

Submission

to the

Ministry of Business,
Innovation and Employment

on the

Discussion paper:
Disclosure requirements in
the new financial regime

28 May 2018

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 seventeen 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
 - MUFG Bank, Ltd
 - China Construction Bank
 - Citibank, N.A.
 - The Co-operative Bank Limited
 - Heartland Bank Limited
 - The Hongkong and Shanghai Banking Corporation Limited
 - Industrial and Commercial Bank of China (New Zealand) 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 to the Ministry of Business, Innovation and Employment (**MBIE**) on the discussion paper: Disclosure requirements in the new financial regime (**Discussion Paper**) and commends the work that has gone into developing the Discussion Paper.
4. If you would like to discuss any aspect of the submission further, please contact:

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Introduction

5. NZBA supports the underlying principles identified by MBIE in the Discussion Paper, in particular that the regulations will take a flexible approach to disclosure which can be applied differently to a wide range of advice situations (subject, however, to our responses to the questions set out in the Discussion Paper). We believe that

flexibility, supported by appropriate processes and controls of the Financial Advice Provider and a heightened focus on ethical conduct, will best reconcile the aims of increasing access to advice and ensuring quality of advice.

Question one

6. NZBA agrees with the objectives identified.

Question two

7. NZBA supports a principles-based approach to disclosure. We believe that the intent to provide flexibility in how information is provided should result in a better customer experience, more effective disclosure and will minimise compliance costs.
8. While NZBA agrees with the points of the advice process that have been identified (paragraphs [22]-[25] of the Discussion Paper), we believe that it should be made clear that Financial Advice Providers (**FAPs**) have flexibility to determine when information should be disclosed depending on the scale and operation of their business and nature of the advice. For example, whether or not they provide the required information at each point, or combine disclosure at, for example, one or two points. Simple advice situations (eg opening a transaction or savings account) illustrate this point; disclosure at a number of points in the process is unlikely to be useful for the customer. In fact, such disclosure may have the opposite effect if the customer is overwhelmed by receipt of small amounts of disclosure on multiple occasions, some of which may be duplicative (as set out in the table in paragraph 73 of the Discussion Paper).
9. The detail of any requirements should take into account that once the nature and scope of the advice required is established, the customer may be referred between staff at an FAP. There should be flexibility for disclosures to be provided by the person to whom the referral is made (B), rather than by the member of staff making the referral (A) who has identified the nature (and scope) of the advice. This takes into account that B will have more knowledge of the limitations and commission and other incentives compared to A.

Question three

10. Please see our response to Question two. We believe that in simple advice situations when the FAP's business structure is relatively simple, disclosure at a number of points in the process will be unlikely to materially increase customer understanding and may in fact have the opposite effect (as discussed above).

Question four

11. NZBA agrees that FAPs should be required to tell consumers they can access general information about the provider, particularly if the FAP places reliance on disclosure through publicly available information (eg online).
12. Where FAPs rely on this approach, customers should also be able to request hard copies of the information. This approach is similar to that which already exists in relation to Qualifying Financial Entities (**QFEs**) (Financial Adviser (Disclosure) Regulations 2010 (**FAA Disclosure Regulations**)). We are not aware of any issues with the existing approach.

Question five

13. We believe that the regulations could be drafted in a similar way to the existing disclosure requirements for QFEs under the FAA Disclosure Regulations (Regs 8-10). Those requirements prescribe disclosure by QFEs and, in some cases, allow for the provision of 'brief particulars'.
14. NZBA considers that its members may also benefit from FMA guidance setting out the FMA's expectations with respect to enforcement of the new disclosure requirements.

Question six

15. NZBA considers that an FMA stop order or similar regulatory response is appropriate in these circumstances. We also note that civil liability may be excessive for low-level breaches, given the high costs of litigation for both parties.

Question seven

16. NZBA agrees. However, we believe that this information should be made available online. It should be clear that information relating to the duties is high level (as set out in the examples in the consultation paper). Question eight
17. NZBA agrees that this may be beneficial to some extent.
18. To enable flexibility there may need to be different levels of prescription. Some matters may sensibly be specified (such as name of FAP) while others may require a more descriptive response i.e. 'brief particulars'. See the existing disclosure requirements for QFEs under the FAA Disclosure Regulations in this regard.

Question nine

19. See our response to Question seven. We believe that information on the complaints process should be made available online.
20. However, we also note that providing information on the availability of free dispute resolution services at the point of making a complaint may be likely to cause confusion given that the Banking Ombudsman won't generally consider complaints unless the consumer has attempted to resolve the issue with their bank in the first instance. This could cause frustration for the consumer if they approach the Banking Ombudsman in the first instance then are referred back to the bank.

Question ten

21. NZBA considers that FAPs should be able to rely on the information disclosed publicly (eg online). Further disclosure should not be required unless there is a material change that differs from the publicly available information.

Question eleven

22. Regulations can ensure that consumers receive an accurate indication of the extent of the market that can (and will) be considered through disclosure of limitations of the nature and scope of advice. The regulations could take a similar approach to the FAA Disclosure Regulations, whereby Authorised Financial Advisers are required to make disclosures where their use of product providers is limited.

Question twelve

23. NZBA agrees with the proposal in relation to fees for advice; an estimate (and basis) should be provided before the customer incurs a fee for advice.
24. However, we do not consider that this requirement should necessarily extend to product related fees and expenses. Products are often be subject to their own disclosure regimes. Customers could instead be separately provided with (or notified of) any disclosure documentation related to the product.

