New Zealand Banking Association
Te Rangapū Pēke

Submission

to the

Financial Markets Authority

on the

Consultation: Proposed CoFI Guidance Note on Intermediated Distribution

14 April 2023

NEW ZEALAND BANKING ASSOCIATION – TE RANGAPŪ PĒKE
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About NZBA

1. The New Zealand Banking Association – Te Rangapū Pēke (**NZBA**) is the voice of the banking industry. We work with our member banks on non-competitive issues to tell the industry's story and develop and promote policy outcomes that deliver for New Zealanders.

2. The following eighteen 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.
   - KB Kookmin Bank Auckland Branch
   - Kiwibank Limited
   - MUFG Bank Ltd
   - Rabobank New Zealand Limited
   - SBS Bank
   - TSB Bank Limited
   - Westpac New Zealand Limited

Contact details

3. If you would like to discuss any aspect of this submission, please contact:

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Introduction

1. NZBA welcomes the opportunity to provide feedback to the Financial Markets Authority (**FMA**) on the Consultation: Proposed CoFI Guidance Note on Intermediated Distribution (**Guidance**). The NZBA acknowledges the series of workshops on intermediated distribution that the FMA held with the banking industry and intermediaries in 2022 and welcomes this relatively new way of working with and obtaining feedback from the industry. NZBA commends the work that has gone into developing the Guidance.

Feedback

2. NZBA are supportive of the Guidance. The format, especially the use of examples, the overview section, and useful questions, make the Guidance clear and easy to understand. The Guidance is appropriately high level, flexible and not overly prescriptive and can apply to its broad audience. We also support the Guidance's recognition that institutions can comply in a proportionate way to avoid unnecessary compliance costs to themselves or their intermediaries.

3. There are a few aspects of the Guidance which we think could be improved further and these are explained below:

   3.1. *Examples*: We welcome the use of examples in the Guidance and think that it strikes the right balance between the Guidance being helpful and informative yet non-prescriptive. We generally think it helpful when the Guidance gives positive examples of what you could do to comply. Would it be possible to include an example in the examples given for reviewing distribution methods on page 17 relating to banks providing home loan products through advisers? This is a common distribution method for our member banks.

   3.2. *Roles and responsibilities*: We welcome recognition in the Guidance on page 11 that financial institutions and intermediaries have responsibility for different aspects of the consumer relationship and that the Guidance says it is not going to be prescriptive about this. We think that also using the phrase 'shared responsibility' in the Guidance, however, is unhelpful. We think that there is a risk that this phrase could be wrongly interpreted and cause confusion about who may be responsible for what (for example, we would not want it to be wrongly assumed that shared responsibility means dual responsibility/that everyone is responsible on some level for everything, which is not correct). We think the Guidance can still talk meaningfully about the determination of roles and responsibilities without using this phrase and we would therefore recommend that it be removed.

   3.3. *Attestations*: The Guidance currently says on page 18 that the FMA would only expect to see attestations being used for lower-risk distribution methods, and in combination with other review processes. Attestations are one of a number of useful tools that financial institutions may use to get assurance over distribution methods in order to achieve good customer outcomes. We generally consider that attestations are helpful, and lead to financial institutions being able to ask further questions if there are any issues. Financial institutions use the information provided as a prompt to ask further questions and they are of value. We would prefer that the Guidance retain flexibility for financial institutions to use attestations as they consider appropriate yet recognising the need for proportionality. We would therefore prefer that the Guidance does not say what types of situations are best suited to attestations. An unintended consequence of the Guidance as drafted is that it could make organisations consider that attestations can be used less widely and could lead to pressure to drop these for the broker industry. There needs to be a range of tools and options available, rather than limiting these.

3.4. *Financial institutions who are intermediaries*: The Guidance does not provide much detail on what would be required in circumstances where financial institutions are also intermediaries. It would seem that in these circumstances distribution would be more likely to comply with the fair conduct principle, and we would welcome further recognition of this in the Guidance.

3.5. *Agents*: We note reference in the Guidance to agents. We would be grateful if the FMA could clarify whether there will be any further guidance about the FMA's approach to who is an agent (see discussion in the Ministry of Business, Innovation and Employment's *Discussion document: Treatment of intermediaries under the new regime for the conduct of financial institutions,* dated May 2021 at paragraphs 33 – 42).

3.6. *Industry approach*: As to whether and when an industry approach may be appropriate (whether in relation to attestations or otherwise), the NZBA are open to exploring this but would need to consider further where this would be practicable and achievable.

3.7. *Incentives:* We would welcome clarification as to whether incentives will be covered in a separate guidance note. We consider that further guidance on incentives would be helpful, including commissions/trail commissions and how remunerations operate.