

# Submission

to the

# Financial Markets Authority

on the

# Consultation paper: Proposed standard conditions for financial advice provider transitional licences

26 July 2019

## 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
  - 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
  - MUFG Bank, Ltd
  - Rabobank New Zealand Limited
  - SBS Bank
  - TSB Bank Limited
  - Westpac New Zealand Limited

## Background

3. NZBA welcomes the opportunity to provide feedback to the Financial Markets Authority (**FMA**) on its Consultation paper: *Proposed standard conditions for financial provider transitional licences (Consultation Paper)* and commends the work that has gone into developing Consultation 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 proposal to impose two standard conditions under the transitional licences for financial advice providers (**FAPs**), namely the maintenance of financial advice service records and the requirement to have an internal process for resolving customer complaints.
6. NZBA has some comments on the standard conditions discussed in the Consultation Paper, should FMA proceed with these proposals.

## Record keeping

7. NZBA supports the proposal to impose a standard condition requiring the maintenance of financial advice service records.
8. NZBA strongly submits that the standard is agnostic as to the medium for record keeping to better reflect the channels through which customers seek financial advice.
9. Accordingly, the reference to 'written' format, in the proposed standard condition on page 7 of the Consultation Paper, should be removed. We suggest that it be replaced with 'relevant records' which would align it with existing record keeping obligations that apply under QFE, AFA and FMCA licences. If 'adequate' is to be retained, NZBA requests that further clarification of this term in the context is also provided.
10. The example on page 8 suggests that an individual copy of a disclosure statement provided to a client must be kept by the FAP. NZBA submits that rather than keeping individual copies of generic documents provided to a customer (such as disclosure statements), FAPs should be able to rely on centralised records of these documents.
11. We also request clarification as to whether this condition is intended to apply to records at an entity level or at a retail client level. The proposed standard condition appears to imply that it applies to records demonstrating compliance at an entity level (see the note on page 8 that "this is to ensure licence holders (and any authorised bodies) continue to meet the requirements assessed at licensing and so we can effectively monitor compliance with their obligations"). This contrasts with the explanatory note on page 7 which appears to relate to records at an individual client basis (see the statement that it will "include, without limitation, information about any regulated financial advice given to retail clients and copies of any written information or documents .... in connection with the service").
12. NZBA also makes the following drafting suggestions on the proposed standard condition:
  - (i) 'new code' should be replaced with 'Code of Professional Conduct for Financial Advice Services',
  - (ii) 'FMC Act' should be defined as 'Financial Markets Conduct Act',
  - (iii) the wording "provide them to us on request" should be amended to "provide them to us when lawfully requested".

13. Finally, FAPs that will also be subject to the proposed new CCCFA regime will have additional record keeping obligations. However, providers will lack clarity on the solutions needed to meet those obligations until such time as regulations relating to the new lender responsibility principles are promulgated. NZBA requests FMA give consideration to potential overlapping requirements and considers introducing the record keeping condition once there is certainty of record keeping requirements across the regulatory regimes. If the timing of these two requirements are not aligned it is very likely that there will be duplication of effort as impacted systems and processes will need to be changed twice. This will impact on a customer's experience of a seamless financial service and the quality of conversations.

## Internal complaints process

14. NZBA supports the proposal to impose a standard condition requiring a FAP to have an internal process for resolving client complaints.
15. The proposed standard condition on page 9 of the Consultation Paper requires that "retail clients are to be given information about the process and how it works". This implies a one-off provision of information about the complaints process. We consider this should be amended to reflect that the customer relationship is ongoing, and often customers will want to make a complaint at a date after the initial interaction. The proposed standard condition could be amended to state that "information should be available for retail clients about the complaints process and how it works". FAPs would be able to meet this by having complaints information displayed clearly on their websites or in brochures in branches. NZBA also queries whether the disclosure aspect is more appropriately addressed in the disclosure regulations.
16. FMA should also consider the ongoing work of the Banking Ombudsman Scheme (**BOS**) and its members in the creation of the BOS complaints dashboard, which will include a definition of 'complaint'. We note the FMA's proposed definition of a complaint is based on the definition in the Code of Professional Conduct for Authorised Financial Advisors and is out of step with currently accepted international complaints handling standards.
17. Under the proposed complaint definition, we consider that FAPs may take a narrow approach in determining whether a complaint is legitimate, rather than reviewing all complaints received. The narrow scope of the definition may have the consequence of limiting a client's ability to have their complaint considered, which we think is contrary to the intention of the condition.
18. We also consider that, from a certainty and efficiency perspective, there should be alignment with the definition proposed by the FMA in the explanatory note to the proposed standard condition.
19. Finally, NZBA requests clarification of 'acknowledgement' in the proposed standard condition. In NZBA's view 'acknowledgement' can occur in various ways, including verbally, in writing, or via social media channels – and if the engagement is resolved at the first point of contact it is deemed to be acknowledged.