NEW ZEALAND BANKERS ASSOCIATION

Submission

to the

Ministry of Business, Innovation and Employment

on the

Options Paper: Review of the Financial Advisers Act 2008 and the Financial Services Providers (Registration and Dispute Resolution) Act 2008

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Submission by the New Zealand Bankers' Association to the Ministry of Business, Innovation and Employment on the Options Paper: Review of the Financial Advisers Act 2008 and the Financial Service Providers (Registration and Dispute Resolution) Act 2008

About NZBA

1. NZBA works on behalf of the New Zealand banking industry in conjunction with its member banks. NZBA develops and promotes policy outcomes that contribute to a strong and stable banking system that benefits New Zealanders and the New Zealand economy.

2. The following fifteen registered banks in New Zealand are members of NZBA:
   - ANZ Bank New Zealand Limited
   - ASB Bank Limited
   - Bank of China (NZ) Limited
   - Bank of New Zealand
   - Bank of Tokyo-Mitsubishi, UFJ
   - Citibank, N.A.
   - The Co-operative Bank Limited
   - Heartland Bank Limited
   - The Hongkong and Shanghai Banking Corporation Limited
   - JPMorgan Chase Bank, N.A.
   - Kiwibank Limited
   - Rabobank New Zealand Limited
   - SBS Bank
   - TSB Bank Limited
   - Westpac New Zealand Limited.

Background

3. NZBA welcomes the opportunity to provide feedback on the review of the Financial Advisers Act 2008 (**FAA**), as set out in the Options Paper: Review of the Financial Advisers Act 2008 and the Financial Service Providers (Registration and Dispute Resolution) Act 2008 (**the Options Paper**).

4. NZBA commends the work that has gone into developing the Options Paper and the Ministry of Business, Innovation and Employment's (**MBIE**) commitment to meaningful consultation and engagement, which has been self-evident throughout this consultation process. NZBA appreciates the invitation to participate in this consultation.

5. The following submission addresses Parts 1 and 2 of the Options Paper on the review of the FAA. NZBA previously submitted separately on Part 3 of the Options Paper on the review of the Financial Service Providers (Registration and Dispute Resolution) Act 2008.

6. If you would like to discuss any aspect of the submission further, please contact:

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Executive summary

7. The below submission focuses on the discrete elements identified in the Options Paper on which there is general industry consensus. NZBA members will provide feedback on their preferred potential packages of options in their own individual submissions.

8. NZBA and its members:

   a. Support the continuation of the current licensing and self-regulation model for Qualifying Financial Entities (**QFEs**).

   b. Support a regime that enables advice to be given through technological channels, including robo-advice.

   c. Do not support a change that would require a client to opt-in before being considered a wholesale client.

   d. Support changes to terminology in the FAA to help make concepts and distinctions clearer and easier for consumers to understand.

   e. Support the improvement and simplification of the disclosure regime to make it more meaningful and accessible.

   f. Support efforts to increase consumer awareness of the value of financial advice and advisers, particularly in the context of a broader financial literacy drive.

QFEs – Entity licensing and regulation

9. NZBA and its members support the continuation of the current licensing and self-regulation model for QFEs. Our members consider this model is an effective way of regulating their entities who primarily provide everyday financial advice and who have a mature regulatory infrastructure, with appropriate control and oversights.

10. NZBA and its members submit that self-regulation of employees who distribute FAA products is appropriate for businesses of a certain size and scale, while still providing suitable consumer protection. The existing self-regulation QFE regime provides an appropriate and sensible governance framework for large entities with large staff numbers and broad product ranges. Importantly, a QFE must satisfy the Financial Markets Authority (**FMA**) on various governance competencies to be eligible for QFE status. The FMA's oversight and supervision of QFEs provides further protections and assurance for QFE customers.

11. Under the current regime, QFEs are responsible for ensuring their employees are competent, trained, overseen, and performance managed. The regime provides reasonable flexibility for QFEs to decide how to best achieve those requirements. Importantly, it also allows QFEs to employ other advisers with higher qualifications to provide more complex financial planning services, including on more complex financial products, and ensures that training and advice is tailored and fit for purpose.

12. NZBA and its members are in favour of retaining the existing competency model for QFE employees under which the QFE is responsible for ensuring that its employees have the requisite competency to give advice on products for which they are responsible for selling.

Advice through technological channels, including robo-advice

13. NZBA and its members support a regime that enables advice to be given through technological channels, including robo-advice. We see digital tools and robo-advice as effective mechanisms to provide low cost, accessible advice, which will also foster greater innovation in the financial services industry to the benefit of consumers.

14. Feedback from our members shows that as digital customer interactions are increasing, technology will need to play an increasingly important role in the delivery of financial advice and "future proofing" of the regime is therefore essential.

15. NZBA and its members support allowing financial advice to be provided online by a licensed entity. Accordingly robo-advice should be treated as provided by the licensed entity. NZBA and its members submit that for QFEs, QFE registration should be sufficient, for example a designation allowing robo-advice could be added to a QFE's licence.

