

Summary of key themes: Consultation on the proposed standard conditions for financial advice provider full licences and classes of financial advice service

Submissions – Part 3

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Feedback: Proposed standard conditions for financial advice provider full licences and classes of financial adviser service

Please submit this feedback form electronically in both PDF and MS Word formats via email to consultation@fma.govt.nz with 'Feedback: Proposed standard conditions for financial advice provider full licences and classes of financial adviser service' in the subject line. Thank you. Submissions close at 5pm on Friday, 7 August 2020.

Date: 7 August 2020

Number of pages: 4

Name of submitter: [REDACTED]

Company or entity: Mercer NZ

Organisation type: Company

Contact name (if different):

Contact email and phone: [REDACTED]

Question number	Comment	Recommendation
4.1 Condition 1 – Record keeping		
(a) Do you agree or disagree with the proposed standard condition? Please provide your reasons.	We agree with the proposed standard condition and the requirements, as they are consistent with Mercer's current record keeping practices.	
(b) What written records do you currently keep for your financial advice business?	Mercer currently keeps written records in relation to person-to-person financial advice, as well as advice provided through digital means.	We recommend further detailed guidance be provided regarding record keeping for the provision of digital-based advice.
4.2 – Internal complaints process		
(a) Do you agree or disagree with the proposed standard condition? Please provide your reasons.	We support this condition in its current form.	

Question number	Comment	Recommendation
<i>(b) Do you currently have an internal complaints process for your financial advice business that meets the requirements of the proposed standard condition?</i>	Mercer has an established process to record, assess, address and report complaints. We continuously look for opportunities to improve from a process perspective, and believe effective handling of customer complaints is a key component to demonstrate good conduct.	
4.3 – Regulatory returns		
<i>(a) Do you agree or disagree with the proposed standard condition? Please provide your reasons</i>	We agree with this proposed standard condition, and understand the importance of collating such data for the FMA's monitoring responsibility and the financial service industry as a whole.	We note that the FMA will consult further regarding the Regulatory Return Framework and Methodology, and welcome further clarity/details at a later stage.
4.4 – Outsourcing		
<i>(a) Do you agree or disagree with the proposed standard condition? Please provide your reasons.</i>	We support the proposed standard condition in its current form. The requirements imposed are consistent with those equivalents under the MIS licence; in this case, in relation to those outsourcing arrangements which Mercer relies on to deliver financial advice service.	
<i>(b) What core financial advice services do you currently outsource?</i>	<p>At Mercer, the following core services in relation to financial advice are outsourced to a Mercer group company based in Australia:</p> <ul style="list-style-type: none"> - helpline service redirecting member enquiries to financial advisers within Mercer NZ; - hosting of financial advice records on an internal system; - ongoing maintenance of digital advice platform <p>Records of digital advice provided through market campaigns is held by an external service provider.</p>	
4.5 – Professional Indemnity Insurance		

Question number	Comment	Recommendation
<i>(a) Do you agree or disagree with the proposed standard condition? Please provide your reasons.</i>	We support the proposed standard condition and are in support of the requirement to have professional indemnity insurance covering financial advice service activities.	
<i>(b) Do you currently hold professional indemnity insurance covering financial advice service activities?</i>	Yes.	
4.6 – Business continuity and technology systems		
<i>(a) Do you agree or disagree with the proposed standard condition? Please provide your reasons.</i>	We agree with the proposed standard condition, and are in support of the requirements in relation to business continuity plans and cybersecurity. As noted in the consultation document, these measures will need to be appropriate for the scale and scope of our financial advice service.	
<i>(b) Do you currently have a documented business continuity plan?</i>	Yes, Mercer NZ has a documented business continuity plan.	
<i>(c) Do you currently rely on critical technology systems to deliver a financial advice service?</i>	Mercer has internally maintained systems which houses our customer records for the purpose of delivering financial advice service.	
4.7 – Ongoing capability		
<i>(a) Do you agree or disagree with the proposed standard condition? Please provide your reasons.</i>	We agree with the proposed standard condition, also given that Mercer is already subject to the licensing requirements and conditions under the FAA and the FMCA in relation to ongoing capability.	We note the consultation document mentioned the “Financial Advice Provider Licensing Application Guide” in this proposed condition. We would welcome the release of this Guide as soon as practicable, so that further clarity and details can be understood.
4.8 – Notification of material changes		

Question number	Comment	Recommendation
(a) Do you agree or disagree with the proposed standard condition? Please provide your reasons.	We agree with the proposed standard condition in principle, and understand the importance of the FMA being promptly informed of any material changes that we make to our business.	We would welcome further guidance which can provide clarity on the following: - The timing of disclosure, where the consultation mentioned "within 10 working days of commencing to implement any material change". In practice, particularly for most established financial service providers, the right time for notification is typically once a provider has completed final internal approvals for a material change to occur.
4.9 – Financial advice provider full licence classes		
(a) Do you agree or disagree with our approach to divide a financial advice service into three distinct licence classes? Please provide your reasons.	We understand the rationale for the licence class system proposed by the FMA, that is in relation to the <i>manner</i> in which regulated financial advice may be provided, but do not limit the <i>types</i> of financial advice that may be provided under the licence (as the latter is addressed by the competency requirements).	We recommend re-considering the labelling of the licence classes i.e. Class A, B, or C. We believe such labelling may lead to general consumer perception that those FAPs with Class C licences are somewhat "inferior" compared to those with Class A licences. In fact, we understand the class system is actually intended to enable the FMA to right size the application process from the simple sole-adviser business model to those entities with more complex advice delivery model.
<p>Please note: Feedback received is subject to the Official Information Act 1982. We may make submissions available on our website, compile a summary of submissions, or draw attention to individual submissions in internal or external reports. If you want us to withhold any commercially sensitive or proprietary information in your submission, please clearly state this and note the specific section. We will consider your request in line with our obligations under the Official Information Act.</p>		
<p>Thank you for your feedback – we appreciate your time and input.</p>		

Feedback: Proposed standard conditions for financial advice provider full licences and classes of financial adviser service

Please submit this feedback form electronically in both PDF and MS Word formats via email to consultation@fma.govt.nz with 'Feedback: Proposed standard conditions for financial advice provider full licences and classes of financial adviser service' in the subject line. Thank you. Submissions close at 5pm on Friday, 7 August 2020.

Date: 7 August 2020

Number of pages: 4

Name of submitter: [REDACTED]

Company or entity: Milford Asset Management

Organisation type: Investment Firm/Fund Manager

Contact name (if different):

Contact email and phone:

[REDACTED]

[REDACTED]

Question number	Comment	Recommendation
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label each additional page with your name & organisation.

4.1 Record keeping	<p>(a) We agree with the proposed record keeping standard condition.</p> <p>(b) We retain the following written records for our financial advice business; Adviser and Service disclosure documentation, fact finds and risk tolerance questionnaires, investment plans, investment authorities, scopes of service, written information about personalised services, application forms, client agreements, product disclosure statements, customer due diligence documentation and client correspondence including reporting.</p> <p>(c) There will be costs incurred as a result of system enhancements in order to meet the new disclosure regulations.</p> <p>(d) There will be a requirement to review all of our systems and processes to ensure we comply with the requirements of the new regime, however we do not anticipate this will have an adverse impact on our business.</p> <p>(e) We do not anticipate this standard condition will create a material barrier to enter the market. If this standard</p>	<p>It would be helpful to have further guidance as to what the record keeping obligations are in relation to prospective clients. As we move into a technology neutral regime, it is anticipated that there will be an increase in web prospects who do not proceed with the advice, and they may have tried several digital advice offerings. A prospect may also provide incorrect details as part of an online process and as full customer due diligence has not been completed at this stage prospect records will be of lower quality than actual client records. Do providers need to retain these records for 7 years or ensure as part of the design of the online tools that the required disclosures are provided? We would recommend not, and in the interests of minimising the risk of a data security breach, that they are purged after 2 years.</p>
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	<p>condition was going to create a barrier to enter the market particularly for smaller organisations, we expect this feedback would have been received during the consultation for transitional licence standard conditions.</p> <p>(f) The flexibility around the manner in which the records must be kept is helpful. We also appreciate the explanatory note detail which provides further guidance to the industry of expectations.</p>	
<p><i>4.2 Internal Complaints Process</i></p>	<p>(a) We agree with the proposed internal complaints process standard condition.</p> <p>(b) Yes, Milford has an internal complaints process for our financial advice business that meets with the proposed standard condition.</p> <p>(c) The proposed standard condition would not create any additional compliance costs for our business.</p> <p>(d) We do not believe the proposed standard condition would have any other adverse impact on our business.</p> <p>(e) We do not believe this standard condition creates a material barrier to enter the market and would expect all financial advice providers to have internal complaints processes in place.</p>	
<p><i>4.3 Regulatory Returns</i></p>	<p>(a) We agree with the proposed regulatory returns standard condition. It would be helpful if providers who are existing licensees under the FMC Act could consolidate any ongoing financial advice provider regulatory returns with existing licence regulatory returns.</p> <p>(b) The proposed standard condition would not create any material additional compliance costs for our business.</p> <p>(c) We do not believe the proposed standard condition would have any other adverse impact on our business.</p> <p>(d) We do not believe this standard condition creates a material barrier to enter the market and anticipate guidance as to the manner and content of ongoing regulatory returns will be made available to the industry in due course.</p>	