Question thirteen

25. Please see our response to Question 12.

Question fourteen

26. NZBA agrees that information relating to commissions and other incentives should be disclosed early.
27. However, we also note the duty set out in cl 27 of the Financial Services Legislation Amendment Bill (s 431Q(b)); FAPs that engage nominated representatives must not use payment or incentive structures that are intended to encourage the nominated representatives to engage in conduct that contravenes certain duties, including the duty to give priority to a customer's interests. Customers are therefore unlikely to benefit from disclosure of nominated representatives' incentives and commissions. We consider that, if anything, high-level disclosure published online would suffice.
28. We also suggest that, to the extent Financial Advisers operate on the same basis, they also could rely on disclosure online.

Question fifteen

29. NZBA supports a materiality threshold to determine the commissions and incentives that must be disclosed. Please also see our response to Question 14.

Question sixteen

30. Yes, NZBA agrees that it is necessary for the regulations to be prescriptive for both soft commissions and up front commissions. However, we believe that the level of prescription should be sensibly anchored so that there is still some flexibility in how these are disclosed. Otherwise, there is a risk of repetition, undermining the efficacy of the disclosure.

Question seventeen

31. NZBA would prefer Option 1 or Option 2 – 'Require a comparison of commission rates' and 'Require the disclosure of commissions and incentives in dollar terms'. We believe that it will be beneficial for customers to receive both a comparison of incentives as well as being able to better understand the incentives by seeing these in dollar terms. However, we consider that FAPs should be able to achieve this disclosure by way of examples in the publicly available information where that may be appropriate. As discussed in our response to Question 14, we consider that this disclosure may not be required in certain circumstances.

32. If the intention is to progress with Option 2, we suggest that development of the detailed requirements includes work on real examples and schemes to consider practical implications of calculation for FAPs and for how amounts will be presented to customers. As the paper highlights, calculations may be complex and requirements will need to be interpreted for a wide range of incentive models. In particular, many FAPs will have balanced scorecard approaches to incentives with a number of qualifying gateways, or awards may be team based. Schemes and other incentives may also vary by channel.

Question eighteen

33. Yes, NZBA agrees that those giving financial advice should be required to disclose all relevant potential conflicts of interest. However, please also note our response to Question two.

Question nineteen

34. No, NZBA does not agree that any additional factors that might influence financial advice should be disclosed.

Question twenty

35. No comment.

Question twenty-one

36. We agree that bankruptcy, insolvency and decisions from an external disciplinary tribunal, regulatory or other formal external proceedings should be disclosed. However, we do not agree that disclosure should include internal performance or disciplinary action, given the different standards that may apply across FAPs.

Question twenty-two

37. No, NZBA does not agree that the disclosure of information relating to disciplinary history and bankruptcy or insolvency history should also apply to the directors of a financial advice provider. We anticipate that this will be considered during licensing by way of the Financial Service Providers (Registration and Dispute Resolution) Act and 'fit and proper' requirements.

Question twenty-three

38. No, NZBA does not agree that FAPs should be required to disclose if they have been found to have contravened a financial advice duty.

Question twenty-four

39. No, NZBA does not agree with a prescribed template, however some level of prescription may be helpful, particularly in relation to the information that is to be publicly available. Please see our comments regarding a flexible regime in response to Question two.

Question twenty-five

40. Please see our response to Question 24.

Question twenty-six

41. Yes, NZBA agrees that the regulations should allow for disclosure to be provided verbally. The FAA Disclosure Regulations currently provide exemptions for verbal disclosure in certain cases (category 2 products). NZBA considers that its members may also benefit from FMA guidance setting out the FMA's expectations with respect to verbal disclosure.
42. If verbal disclosure is not permitted, we consider it is unlikely that the new disclosure regime will achieve its objectives as outlined in the Discussion Paper.

Question twenty-seven

43. No, NZBA does not consider verbal disclosure should carry any additional requirements. It should be sufficient that the customer is informed that further disclosure is available online.

Question twenty-eight

44. NZBA considers that certain requirements of the Financial Advisers (Personalised Digital Advice) Exemption Notice 2018 should be carried over to the new regime, in particular a description of how the service works.

Question twenty-nine

45. Please see our response to Question 28.

Question thirty

46. Yes, NZBA agrees that those advising consumers to replace financial products should be required to provide a prescribed notification. However, we consider that this could be dealt with under the suitability requirements in the Code of Professional Conduct for Financial Advice Services.

Question thirty-one

47. No, NZBA does not agree that a prescribed notification should apply to the financial advice given on the replacement of all financial advice products. In some instances there is little or no potential risk when replacing a product. That may overtime degrade the efficacy of the disclosure.

Question thirty-two

48. Yes, NZBA considers that there needs to be some flexibility with respect to reduced disclosure requirements, and that further disclosure should not apply unless there has been some material variation to the adviser service.

Question thirty-three

49. No, NZBA does not agree there should be a limit on the length of time that relief would apply.

Question thirty-four

50. Yes, NZBA considers that it is necessary for the disclosure regulations to provide a transitional period for the industry to comply with the new requirements beyond this nine-month period. Depending on the final requirements, a nine-month period may not be sufficient to design and implement new disclosure processes to ensure compliance with the regime.

Question thirty-five

51. No comment.

Question thirty-six

52. No, NZBA does not agree that disclosure to wholesale customers is necessary.

Question thirty-seven

53. NZBA does not have any suggestions for how the regulations could ensure that wholesale clients are aware of what it means to be deemed a wholesale client.