appropriate'. NZBA submits that the preference should be to align the requirements in all cases unless there is real evidence that alignment would create serious undesirable outcomes.

NZBA notes that the draft FMCB regulations have not yet been consulted on, and so it is difficult to fully compare the provisions under the two regimes. It would be useful if drafts of the FAA regulations and FMCB regulations dealing with DIMS could be published for consultation at the same time to allow the industry to comprehensively compare the proposals under the two regimes.

Useful disclosure

NZBA notes that the Discussion Document raises a number of questions regarding disclosure by advisers and custodians to consumers. On a fundamental level it is essential that disclosure is useful to consumers. In order to achieve this disclosure must be consistent, simple, and succinct.

Where possible any new requirements should be based on existing disclosures to minimise the additional burden of the requirements. Furthermore, where disclosure is required from multiple parties involved in a transaction (for example the adviser and the custodian) every effort must be made to ensure that there is no unnecessary duplication.

In addition, the regulations should not create an obligation on custodians to look through to the underlying investors. Flexibility should be provided to allow either the custodian or the DIMS provider to satisfy reporting requirements. This flexibility will not impact on the protections granted to consumers, nor would it reduce the information provided. It would, however, help reduce the costs of implementing the regime by allowing providers to retain the different commercial arrangements that currently exist in the market.

Equal treatment of custodians and custodial services

As stated above, NZBA supports consistency wherever possible. As such, NZBA does not support differences in the treatment of different types of custodians or different custodial services.

Regulatory requirements should not distinguish between custodians that are subject to NZX Listing Rules and those that are not. In line with our comments above NZBA notes, however, that steps should be taken to reduce any unnecessary duplication or inconsistencies for custodians that are covered by both sets of requirements.

On a more general note, NZBA notes that the use of custodians also occurs in the provision of other services such as Managed Investment Schemes. While we understand that the scope of the Discussion Document is limited to custodial services under the FAA, we submit that similar requirements, including reporting requirements, should apply to all custodians holding property on behalf of consumers, regardless of whether it is through a DIMS service or not. There does not appear to be any policy rationale to single out custody arrangements for DIMS services, and NZBA submits that it is in the interests of consumers to ensure that requirements are applied across the board. We expect that further work will be done in this area during the development of the Financial Markets Conduct Regulations.

Timing of FAA regulations

As noted above, the DIMS regimes under the FMCB and the FAA are inextricably intertwined. As such, the proposals in the Discussion Document rely heavily on concepts in the FMCB (such as 'custodial services' or 'custodians') that do not currently exist under the FAA regime.

This poses some challenges for the timing of these regulations, particularly if it is intended that they would be promulgated before the FMCB regulations. NZBA notes that it would be preferable if the two are promulgated simultaneously to help ensure that the final form of the FMCB regulations does not require changes to the FAA regulations. As noted above, it would be useful if future consultation on the two sets of regulations is conducted simultaneously to allow for a proper assessment as to the consistency of the two regimes.

Transition

Finally NZBA submits that any changes in requirements should be subject to a transition period of no less than 12 months. A 12 month transition will allow sufficient time to develop and implement systems to comply with the changes in the most efficient manner.

In addition, this period should align with the implementation timeframes for the DIMS regulations under the FMCB due to the reliance of the regime on the content of the final FMCB regulations.

Next steps

We are happy to discuss any aspects of this submission further, so please do not hesitate to contact me.

Yours sincerely

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