<p><i>4.4 Outsourcing</i></p>	<p>(a) We agree with the proposed outsourcing standard condition in principle.</p> <p>(b) We outsource our infrastructure, IT support and cyber security services that support our financial advice business.</p> <p>We have outsourced custodial and registry functions that support the products and services to which our financial advice relates.</p> <p>(c) The proposed standard condition would not create any additional compliance costs for our business.</p> <p>(d) We do not believe the proposed standard condition would have any other adverse impact on our business.</p> <p>(e) We do not believe this standard condition creates a material barrier to enter the market.</p>	<p>We recommend a review of the requirement to 'ensure' at all times with either "you must be satisfied that your arrangements enable you to meet your market service licensee obligations at all times" or "you must take reasonable steps to ensure".</p> <p>We have no further comments in relation to this proposed standard condition.</p>
<p><i>4.5 Professional Indemnity Insurance</i></p>	<p>(a) We agree with the proposed professional indemnity insurance standard condition.</p> <p>(b) Yes, Milford currently holds professional indemnity insurance.</p> <p>(c) The proposed standard condition would not create any additional compliance costs for our business.</p> <p>(d) We do not believe the proposed standard condition would have any other adverse impact on our business.</p> <p>(e) We do not believe this standard condition creates a material barrier to enter the market and is important to provide comfort to clients and employees.</p>	
<p><i>4.6 Business Continuity and Technology Systems</i></p>	<p>(a) We agree with the proposed business continuity and technology systems standard condition.</p> <p>(b) Yes, we have a documented business continuity plan.</p> <p>(c) We utilise a number of systems and solutions to support our financial advice service.</p> <p>(d) The proposed standard condition would not create any additional compliance costs for our business.</p>	

	<p>(e) We do not believe the proposed standard condition would have any other adverse impact on our business.</p> <p>(f) We do not believe this standard condition creates a material barrier to enter the market.</p>	
<i>4.7 Ongoing Capability</i>	<p>(a) We agree with the proposed ongoing capability standard condition.</p> <p>(b) The proposed standard condition would not create any additional compliance costs for our business.</p> <p>(c) We do not believe the proposed standard condition would have any other adverse impact on our business.</p> <p>(d) We do not believe this standard condition creates a material barrier to enter the market.</p>	
<i>4.8 Notification of Material Changes</i>	<p>(a) We agree with the proposed notification of material changes standard condition.</p> <p>(b) The proposed standard condition would not create any additional compliance costs for our business.</p> <p>(c) We do not believe the proposed standard condition would have any other adverse impact on our business.</p> <p>(d) We do not believe this standard condition creates a material barrier to enter the market.</p> <p>(e) Further to our comments in 4.3 above, it would be helpful if providers who are existing licensees under the FMC Act could consolidate notification of material changes with existing licence notification requirements.</p>	
<i>4.9 Financial Advice Provider Full Licence classes</i>	<p>(a) We appreciate it will help with processing full applications if there are distinct licence classes. Our only concern is if there is a requirement to notify clients as to the licence class sought as we think an 'A, B or C class licence' would send the wrong message to the public.</p> <p>(b) We do not believe the licence classes create a barrier to enter the market.</p> <p>(c) We have no further comments.</p>	<p>We suggest it is made clear that the distinct licence class is for application processing purposes only. We would not support disclosing the different class names as it could lead to confusion that 'A' is better than 'B' and so on.</p>

Feedback summary – *if you wish to highlight anything in particular.*

We thank you for the opportunity to provide feedback on the proposed standard conditions and look forward to reviewing the full licencing application process once available.

The wider Milford group of companies includes entities with a DIMS, MIS and a transitional FAP licence. We would like to recommend that the FMA consider reviewing the standard conditions across these licences with the objective of aligning the requirements that share the same purpose. This would make compliance with the standard conditions easier to manage from a licensee perspective and allow the FMA to bring the older standard conditions into line with its current perspective.

Please note: Feedback received is subject to the Official Information Act 1982. We may make submissions available on our website, compile a summary of submissions, or draw attention to individual submissions in internal or external reports. If you want us to withhold any commercially sensitive or proprietary information in your submission, please clearly state this and note the specific section. We will consider your request in line with our obligations under the Official Information Act.

Thank you for your feedback – we appreciate your time and input.

[REDACTED]

From: [REDACTED]
Sent: Wednesday, 8 July 2020 9:33 AM
To: consultation@fma.govt.nz
Subject: Feedback: Proposed standard conditions for financial advice provider full licences and classes of financial adviser service
Attachments: image002.jpg

Hi team

I only have one brief point to add feedback on hence using the body of my email rather than the feedback form.

I agree on the commentary about the naming of the license classes being A, B and C and the risk of consumers seeing that there is a quality differentiation between them. A "class A" license holder has a more positive perception than a "Class B" or "Class C" license holder, which is not the intention of the class system.

My proposed names are:

Instead of Class A – Single Adviser License
Instead of Class B – Multi Adviser License
Instead of Class C – Representative License

Cheers



[BOOK A MEETING](#) - make an appointment for a quick phone call or a face to face meeting with direct access to my calendar

Disclosure Statement available on request

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[REDACTED]

From: [REDACTED]
Sent: Wednesday, 17 June 2020 9:36 AM
To: consultation@fma.govt.nz
Subject: Feedback: Proposed standard conditions for financial advice provider full licences and classes of financial adviser service

Date: 17 June 2020
Number of pages: 1
Name of submitter: [REDACTED]
Company or entity: Nest Egg Investments Limited
Organisation type: Sole trader
Contact name (if different):
Contact email and phone: [REDACTED]

Condition 5, the requirement for professional indemnity insurance is extremely onerous for a 1-man financial adviser such as myself. [REDACTED] The cost of professional indemnity insurance is around \$2,000/year upwards. This cost, if mandated, will quite simply put me out of business.

I would like to understand if the cost of complying with this proposed condition is sufficient grounds for a waiver of this condition.

Thanks & regards,

[REDACTED]

[REDACTED]

Website: nestegginvestments.co.nz

Feedback: Proposed standard conditions for financial advice provider full licences and classes of financial adviser service

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Date: 03/08/2020 Number of pages: 7

Name of submitter: [REDACTED]

Company or entity: The New Zealand Automobile Association (NZAA)

Organisation type: Motoring Association

Contact name (if different): N/A

Contact email and phone: [REDACTED]

Question number	Comment	Recommendation
<p><i>You don't need to quote from the consultation document if you use page numbers.</i></p> <p><i>You may insert additional lines or pages - please label each additional page with your name & organisation.</i></p>		
4.1(a) - Condition 1 – Record keeping	We generally agree with <i>Condition 1 – Record Keeping</i> as we agree that "...keeping records is a standard requirement for a good business and key to ensuring good conduct and culture."	No further comments.
4.1(b) - Condition 1 – Record keeping	Records of the customer conversation are currently taken using the Client Profile Forms (CPF's). The NZAA are developing a Customer Relationship Management (CRM) system to electronically capture the advice conversation.	No further comments.
4.1(c) - Condition 1 – Record keeping	The NZAA has incurred IT development costs associated with developing a new CRM system to capture the advice conversation, together with additional processes and controls to support record keeping requirements.	No further comments.
4.1(d) - Condition 1 – Record keeping	The Standard Condition is expected to ensure more robust records are kept demonstrating compliance with the FMC Act, FMC Regulations and Code of Professional Conduct. For example, the NZAA CRM will capture records associated with vulnerable customers, replacement business and full advice records for at least 7 years. Therefore, costs include those associated with holding electronic records.	<p><i>Part 1. Record keeping</i> states that "Records may be kept by another person (including any outsource provider) on your behalf providing you ensure that person complies with this condition and that you can retrace the records if required"</p> <p>Our question is around whether the FMA can provide some examples of how we "...can ensure that person complies with this condition...". That is, would the FMA expect that where the advice record is partly kept on a third-party insurers system, that NZAA</p>

Name of submitter: [REDACTED]

Company or entity: The New Zealand Automobile Association (NZAA)

		<p>should agree contractually with those insurers to:</p> <ul style="list-style-type: none"> a) keep the advice record for a minimum of 7 years; and b) ensure that the advice record is available to the NZAA and FMA at "all reasonable times". <p>Are there any other ways NZAA "...can ensure that person..." complies with the condition?</p>
4.1(e) - Condition 1 – Record keeping	The impact associated with holding the advice records is seen as a positive step for the NZAA and will allow for the Association to undertake more effective Quality Assurance (QA) activities against records that will be more freely available to inspect.	No further comments.
4.1(f) - Condition 1 – Record keeping	No further comments.	No further comments.
4.2(a) – Condition 2- Internal Complaints Process	We agree with Condition 2 – <i>Internal complaints process</i> , as we agree that "Effective handling of client complaints is a key aspect of good conduct."	No further comments.
4.2(b) – Condition 2- Internal Complaints Process	The NZAA has invested in a new Complaints Management System (CMS) that records the resolution of customer complaints. The CMS currently details when each complaint is received and the action in relation to that complaint.	No further comments.
4.2(c) – Condition 2- Internal Complaints Process	Yes, as above.	No further comments.
4.2(d) – Condition 2- Internal Complaints Process	No.	No further comments.
4.2(e) - Condition 2- Internal Complaints Process	No.	No further comments.
4.2(f) – Condition 2- Internal Complaints Process	No	No further comments.
4.3(a) Condition 3- Regulatory Returns	We generally agree with Condition 3 – <i>Regulatory Returns</i> , as it will enable the FMA "...to obtain updated information from financial advice providers from time to time".	Our recommendation is that Condition 3 could provide more clarity around the frequency of submitting a Regulatory Return. For instance, the Condition provides an example of submitting a return annually, which is the same as the frequency for submitting an Annual Business Statement (ABS) currently required under the Financial Advisers Act 2008. This frequency is reasonable to the