16. NZBA and its members consider a requirement to give customers the option to speak to a person as set out under the Option 2 "hybrid" regulatory model to be unnecessary and will in our view limit many of the benefits of electronic delivery. Many advisers will as a matter of course offer a face-to-face service on request for customer service reasons, but we do not support it being a legal requirement.

17. NZBA and its members submit that the provision of robo-advice should be subject to appropriate governance.

18. If MBIE considers that a licensing regime is appropriate to monitor the provision of robo-advice, an effective licensing regime should produce consistent standards across providers and recognise the differing levels of other regulation and supervision across provider types under other legislation. Licence terms should cover what products can be advised on and what information is required or allowed on the adviser's website.

19. In addition, any licence would need to have the requisite flexibility to allow for developments in technology throughout the term of the licence and should be principles-based. For example, there will inevitably be significant technological advancement during a five year licence term, and the licensing regime will need to reflect this by licensing outcomes by way of governance and risk management processes, rather than individual technology solutions.

20. A new code could also be introduced as a measure to govern the provision of robo-advice.

21. Otherwise, the same requirements and outcomes for financial advice should apply to robo-advice. In our view, there is no reason to treat online advice differently to traditional advice. From a content perspective, online financial advice should be subject to the same requirements as if that advice were given in person.

Wholesale and retail consumers

22. NZBA and its members do not support a change that would require a client to opt-in before being considered a wholesale client. Rather, we support retaining the current definitions of wholesale and retail clients and the 'opt-out' process for wholesale clients.

23. NZBA and its members do not support such a change for the following reasons:

    a. We believe the current definitions and the 'opt-out' process are functioning well – they protect consumers and provide certainty, while providing a lighter touch regime for more sophisticated customers if certain criteria are met.

    b. We have seen no evidence of consumer harm as a result of the current definitions and 'opt-out' process.

    c. The proposed change would increase complexity, customer inconvenience, and is unlikely to be well understood by consumers or lead to improved consumer outcomes.

    d. A change to the current model will create an unnecessary and expensive compliance burden, and require extensive changes to processes, training requirements, IT and other systems without any demonstrable benefit. This could also involve re-classifying existing customers, which would be a huge and very costly undertaking.

    e. The current definitions align with other legislation and disrupting this would in our view create more problems than benefits.

    f. It is not consistent with FMA and MBIE's objectives and imposes costs on all wholesale parties.

Terminology

24. A number of the issues raised in the Options Paper relate to the current regime being too complex for customers to understand. NZBA and its members agree that some terminology in the FAA is unclear and confusing. The way that products, advice, and advice categories are described has created barriers to the practicality of giving financial advice, and in many instances has resulted in a conservative approach within the industry.

25. Concepts in the FAA are often poorly understood, unclear, or are not used as intended. The current regime also expects the customer to engage with and

understand the structure of the regime. NZBA and its members believe that some of these issues could be addressed by changes in the way that advisers are labelled or presented.

26. For example, the distinction between Authorised Financial Advisers (**AFAs**) and Registered Financial Advisers (**RFAs**), and the different standards of competency between these two categories, is not well understood by consumers. NZBA and its members consider that revised terminology should be developed to clearly indicate the differing competency standards to consumers.

27. Another way to label advisers could be to allow more appropriate labelling focused on what consumers need and the products advisers can advise on (for example mortgage adviser, insurance adviser). Customers should be able to rely on the regime to ensure that an adviser is allowed to perform the activities that he or she holds him/herself out to do, and be able to understand easily what that means in terms of what advice may be provided.

Disclosure to consumers

28. NZBA and its members support the improvement and simplification of the disclosure regime to make it more meaningful and accessible.

29. Disclosure must be consumer friendly, timely, effective, clear, relevant and concise. Standardising the format and information given by advisers is necessary and desirable. However, NZBA and its members suggest retaining flexibility to tailor disclosure to the relevant adviser or advice model.

30. NZBA and its members submit that disclosure documents must be free of technical, financial or legal jargon, in plain language, and bring relevant information to the attention of a reasonable person.

31. Disclosure requirements must be technology neutral and flexible and must reflect that providers and advisers interact with customers in different ways and via different channels, including by phone, online, or in person.

Financial Literacy

32. The barriers identified in the Options Paper are relevant only to consumers who want or seek financial advice. Another significant barrier to achieving the stated outcomes is that many consumers may not recognise the value of financial advice, and therefore do not seek it or accept it when offered.

33. In order to address this barrier, and other barriers identified in the Options Paper, NZBA and its members support efforts to increase consumer awareness of the value of financial advice and advisers, particularly in the context of a broader financial literacy drive.

34. For example, consumers should be educated to recognise that if they are investing money or planning for retirement they should seek financial advice, in the same way they recognise that if they are selling buying or selling a house they should seek legal advice. Although it is fundamental that the legislative settings encourage this

outcome, there is a significant role for the Crown (for example, via the FMA and the Commission for Financial Capability) to improve financial literacy generally. A more consumer-focused Financial Services Providers Register (**FSPR**) and a dedicated section on websites such as Sorted.co.nz would also be a positive step.