Name of submitter: [REDACTED]

Company or entity: The New Zealand Automobile Association (NZAA)

		<p>NZAA, based on the minimum frequency the NZAA anticipate it would take to materially change any key 'regulated' activities.</p> <p>If the Standard is flexible on this point, i.e. for some licensed entities a Regulatory Returns would be more frequent than annual, it would be useful to include the criteria the FMA would use to assess this requirement.</p>
4.3(b) Condition 3- Regulatory Returns	Yes. If the Regulatory Return was more frequent than annual, then the NZAA expects additional costs associated with collecting the data and information required in order to update the Regulatory Return. For instance, if this was a quarterly or six-monthly requirement, we expect either additional resource, or re-prioritisation of existing resource, would be required to manage the additional workload.	No further comments.
4.3(c) - Condition 3- Regulatory Returns	Any further impacts on the NZAA would depend on the exact nature of the Regulatory Return Framework and Methodology that is released by the FMA. For instance, if the Return simply required factual information on items such as: business volumes and services types, numbers of customers, numbers and types of breaches, and complaints information, then this information would not be overly resource intensive to produce.	We recommend that the Regulatory Return Framework and Methodology that is released by the FMA focuses on a similar set of criteria as was previously required for ABS submissions under the FAA 2008. Information such as: business volumes and services types, numbers of customers, numbers and types of breaches, and complaints information, would be achievable. However, anything over and above this requirement may result in higher compliance costs for the NZAA.
4.3(d) - Condition 3- Regulatory Returns	No.	No further comments.
4.3(e) - Condition 3- Regulatory Returns	No.	No further comments.
4.4(a) – Condition 4 - Outsourcing	We generally agree with Condition – <i>Outsourcing</i> , as we agree that it will ensure “financial advice providers monitor and regularly review their	NZAA would appreciate further clarification on the term “material” as it relates to “...the provision of your financial advice service”. In particular, would the materiality of the

Name of submitter: [REDACTED]

Company or entity: The New Zealand Automobile Association (NZAA)

	outsource providers and associated arrangement”.	outsourcing arrangement be dictated by organisations’ own materiality scales, for instance? In addition, NZAA would like further clarification on the FMA’s expectation around the term “Regular reviews of your outsource arrangements”. That is, by “regular” does the FMA mean annually or is this again something that must be determined by the licensed entity based on the materiality of the outsource arrangement. It would be useful to provide an illustration here around, say, how the frequency of the review can be determined based on materiality of the arrangement.
4.4(b) – Condition 4 - Outsourcing	Depending on the definition of “material” and “outsourcing” as stated above, financial advice services that are outsourced by the NZAA could potentially include: <ul style="list-style-type: none">- storage of advice records by a third-party Software provider, where NZAA owns a license to use their software.- storage of the record of compliance processes, i.e. Compliance Assurance Programme results, on a third-party system, where NZAA own a license to use the core system.	NZAA would also appreciate further examples of what would constitute an “outsourced relationship”.
4.4(c) – Condition 4 - Outsourcing	There could potentially be increased compliance costs depending on the expected frequency of reviewing outsourcing arrangements, this could result in directing NZAA resources to review outsourcing arrangements more frequently.	No further comments.
4.4(d) – Condition 4 - Outsourcing	No.	No further comments.
4.4(e) – Condition 4 - Outsourcing	No.	No further comments.
4.4(f) – Condition 4 - Outsourcing	No.	No further comments.
4.5(a) – Condition 5 – Professional Indemnity Insurance	We generally agree with Condition – Professional Indemnity Insurance, as we agree that it will help ensure “...that retail clients can be compensated for financial	We would like further clarity around the extent to which the Professional Indemnity Insurance would need to cover ‘... all activities undertaken for

Name of submitter: [REDACTED]

Company or entity: The New Zealand Automobile Association (NZAA)

	loss as a result of a breach of a professional duty by a financial advice provider and those they engage.'	your financial advice service to retail clients in New Zealand including, where necessary, past activities... Our specific question is around how the FMA would define '...all activities.' and '...past activities...'
4.5(b) – Condition 5 – Professional Indemnity Insurance	The NZAA currently holds professional indemnity insurance, and broadly covers advice and services. We are also currently reviewing the specific coverage of our insurance in light of the requirements set out under this Standard Condition.	No further comments.
4.5(c) – Condition 5 – Professional Indemnity Insurance.	No.	No further comments.
4.5(d) – Condition 5 – Professional Indemnity Insurance.	No.	No further comments.
4.5(e) – Condition 5 – Professional Indemnity Insurance.	No.	No further comments.
4.5(f) – Condition 5 – Professional Indemnity Insurance.	No.	No further comments.
4.6(a) - Business continuity and technology systems.	We generally agree with Condition – <i>Business continuity and technology systems</i> , as we agree that it will help "...ensure that financial advice providers have suitable arrangements in place to ensure that they are able to manage disruptions to their business...'	We would like further clarity around what would constitute a '...material event...' Would this be dependent on the materiality of an incident as defined by the organisation's incident management thresholds for instance? Or does the FMA have some examples of what would constitute a 'material' event.
4.6(b) - Business continuity and technology systems.	Yes.	No further comments.
4.6(d) - Business continuity and technology systems	No.	No further comments.
4.6(e) - Business continuity and technology systems	No.	No further comments.
4.6(f) - Business continuity and technology systems	No.	No further comments.
4.6(g) - Business continuity and technology systems?	No.	No further comments.
4.7(a) - Ongoing capability	We agree with Condition 7 - <i>Ongoing capability</i> , as we agree that it will help ensure that all financial advice providers	No further comments.

Name of submitter: [REDACTED]

Company or entity: The New Zealand Automobile Association (NZAA)

	continue to meet the eligibility and other requirements of the FMC Act.	
4.7(b) - Ongoing capability	No.	No further comments.
4.7(c) Would the proposed standard condition have any other adverse impact on your business? If so, please describe what this would be.	No.	No further comments.
4.7(d) Does this proposed standard condition create a barrier to enter the market? If so, please explain why this is the case.	No.	No further comments.
4.7(e) Do you have any other comments on the proposed condition or how it is drafted?	No.	No further comments.
4.8(a) - Notification of material changes	We generally agree with Condition - <i>Notification of material changes</i> , as we agree that it will help enable the FMA to '...accurately maintain financial advice provider risk profiles and appropriately target monitoring efforts to ensure that financial advice providers continue to be capable of effectively providing the financial advice service covered by their licence class.'	We would like if possible, clarity on the part in bold below: "The purpose of this standard condition is to ensure that we are informed of any material changes that you make to your business, whether or not they may have a material adverse effect on your ability to provide your financial advice service, so that we can engage with you as necessary.' In particular, any further clarity around a scenario, where the NZAA would need to inform the FMA of a material change, where the change did not relate to the NZAA's ability to provide a financial advice service.
4.8(b) - Notification of material changes.	No.	No further comments.
4.8(c) - Notification of material changes	No.	No further comments.
4.8 (d) - Notification of material changes	No.	No further comments.
4.8 (e) - Notification of material changes	No.	No further comments.
4.8(f) - Notification of material changes	No.	No further comments.
4.9(a) - <i>Financial advice provider full licence classes</i> -	We generally agree with Condition 9 - <i>Financial advice provider full licence</i>	No further comments.

Name of submitter: [REDACTED]

Company or entity: The New Zealand Automobile Association (NZAA)

Do you agree or disagree with our approach to divide a financial advice service into three distinct licence classes? Please provide your reasons.	<i>classes</i> , as we agree that it will allow the 'FMA to be notified when a financial advice provider makes material changes	
4.9(b)- <i>Financial advice provider full licence classes</i> - Do the proposed licence classes create a barrier to enter the market? If so, please explain why this is the case.	Yes.	No further comments.
4.9(c)- <i>Financial advice provider full licence classes</i> - Do you have any other comments on the proposed full licence classes?	Yes.	No further comments.
Feedback summary – <i>if you wish to highlight anything in particular.</i> No further comments.		
Please note: Feedback received is subject to the Official Information Act 1982. We may make submissions available on our website, compile a summary of submissions, or draw attention to individual submissions in internal or external reports. If you want us to withhold any commercially sensitive or proprietary information in your submission, please clearly state this and note the specific section. We will consider your request in line with our obligations under the Official Information Act.		
Thank you for your feedback – we appreciate your time and input.		

Submission

to the

Financial Markets Authority

on the

Consultation: Proposed standard conditions for financial advice provider full licences and classes of financial advice service

7 August 2020

About NZBA

1. The New Zealand Bankers' Association (**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 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

Introduction

3. NZBA welcomes the opportunity to provide feedback to the Financial Markets Authority (**FMA**) on its consultation: *Proposed standard conditions for financial advice provider full licences and classes of financial advice service* (**Consultation**). NZBA commends the work that has gone into developing the Consultation.

Summary

4. NZBA supports the proposal to impose standard conditions under the full licences for financial advice providers (**FAPs**).
5. Banks are already subject to numerous similar obligations under their RBNZ imposed Conditions of Registration and, for some banks, other licensing regimes. This includes the market services licensing regime under Part 6 of the Financial Markets Conduct Act 2013 (**FMCA**), which provides for the licensing of Managed Investment Scheme managers and providers of Discretionary Investment Management Services (amongst others), and is the regime which FAP licensing will form part of.

6. NZBA would welcome an approach that ensures common licensing conditions which are applied to different licensees (whether within the same statutory licensing framework or under different regimes) are consistent where possible to avoid an unnecessary compliance burden.
7. This is particularly the case in respect of the proposed standard conditions of full FAP licences, which cover the same matters as certain of the standard conditions which are already imposed on existing FMCA market service licensees (for example, in respect of Outsourcing).

Condition 1 – Record keeping

8. NZBA supports the proposal to impose a standard condition requiring the maintenance of financial advice service records. We note our [submission dated 26 July 2019 on the consultation paper: Proposed standard conditions for financial advice provider transitional licences](#).
9. We consider that the timelines outlined at (d) of the condition could be difficult to implement in practice. Instead, the requirement could be simplified to “must be kept for a period of at least 7 years from the date the record is made”. That change would provide clarity and aid implementation from a systems perspective.
10. Additionally, we consider that, where possible, this condition should be aligned with the requirements soon to be enacted under the Credit Contracts Legislation Amendment Act 2019 (**CCLAB**).
11. Condition 1(c) requires that your records ‘must be available for inspection by us at all reasonable times’. The requirement to ‘be available’ differs from the requirement in s 9CA of CCLAB which uses the language ‘must make available’. We submit this condition should be amended to align with CCLAB. This reflects the fact that it may take time to collate records from different systems in order to make them available to FMA.
12. Similarly, the explanatory note requires that ‘your records should be readily available to you, and in any event within 10 working days when requested by us’. This timeframe may be impractical for complex requests. It also differs from s 9CA(7) of CCLAB which requires that ‘the lender must provide the records within 20 working days of the date on which the request is received by the lender or, in the case of records being provided to the Commission, within any longer period of time specified by the Commission’. Our preference is that the timeframes set out in this condition align with the CCLAB requirements.

Condition 2 – Internal complaints process

13. NZBA supports the proposal to impose a standard condition requiring a FAP to have an internal process for resolving client complaints. Again, we note our July 2019 submission.

14. Complaints data is a rich and valuable source of information which enables banks to improve customer outcomes. NZBA's members already have internal complaints processes that meet the requirements of the proposed standard condition.

Condition 3 – Regulatory returns

15. In principle, NZBA supports the proposal to impose a standard condition requiring a FAP to provide regulatory returns.
16. We consider that any regulatory returns should be able to be completed and submitted to the FMA electronically (eg through an online portal).
17. We support an approach that ensures the regulatory returns requirements across different licencing regimes are consistent where possible to avoid an unnecessary compliance burden. In particular, we note that there is potential for overlap between this condition and the CCLAB requirement for annual returns. These requirements should align where possible, particularly regarding financial advice given in relation to consumer credit contracts.
18. Further clarity is required on the proposed content of the Regulatory Return, including how this would align with standard condition 7 and the statutory reporting obligations market service licensees must comply with under ss 411 (should additional reporting obligations be prescribed for licensed FAPs by regulations) and 412 of the FMCA. Guidance on the definition of 'material change of circumstances' in section 410 of the FMCA would also be welcomed.
19. We look forward to reviewing and providing feedback on the proposed Regulatory Return Framework and Methodology. Once consultation on that has been completed, we consider that this condition would require a lead in period for implementation.

Condition 4 – Outsourcing

20. NZBA supports the proposal to impose a standard condition requiring a FAP to ensure that they meet their licensee obligations where they have outsourcing arrangements in place. This condition should not conflict with banks' existing obligations under other licensing regimes and (where applicable) the Reserve Bank of New Zealand's outsourcing policy (**BS11**). That will ensure consistency of regulatory approach to outsourcing arrangements and avoid operational complexity and inefficiency.
21. The outsourcing standard conditions applicable to other FMCA market service licensees use 'necessary to the effective and proper running of the market service' as the criterion for the application of the outsourcing standard condition. It is not clear to us why this criterion is not also used in the outsourcing standard condition for FAP licensees. We suggest the FMA considers using this test to ensure consistency across common standard conditions.

22. If the FMA does not accept our submission in paragraph 21 above, we would welcome further guidance in the explanatory note to this standard condition on what types of outsourcing arrangements are considered 'material to the provision of the financial advice service' (as opposed to 'necessary to the proper running of the market service'), as this is a critical definition for determining the scope of this condition, and the outsource arrangements to which it applies.
23. We do not believe that 'the review of compliance processes to a professional services company' is an arrangement that should be captured by the condition.
24. Regarding the matters that should be considered in respect of outsourcing arrangements (explanatory note, bullet point 2) – 'having contractual arrangements with each provider that enable you to effectively monitor their performance and take appropriate action for non-performance, ~~and having suitable termination provisions to enable you to continue to meet your licensee obligations at all times~~' – we do not think the struck-out text is necessary as it is covered by the ability to take appropriate action for non-performance.

Condition 5 – Professional indemnity insurance

25. NZBA supports the proposal to impose a standard condition requiring a FAP to maintain professional indemnity insurance, subject to the ability for the FMA to waive the standard condition (via a specific condition) where the applicant demonstrates that it is unable to obtain appropriate cover, or has another valid reason for not having cover.
26. As the detail of the standard condition and the commentary outline, any cover should be 'adequate and appropriate for the provision of your financial advice service to retail clients in New Zealand.' There are valid circumstances in which it would be appropriate for a FAP to elect to self-insure (via its balance sheet), rather than maintain professional indemnity cover in respect of its financial advice service. This would particularly be the case where, under the new financial advice regime:
 - (a) the scope of regulated financial advice provided to retail customers is limited. For example, in response to retail customer questions only in respect of simple debt securities (eg call accounts and term deposits) issued by a registered bank;
 - (b) regulated financial advice is able to be provided only by a very limited number of financial advisers;
 - (c) the FAP is itself an entity of significant scale and substance; and/or
 - (d) the aggregate amount of any claim or claims for any loss a retail customer may suffer as result of relying on the regulated financial advice provided by or on behalf of the FAP would be unlikely to exceed the excesses typically applied to a professional indemnity policy where the insured is a financial institution of scale.

27. We consider the application of a specific condition waiving this standard condition where a FAP has valid reasons for not having professional indemnity cover (or is unable to obtain appropriate cover) is appropriate.
28. However, we submit that the requirement for disclosure to retail clients that an entity does not have professional indemnity cover should not automatically attach to this specific condition. Rather, it should be at the FMA's discretion whether this additional disclosure obligation is imposed. This is particularly in circumstances where:
- (a) it is a considered (and reasonable) decision for the FAP not to maintain professional indemnity cover in respect of its financial advice service; and
 - (b) the absence of such cover would not adversely affect retail customers (ie there is not a real risk of the FAP being unable to respond to a claim/remediate the customer in the absence of professional indemnity cover).

Condition 6 – Business continuity and technology systems

29. NZBA supports the proposal to impose a standard condition requiring a FAP to maintain a business continuity plan. Again, we would welcome an approach that ensures consistency across different licensing regimes and common standard conditions to avoid an unnecessary compliance burden.
30. We consider that the term 'cybersecurity' should be replaced with 'information security' which is wider in scope and concerned with making sure data in any form is kept secure, as opposed to cybersecurity which is about protecting data that is in electronic form, and the requirement to report material events in five days is removed. The new Privacy Act ensures reporting is in place for at risk customer information.

Condition 7 – Ongoing eligibility

31. NZBA supports the proposal to impose a standard condition requiring a FAP to meet eligibility requirements on an ongoing basis.
32. We look forward to reviewing and providing feedback on the Licensing Application Guide.

Condition 8 – Notification of material changes

33. In principle, NZBA supports the proposal to impose a standard condition requiring a FAP to notify FMA of material changes.

34. We recommend that further guidance is provided in the explanatory note around what is considered 'material', and how this condition will be aligned with standard condition 3.
35. We also consider that the requirement to provide notification within 10 working days of 'commencing to implement' should be amended to state within 10 working days of 'implementation'. 'Commencing to implement' could be interpreted to mean an early stage in the change process, when the change to the nature or manner in which the financial advice service is provided is only beginning to be considered. This amendment will provide more certainty as to when the 10 working day time period should run from, and ensure the FMA is receiving reporting in respect of changes which have actually taken place (rather than early stage reporting resulting from an abundance of caution to ensure compliance with the standard condition).
36. Where possible, reporting timelines should be aligned with requirements to report similar matters to other regulators to avoid inconsistency.

Financial advice provider full licence classes

37. NZBA agrees with the division of financial advice services into three distinct licence classes.
38. We note that these naming conventions may be open to some consumer confusion – A, B and C could be understood to infer differing levels of quality. Instead, the class names could reflect what the licence is about.

Contact details

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

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

Feedback:

Proposed standard conditions for financial advice provider full licences and classes of financial adviser service

Please submit this feedback form electronically in both PDF and MS Word formats via email to consultation@fma.govt.nz with 'Feedback: Proposed standard conditions for financial advice provider full licences and classes of financial adviser service' in the subject line.

Thank you. Submissions close at 5pm on Friday, 7 August 2020.

Date:	25 th June 2020	
Number of pages:	3	
Name of submitter:	[REDACTED]	
Company or entity:	NEWTON ROSS Limited	
Organisation type:	Financial Advice	
Contact name (if different):	[REDACTED]	
Contact email and phone:	[REDACTED]	
Question number	Comment	Recommendation
<p><i>You don't need to quote from the consultation document if you use page numbers. You may insert additional lines or pages - please label each additional page with your name & organisation.</i></p>		
1. Record Keeping	<p>The requirements under record keeping seem appropriate. Though records kept may be different in nature to the scope of advice provided.</p> <p>We presently do not contract clients to consent to granting FMA access to their private information as you require in the explanatory note.</p> <p><i>"Your arrangements must ensure that your retail clients' consent to us viewing or obtaining your records".</i></p> <p>Consent may be specifically required from each client at the time the FMA requests access to their file information. Otherwise all our clients would need to be re-contracted with this provision.</p>	
2. Internal Complaints Process	We have no comment on this standard as explained.	
3. Regulatory Returns	Standard return dates coinciding with AML/CFT returns date (30 th June) would be helpful so data is to a consistent date (number of clients, new clients, FUM, etc).	
4. Outsourcing	We have no comment on this standard as explained.	
5. Professional Indemnity Insurance	<p>PI cover is increasingly difficult to get particularly at the FAP level and generally only extends to covering fraudulent activity or errors.</p> <p>The requirement to provide cover for <i>"compensation of financial loss as a result of a breach of professional duty"</i> may be uninsurable in NZ and or so expensive as to put some advisers effectively out of business.</p> <p>We acknowledge the "waiver" solution, but this might become the standard for the whole industry if PI cover is not available as required.</p> <p>Research is needed around the cost and availability of this PI cover before being set as a standard. There is a requirement for FAPs to obtain insurance to effectively cover their FAs</p>	

	professional duty but FAs and NRs also seem to have a requirement to obtain insurance cover for this same issue as well? This needs clarification.
6. Business Continuity & Technology Systems	We believe the standard of requiring “you must at all times ensure that the cybersecurity for those systems...is maintained”. Although the purpose of the standard is understood, the reality is that no system in the world can be ensured to be protected from cybersecurity risks at all times. This is an unrealistic standard as defined and needs work to be more practical, particularly for smaller businesses that may not be able to afford a “recognised cybersecurity framework”.
7. Ongoing Eligibility	We have no comment on this standard as explained.
8. Notification of Material Changes	We have no comment on this standard as explained.
<p>Feedback summary – if you wish to highlight anything in particular.</p> <p>Classes of Financial Advice Service: Feedback</p> <p>Firstly, the naming convention of classes needs to be addressed as an “A” licence sounds superior to a “B” licence.</p> <p>The “A” licence class for simple structures / own or smaller operators. The implication from a presentation by John Botica was that applications under the class A would be quick and easy and considered through a smaller scale operation lens. Yet it is precisely these smaller operations (David Ross, Barry Kloogh for example) that don’t have enough checks and balances and external oversight in place around their business operations.</p> <p>What happens for instance if a Class A FAP/FA single person operator wants to go on holiday (or gets sick) and has another FA or FAP cover his business and clients...do they need to specify that FA under their licence now or what if that relieving FA operates under his own FAP or through an interposed person / authorised body?</p> <p>The class system creates complexity when it is not required. For instance, an existing simple and small business structure (say a 2-man operation) may include an adviser that is now determined to be an interposed person or authorised body automatically falling under B or C requirements. This seems potentially harsh with unintended business restructuring, re-contracting, costs and possible legal ramifications while entire client bases may need to be re-contracted.</p> <p>For example, an existing AFA is contracted to provide advice to what will be a FAP (that might only have 2 advisers). The AFA is contracted through their own company structure. That simple business now falls automatically into Class B. To avoid this the contracted AFA would now be required to work as a directly contracted FA to stay as a Class A licence. This may not be legally, or structurally viable for the business or the FA.</p>	
<p>Please note: Feedback received is subject to the Official Information Act 1982. We may make submissions available on our website, compile a summary of submissions, or draw attention to individual submissions in internal or external reports. If you want us to withhold any commercially sensitive or proprietary information in your submission, please clearly state this and note the specific section. We will consider your request in line with our obligations under the Official Information Act. Thank you for your feedback – we appreciate your time and input.</p>	

Submission on “Proposed standard conditions for financial advice provider full licences and classes of financial advice” consultation

7 August 2020

Introduction

1. This is a submission on behalf of **Nikko Asset Management New Zealand Limited (Nikko AM)**. Nikko AM is a licensed MIS Manager and currently provides digital advice on its free to use platform “GoalsGetter”, pursuant to the Financial Advisers (Personalised Digital Advice) Exemption Notice 2018 (“the Exemption”).
2. In *summary*:
 - a. We are generally supportive of the licence conditions but we:
 - i. propose small changes to the business continuity and technology systems condition;
 - ii. note that we are being asked to support a regulatory return condition without knowing what the detail of that requirement will be, so request further consultation on the content once the detail is known; and
 - iii. seek clarification to the explanatory note to the notification of material changes condition.
 - b. We oppose the licence classes as proposed. We believe that licence classes should group similar kinds of business in terms of their risk, nature of processes required to operate, complexity and scale together. The proposed classes do not do this and, as a consequence, give rise to undesirable regulatory outcomes.

Licence classes

3. The object of a licensing regime should be to:
 - a. Impose controls and oversight on financial advice provider businesses that are proportionate and appropriate for the nature of the licensees; and
 - b. To create a framework that enables harms to be addressed in an efficient and effective way.

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4. The main purpose of creating licence categories within a licensing framework would logically be to group businesses that are of a similar kind in terms of risk, scale, complexity, and skills and processes they need in order to operate, together, so that:
 - a. From a regulator's perspective, entities that share the same general characteristics and risks can be overseen in a similar manner that is appropriate for them based on licence class; and
 - b. From a licensee perspective, a licence class should set appropriate boundaries to operate within so that:
 - i. A licensee can incrementally change and grow in a reasonable way without immediately having to re-license , and equally
 - ii. it should not be possible for the business to transform materially in terms of risk and scale, or to carry on business in a way that requires a different skill set, without having to re-license.
5. Unfortunately, the licensing categories as proposed do not:
 - a. group similar businesses (in terms of risk profile, processes or skills required) together. As examples to illustrate the point:
 - i. A two man adviser firm is in the same licence class as a FAP that coordinates oversight across multiple different businesses;
 - ii. A large corporate that successfully builds a digital channel to advise thousands is in the same licence class a one person adviser; and
 - iii. A one person adviser firm is in a different class to other small adviser businesses (like two or three person businesses) that would reasonably need similar kinds of process and oversight.
 - b. set appropriate parameters for a business to operate within. As examples to illustrate the point:
 - i. A one man adviser business cannot become a two man adviser business, without reapplying for a whole new licence class, even though the processes and risks for small firms should be relatively similar to one man firms. Similarly, a large corporate with a sophisticated digital channel that serves thousands of customers cannot add

an “AFA equivalent” human to their business escalate to and to help oversee the tool without going through an entire re-license, even though common sense says that the change is most likely an incremental change; conversely

- ii. A two man adviser business could take on the role of being a central hub FAP for twenty different adviser businesses without changing its licence category. A one man adviser business can set up a digital advice channel within the same licence category, despite the fact that the skills and processes required to do this will be of an entirely different nature to those of a one man advice business.

6. If we were comparing the FMA’s licence categories to vehicle licence categories:

- a. Having one person adviser businesses in the same category as a digital channel would be akin to having a vehicle licence category that allows you to drive a single car or fly a single plane at your choice;
- b. Requiring a one person adviser business to re licence if he or she becomes a two person business would be like requiring a household with one car to re licence if they buy a second car; and
- c. Allowing a two person advisor business to become a central FAP for multiple businesses without changing licence category would be akin to allowing a household with two cars to set up a minicab business without getting a new licence.

7. Overall, the licence categories do not appear to contribute to either risk management of harms for the regulator to monitor, nor do they allow sensible incremental growth by the sector.

8. It would make more sense to categorise licence classes by size of business or by number of clients or some other rough proxy to group like businesses together.

Licence conditions

9. We are generally supportive of the licence conditions subject to the comments below

Regulatory returns condition

10. We are not opposed to providing reasonable regulatory returns. However, this consultation has not provided information as to what will be requested and in what format. Therefore it is impossible to comment on the level of burden created by the obligation.
11. Information requests can vary from being very easy to fulfil to extremely burdensome, depending on what exactly is being asked for. Therefore we request further consultation on the substance of the regulatory return in the future if the condition is adopted.

Business continuity and technology systems condition

12. We are pleased that the FMA has proposed a condition in relation to business continuity and cyber risk. These are key risks hanging over all financial services businesses. However, we believe that the condition should be further strengthened.

13. First, we suggest the following changes to the drafting:

~~*If you use any technology systems, which if disrupted, would materially affect the continued provision of your financial advice service (or any other market services licensee obligation),*~~ *you must at all times ensure that cybersecurity for these your systems – being the preservation of confidentiality, integrity and availability of information and/or information systems – is maintained.*

14. The previous drafting suggests that the condition might only apply to some businesses, whereas we believe that the obligation should be absolute. It is difficult to envisage any financial services business that would not be reliant on a data base or computer system, and that does not therefore have cyber security as a key risk affecting it.

15. Second, as the FMA will no doubt be aware, from 1 December 2020 there will be a regime of mandatory reporting of material breaches of privacy to the Privacy Commission. It would be useful to bring the FMA and Privacy Commission reporting together so as to make the response to any cyber issue more seamless.

Notification of material changes condition

16. We are not opposed to the notification of material changes condition itself. However the explanatory note is problematic.
17. It appears to say that any change as to, “how you or any of those engaged by you, meet the competency requirements of the Code of Professional Conduct for Financial Advice Services” triggers an obligation to notify.
18. The issue is that Code Standard 6 (General Competence, Knowledge and Skill) allows a person giving financial advice to achieve equivalence to Level 5 in many different ways - including by systems and processes (this is particularly relevant to us as a digital advice provider). The corollary of this is that any change to internal process could be argued to trigger the material change obligation for a digital advice provider, since it is through our processes that we achieve equivalence in the first place.
19. As a digital advice provider, we continually think about different ways in which we might innovate, present information differently or disrupt. We also continually make adjustments to our processes and procedures as part of our quality assurance review; as we gain data about how the tool has performed, and as we gain a better understanding of the customer experience. Incremental change, including to systems and procedures, is part of daily life for every digital business.
20. Equally, a business like a bank or insurer that hires a large number of advisers and nominated representatives, will under the explanatory note be undergoing a “material change” every time a nominated representative gets level 5 and becomes an adviser as that will change the way in which a person “engaged” by the organisation meets the competency requirements of the Code.
21. Our view is that, it is probably not the intent of the explanatory note to require notification every time we adjust our internal processes as a digital provider (or every time an individual obtains a new qualification in a large organisation) but this appears to be implication of what the note is saying

22. As noted above, we are not opposed to a material change reporting obligation per se, but the trigger points should be clear, well defined and should only arise very occasionally, when there is some form of change to the risk profile of the entity.

Contact person:

[REDACTED]
[REDACTED]
[REDACTED]



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4 August 2020

Financial Markets Authority
Level 2, 1 Grey Street,
Wellington, New Zealand
by email only: consultation@fma.govt.nz

NZX Submission on proposed standard conditions for financial advice provider full licenses and classes of financial advice service

NZX Limited (**NZX**) submits this response to the Financial Markets Authority (**FMA**) consultation document 'Proposed standard conditions for financial advice provider full licenses and classes of financial advice service' (**Consultation Document**).

We thank the FMA for the opportunity to make this submission and to contribute to the Government's work of further developing the policy settings for the regulation of financial advice providers and their services in New Zealand under the Financial Services Legislation Amendment Act 2019 (**FSLA Act**).

Nothing in this submission is confidential.

Response to consultation

We support the FMA's agenda to regulate financial advice providers with the view that these proposals will bring the regulation of financial advice in New Zealand closer to international standards. This will ultimately benefit New Zealand's international reputation ensuring that it retains its reputation as a reliable and viable option for investments.

We wish to comment on the following proposed conditions that are set out in the Consultation Paper:

1. professional indemnity insurance; and
2. instances when technological disruptions should be reported to the FMA.

Professional Indemnity Insurance

We agree with the FMA's proposal to include professional indemnity insurance as one of the financial advice provider full licence standard conditions. We also believe that introducing this standard will benefit the market by providing more certainty to investors as it will enable them to obtain remedies for negligent acts committed by financial advisers.

We support the FMA's intended approach to not prescribe a specific level of professional indemnity insurance cover in proposed condition 5. Insurance coverage is usually a significant undertaking for a smaller firm and we agree that it is appropriate for firms to determine the level of cover they need based on the nature and scope of their advice, and

client base. We agree that where the FMA waives the requirement for professional indemnity insurance, that it will be appropriate to require the licence holder to notify retail clients that they do not have professional indemnity coverage.

As an alternative solution to accrediting firms without insurance coverage, the FMA may wish to consider creating a professional indemnity class fund for financial advisers in smaller firms to alleviate the financial burden of such insurance coverage.

Reporting of technological disruptions

We support the FMA's initiative towards creating more reliable and secure technological systems throughout the market.

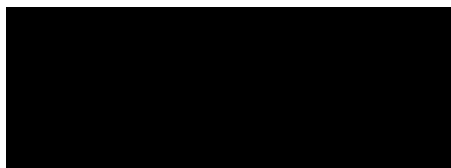
Proposed condition 6, requires the financial adviser's firm to notify the FMA within five business days of discovering any event that materially impacts the cybersecurity of the firm's critical technology system. The proposed condition is drafted in a manner that appears to apply to technology systems of a financial advice provider's entire business, rather than to systems involved in the provision of financial advice, which we suggest is inappropriate for providers who operate diverse businesses using a wide range of technological systems.

We would like to recommend that the FMA amend the current wording of this requirement so that only technological disruptions which materially affect the ability for a financial adviser to *provide financial advice* should be reported to the FMA within 5 business days. We believe that this amendment is consistent with the intention of condition 6.

Closing comments

We thank the FMA for this opportunity to submit on these proposals and NZX is happy to provide further information or clarification of any matters contained within. We would welcome the opportunity to meet with you discuss any aspect of this submission.

Yours faithfully,

A large black rectangular redaction box covering the signature area.A black rectangular redaction box covering the signature area, with a smaller box below it.

Feedback: Proposed standard conditions for financial advice provider full licences and classes of financial adviser service

Please submit this feedback form electronically in both PDF and MS Word formats via email to consultation@fma.govt.nz with 'Feedback: Proposed standard conditions for financial advice provider full licences and classes of financial adviser service' in the subject line. Thank you. Submissions close at 5pm on Friday, 7 August 2020.

Date: 5 August 2020

Number of pages: 6

Name of submitter:

[REDACTED]

Company or entity:

Partners Life

Organisation type:

Life and Health Insurer

Contact name (if different):

Contact email and phone:

[REDACTED]

Question number	Comment	Recommendation
<p><i>You don't need to quote from the consultation document if you use page numbers.</i></p> <p><i>You may insert additional lines or pages - please label each additional page with your name & organisation.</i></p>		
<p>4.1 (a)</p> <p>Standard condition 1, record-keeping</p>	<p>Partners Life supports this standard condition.</p> <p>We submit that every business should have robust record-keeping processes and systems to evidence that its service delivery meets the minimum standards, and to provide ongoing customer service.</p>	
<p>4.2 (a)</p> <p>Standard condition 2, internal complaints process</p>	<p>Partners Life supports this standard condition.</p> <p>We submit that every business should have a robust complaints process that is clearly communicated to customers, to provide appropriate service to its customers.</p>	
<p>4.2 (b)</p> <p>Standard condition 2, internal complaints process</p>	<p>Partners Life has an internal complaints process for our financial advice business that meets the requirements of the proposed standard condition.</p>	
<p>4.3 (a)</p> <p>Standard condition 4, regulatory returns</p>	<p>Partners Life supports this standard condition.</p> <p>While it adds cost to financial advice providers (the quantum depending upon the content of the return) we recognise that regulatory returns are the primary source of data the FMA uses for risk-based, harm-focused regulation.</p>	<p>We note that the FMA states that it will consult with the market when developing the regulatory return, and we strongly support this consultation. This will enable the FMA to develop a regulatory return that optimises the balance between the cost for financial advice providers to collect the data, and the value to the FMA. We encourage the consultation process to be completed and the findings released in a timely fashion to enable the market to have plenty of time to carry out</p>

Question number	Comment	Recommendation
		<i>any changes necessary to comply with the new requirements.</i>
4.4 (a) <i>Standard condition 4, outsourcing</i>	<p><i>Subject to our answer to question 4.4 (f) below, we support this standard condition.</i></p> <p><i>We submit that a robust business must perform appropriate due diligence before outsourcing any core activities to a third party, and it must have policies and processes in place to minimise the risk of harm to customers that may be caused by outsource providers.</i></p>	
4.4 (f) <i>Standard condition 4, outsourcing</i>	<p><i>We submit that it may not be possible for many financial advice providers to negotiate terms with key outsource providers, such as terms to allow the ability to monitor performance and take appropriate action for non-performance.</i></p> <p><i>Many financial advice providers are much smaller businesses than the companies to which they outsource key activities. Many outsource providers are large international companies with whom even large financial advice providers would have to accept standard terms to engage the outsource provider.</i></p> <p><i>For example, providers that are much bigger than most financial advice providers include software companies such as Microsoft and IRESS, training providers such as Open Polytech and Strategi, and professional services firms such as PwC and Dentons.</i></p>	<p><i>We submit that the explanatory note of the condition, second bullet point, should be amended to:</i></p> <ul style="list-style-type: none"> <i>• Having contractual arrangements with each provider that enable you to continue to meet your licensee obligations at all times. Suitable arrangements could include enabling you to effectively monitor their performance, take appropriate action for non-performance, terminate the agreement suitably, or switch providers quickly and with little disruption.</i> <p><i>We further submit that an additional bullet point be added to the bullet point list in the explanatory note:</i></p> <ul style="list-style-type: none"> <i>• Having contingency plans to enable you to minimise harm to your customers if an outsource provider causes you to breach your licensee obligations.</i>
4.5 (a) <i>Standard condition 5, professional indemnity insurance</i>	<i>Partners Life supports this standard condition.</i>	
4.6 (a) <i>Standard condition 6, business continuity and technology systems</i>	<p><i>Partners Life supports this standard condition.</i></p> <p><i>We submit that a robust business will have a business continuity plan, and it is important for financial advice providers to be able to serve</i></p>	

Question number	Comment	Recommendation
	<p><i>their clients though unforeseen events.</i></p> <p><i>We submit that while cyber-security is a specialised area, financial advice providers must ensure the security of their client data.</i></p>	
<p><i>4.7 (a)</i></p> <p><i>Standard condition 7, ongoing eligibility</i></p>	<p><i>While we support this standard condition, we are concerned that the FMA have not released the requirements for financial advice providers to meet ss396 and 400 of the Financial Markets Conduct Act (FMCA).</i></p> <p><i>We understand that the licensing guides and minimum standards for existing licence types under the FMCA were drafted to meet ss396 and 400 of that Act.</i></p> <p><i>We are therefore concerned that the FMA are proposing this standard condition before the financial advice provider licensing guide and minimum standards have been released, so financial advice providers are asked to agree to a proposed standard condition without knowing the detail to which they are asked to agree.</i></p>	<p><i>We submit that the FMA should release the financial advice provider licensing guides and minimum standards with adequate time for stakeholders to consider them before the market is required to respond to this proposed standard condition.</i></p>
<p><i>4.8 (a)</i></p> <p><i>Standard condition 8, notification of material changes</i></p>	<p><i>We support this standard condition.</i></p> <p><i>If licence-holders notify the FMA of material changes to their businesses, it enables the FMA to better understand risks to their objective to promote and facilitate the development of fair, efficient and transparent financial markets.</i></p>	
<p><i>4.9 (a)</i></p> <p><i>Proposed licence classes</i></p>	<p><i>We support the proposal to have three licence classes. We submit that there are significant differences between the controls required for sole adviser businesses, multi-adviser businesses, and businesses that engage nominated representatives. Therefore, the three proposed licence classes are justified.</i></p>	

Question number	Comment	Recommendation
	<p><i>We have three concerns with the proposed classes which are listed here, and explained below:</i></p> <ol style="list-style-type: none"> <i>1. We concur with the opinion of Dentons Kensington Swan that the names of the classes should be changed, because they may mislead the public.</i> <i>2. We submit that digital advice should require a separate licence endorsement, because it requires very different policies, processes, systems and controls than a financial adviser business.</i> <i>3. We submit that sole adviser businesses may require a locum financial adviser when they are unavailable to provide financial advice, and this should be allowed under the proposed Class A licence.</i> 	
<p>4.9 (c)</p> <p><i>Proposed licence classes</i></p> <p><u><i>Licence type names</i></u></p>	<p><i>We concur with the opinion of Dentons Kensington Swan that the names of the classes should be changed, because they may mislead the public.</i></p> <p><i>Classes A, B and C imply different levels of status, and may be misinterpreted as such by the public.</i></p> <p><i>Therefore, we submit that these licence classes should be named to reflect their types.</i></p>	<p><i>We submit that the three licence types should be renamed. For example:</i></p> <ul style="list-style-type: none"> <i>• Sole adviser licence;</i> <i>• Multiple adviser licence;</i> <i>• Comprehensive licence.</i>
<p>4.9 (c) continued</p> <p><i>Proposed licence classes</i></p> <p><u><i>Digital advice in Class A</i></u></p>	<p><i>We submit that digital advice should require a separate licence endorsement, because it requires very different policies, processes, systems and controls than a financial adviser business.</i></p> <p><i>The proposed Class A licence covers financial advice providers with one financial adviser, and advice given directly to retail clients by the financial advice provider.</i></p> <p><i>Digital advice (or robo-advice) is one way that a financial advice provider can give advice directly to retail clients.</i></p>	<p><i>We submit that a digital advice service should be an endorsement to a financial advice provider licence of any of the three classes.</i></p> <p><i>The endorsement would have its own application process, licensing guide and minimum standards, which may be similar to the FMA's digital advice application guide.</i></p>

Question number	Comment	Recommendation
	<p><i>However, we submit that digital advice requires very different policies, procedures, systems and controls from a financial advice provider that delivers advice to retail clients via individuals (financial advisers or nominated representatives).</i></p> <p><i>Digital advice requires expertise in both financial advice and developing and maintaining computer software. Delivering financial advice through individuals does not require expertise in developing and maintaining computer software. Therefore, the licensing requirements and minimum standards should differ.</i></p> <p><i>The FMA's digital advice application guide states that a digital advice provider must have, inter alia:</i></p> <ul style="list-style-type: none"> <i>• people with appropriate expertise in the technology and algorithms used to provide the digital advice service;</i> <i>• adequate and effective processes to monitor and test the algorithms and review the advice provided to clients;</i> <i>• safeguards and controls over the systems and underlying processes to ensure cyber-resilience, data and system security and prevent errors or system failure; and</i> <i>• have adequate and effective arrangements to filter out clients for whom the digital advice service is inappropriate or of insufficient scope.</i> <p><i>We submit that these are not requirements necessary for a sole adviser business, but they are necessary for a digital advice service.</i></p>	
<p><i>4.9 (c) continued</i></p> <p><i>Proposed licence classes</i></p> <p><i><u>Locums in a Class A licence</u></i></p>	<p><i>We submit that sole adviser businesses may require a locum financial adviser when they are unavailable to provide financial</i></p>	<p><i>We submit that a Class A licence-holder should be permitted to engage another financial adviser on a temporary basis to provide financial advice to retail clients when the licence-holder's own financial adviser or</i></p>

Question number	Comment	Recommendation
	<p><i>advice, and this should be allowed under the proposed Class A licence.</i></p> <p><i>The proposed Class A licence allows a financial advice provider to have one individual who provides financial advice to retail clients (a sole trader licensee, or a company with one financial provider).</i></p> <p><i>As part of a robust business continuity plan, a financial advice provider that has one individual who provides financial advice to retail clients must have contingency plans in place for times when the individual is unable to provide financial advice. This may be because the individual is on leave, or unable to work due to illness – perhaps for an extended period.</i></p> <p><i>We submit that in these cases, the financial advice provider be permitted to engage a locum financial adviser to provide financial advice to the licensee's retail clients. Otherwise, the clients of the financial advice provider will be unable to obtain financial advice from their regular financial advice provider while the individual is unavailable.</i></p>	<p><i>sole trader is unavailable. This may be for reasons of leave (including holidays) or illness.</i></p>
<p>Feedback summary – if you wish to highlight anything in particular.</p> <p>We are particularly concerned that the requirements of proposed Standard Condition 7 are unknown. We ask that the FMA release the financial advice provider licensing guides and minimum standards with sufficient time allowed for stakeholders to comment on them as part of a response to proposed Standard Condition 7.</p> <p>We submit that there is scope for a 9th standard condition requiring fair conduct toward retail clients. Given the present focus of the FMA on fair conduct, and good customer outcomes, we expected a standard condition requiring financial advice providers to have a framework in place to support fair conduct and good customer outcomes. The framework could include business values, a business code of conduct, or other statements about business culture that prioritise customer interests.</p>		
<p>Please note: Feedback received is subject to the Official Information Act 1982. We may make submissions available on our website, compile a summary of submissions, or draw attention to individual submissions in internal or external reports. If you want us to withhold any commercially sensitive or proprietary information in your submission, please clearly state this and note the specific section. We will consider your request in line with our obligations under the Official Information Act.</p>		
<p>Thank you for your feedback – we appreciate your time and input.</p>		

Feedback: Proposed standard conditions for financial advice provider full licences and classes of financial adviser service

Please submit this feedback form electronically in both PDF and MS Word formats via email to consultation@fma.govt.nz with 'Feedback: Proposed standard conditions for financial advice provider full licences and classes of financial adviser service' in the subject line. Thank you. Submissions close at 5pm on Friday, 7 August 2020.

Date: 6 August 2020

Number of pages: 2

Name of submitter: [REDACTED]

Company or entity: Pascoe Barton

Organisation type: Investment Advisory

Contact name (if different):

Contact email and phone: [REDACTED]

Question number	Comment	Recommendation
<p><i>You don't need to quote from the consultation document if you use page numbers.</i></p> <p><i>You may insert additional lines or pages - please label each additional page with your name & organisation.</i></p>		
5	<p><i>Historically Investors have the belief that PI Cover, will cover loss of portfolio capital. Obviously it does not. It is intended to cover negligence on the part of the adviser or organisation.</i></p>	<p><i>FMA should set a standard conditions for PI Cover, that the PI Provider must meet.</i></p> <p><i>Disclosure documents should stress that loss of capital except through negligence is not covered.</i></p>
	<p><i>Ascertaining an appropriate level of cover to meet negligence claims should vary significantly depending on the business structure and areas that they are advising. If the business provides insurance cover, there is a huge scope for negligence. Not recommending appropriate cover levels. Inaccurate proposal forms particularly with regard to undisclosed medical conditions effectively voiding the contract at claim time.</i></p> <p><i>For a business which is primarily portfolio management using custodial services there should be minimal need for PI Cover when advisers are appropriately qualified and experienced.</i></p>	<p><i>Group policies may be misleading as to the level of cover come claims time, depending on claims submitted by other advisers.</i></p> <p><i>Risk advisers need to consider the level of potential claims if a clients insurance claim is declined because of inaccurate proposal forms being submitted when the policy was being underwritten.</i></p> <p>Portfolio Management Businesses should not have a mandatory requirement for PI cover. We see the risk as being compliance based (AML and other regulations). These have minimal impact on investors.</p> <p>A viable business should have sufficient financial reserves to be able to quickly mitigate any potential claims.</p>
	<p><i>PI Cover is expensive and there are few providers. It is difficult to compare policies between providers. It seems a nonsense to have to take out two policies as there are two advisers, when historically cover for a business such as ours was offered under the one policy. This effectively doubled the cost</i></p>	<p><i>Historically cover was based on expected and historical revenues for the business. Changes by at least one group scheme provider (Financial Advice New Zealand Group Scheme) meant that for a two adviser business had to take out two policies doubling the costs of PI Cover.</i></p>

	<i>of PI cover, with no benefit to the business or the clients. The only beneficiary was the issuer of the cover.</i>	<i>Obviously, PI Cost could potentially be a barrier, just increasing compliance costs. The reality is that there have been very few claims against advisers offering legitimate portfolio management services. PI Cover does not met investor losses in the Ponzi schemes that have occurred with Bradley, Ross, Kloogh etc.</i>
Feedback summary – <i>if you wish to highlight anything in particular.</i>		
Please note: Feedback received is subject to the Official Information Act 1982. We may make submissions available on our website, compile a summary of submissions, or draw attention to individual submissions in internal or external reports. If you want us to withhold any commercially sensitive or proprietary information in your submission, please clearly state this and note the specific section. We will consider your request in line with our obligations under the Official Information Act.		
Thank you for your feedback – we appreciate your time and input.		

Feedback: Proposed standard conditions for financial advise provider full licences and classes of financial adviser service.

Please submit this feedback form electronically in both PDF and MS Word formats via email to consultation@fma.govt.nz with 'Feedback: Proposed standard conditions for financial advice provider full licences and classes of financial adviser service' in the subject line. Thank you. Submissions close at 5pm on Friday, 7 August 2020.

Date: 4th August 2020

Number of pages:

Name of submitter: [REDACTED]

Company or entity: Penberthy Insurance

Organisation type: Insurance Brokers

Contact name (if different):

Contact email and phone: [REDACTED]

Question number	Comment	Recommendation
4.1	Agree with record keeping, but consideration needs to be given to life/medical products as quite often the info that brokers have on their files is not current in that an Assured could contact Insurer directly and increase/decrease or even cancel covers and brokers are not always aware of these changes unless the provider informs the broker. How can we be expected to keep up to date information?	Set guidelines of exactly what you expect to see in client files on both F&G clients and life/medical, mortgage etc. clients, so all are on the same page.
4.2	Agree and yes, we have internal complaints procedure.	
4.3	Agree – if we have gone to all the efforts of introducing new regime then this should be monitored by way of returns moving forward. This way one could declare serious complaints/PI exposures which will help assist the FMA in renewing or placing additional conditions on licence holder.	Annual renewal of licence moving forward.
4.4	This point is inline with what I mentioned in 4.1 in that, with life products, often the provider has all the current/updated schedules which are not always passed onto the broker.	Consideration should be given to enforce all life/medical providers to have arrear reports, current and updated schedules on portals for brokers to inspect.
4.5	Agree with this and we currently have PI insurance via Insurance Advisernet, however, majority of Insurers are withdrawing PI cover for advisers so where does this leave brokers that need to source their own PI cover.	FMA or other body should arrange a PI offer for any financial advisers to join to ensure that all advisers have appropriate PI cover, which is in the best interest of the client

4.6	Agree. Currently we do not have a BCP but are in the process of preparing one. During the Covid-19 shutdown, we were able to allow all staff to work from home so had very little impact on our business, however, know of other advisers where this did not happen and clients were disrupted or could not contact their advisers etc..	BCP should be condition of licence to ensure that advisers will not be disrupted during a crisis as this is when clients will need them the most.
4.7	Agree and if we have Regulatory Returns as per point 4.3 above then FMA or other body can be assured that advisers are continuing to stay on top of procedures/policies etc..	This point should be included as part of point 4.3
4.8	Agree	This point should be included as part of point 4.3 where one does an annual declaration, which basically means having a licence renewed every year.

Feedback summary – if you wish to highlight anything in particular.

I think the new regime needs more direct guidelines as there are certain areas which could appear vague and allow varying interpretations of what is expected. It would be good to know that if a complaint were made to the FMA, what would the FMA be looking for on our files?

The other area of concern is how is the new regime going to deal with schemes that various brokers have or placement facilities. Quite often clients that I have spoken with do not even understand why they are in the scheme/placement facility which only has one product. How do you give options to an Insured when you are only placing their business in a scheme/placement facility?

Please note: Feedback received is subject to the Official Information Act 1982. We may make submissions available on our website, compile a summary of submissions, or draw attention to individual submissions in internal or external reports. If you want us to withhold any commercially sensitive or proprietary information in your submission, please clearly state this and note the specific section. We will consider your request in line with our obligations under the Official Information Act.

Penberthy Insurance Limited

7 August 2020

Financial Markets Authority
Level 2, Grey St
Wellington 6140
New Zealand

Sent by Email: consultation@fma.govt.nz

Dear Madam or Sir,

Securities Industry Association submission: Proposed standard conditions for financial advice provider full licences and classes of financial adviser service

The Securities Industry Association (**SIA**) thanks the Financial Markets Authority (**FMA**) for the opportunity to provide feedback on the Consultation paper: **Proposed standard conditions for financial advice provider full licences and classes of financial adviser service** (17 June 2020).

Please find attached a submission prepared by the SIA on behalf of its members in response to this consultation paper.

The SIA represents the shared interests of sharebroking, wealth management and investment banking firms that are accredited NZX Market Participants.

SIA members employ more than 500 accredited NZX Advisers, NZDX Advisers and NZX Derivatives Advisers, and more than 400 Authorised Financial Advisers nationwide. The combined businesses of our members work with over 300,000 New Zealand retail investors with total investment assets exceeding \$80 billion, including \$40 billion held in custodial accounts. Members also work with local and global institutions that invest in New Zealand.

No part of this submission is required to be kept confidential. Note, some SIA member firms may make an individual firm submission based on issues specific to the business of their firm. Those issues and views may not be reflected in this submission.

If you have any questions about this submission or require further information, in the first instance, please contact:

[REDACTED]
[REDACTED]

Yours sincerely

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Feedback: Proposed standard conditions for financial advice provider full licences and classes of financial adviser service

Please submit this feedback form electronically in both PDF and MS Word formats via email to consultation@fma.govt.nz with 'Feedback: Proposed standard conditions for financial advice provider full licences and classes of financial adviser service' in the subject line. Thank you. Submissions close at 5pm on Friday, 7 August 2020.

Date: 7 August 2020

Number of pages: 5

Name of submitter: [REDACTED]

Company or entity: Securities Industry Association

Organisation type: Industry Association

Contact name (if different): as above

Contact email and phone: [REDACTED]

Question number	Comment	Recommendation
<p><i>You don't need to quote from the consultation document if you use page numbers.</i></p> <p><i>You may insert additional lines or pages - please label each additional page with your name & organisation.</i></p>		
4.1 Condition 1 - Record keeping	<p>(a) We agree with the proposed standard condition; however, we think there is scope to include further detail in the explanation note with regard to how a record should be kept and what is required to evidence that this has been done adequately. This would ensure there is a clear understanding of the required level and detail at the outset, and consistency across the industry.</p> <p>(b) Further, given some Advisers may speak with a client multiple times a day or within the week in relation to the same matter, we think a materiality threshold would be appropriate and/or recognition that the advice given will be summarised. Voice recording may not be used by some firms, so the obligation needs to be appropriate for manual record keeping.</p>	<p>(a) SIA recommends that further detail is required in the explanatory note to ensure a clear understanding of requirements and consistency across the industry.</p> <p>We suggest an explanation is included to describe (i) what the requirement is for keeping a record; (ii) how to clearly demonstrate that you have met the requirement for keeping a record; and (iii) what the materiality threshold is for keeping a record and extent to which advice can be summarised. It is unclear whether it is possible to maintain a 'tick the box' record in certain circumstances or if more detailed evidence required, and how that should be presented. We recommend this is clearly articulated in the explanatory note to ensure any investment made by respective firms for record keeping purposes is appropriate and in line with expectations.</p> <p>We believe that applying a materiality threshold and/or summarising the advice given meets the objectives of the legislation, provided that there is a record of why the advice was appropriate.</p>
Condition 2 - Internal complaints process	<p>(a) We generally agree with the proposed standard condition, however in 2 (b)(ii) we think that</p>	<p>(a) SIA recommends that 2 (b)(ii) is refined to "any action that was taken to resolve that complaint" to avoid unintended</p>

	<p>“any action that was taken in relation to that complaint” presents an extremely broad scope.</p> <p>This should be reworded to be limited to actions taken to resolve the complaint. As currently drafted there is the potential for the inadvertent capture of internal matters and discussions related to the complaint, but not the resolution of the complaint, for example, an employment matter.</p> <p>We also submit on the scope of the definition of complaints, being complaints “...relating to your financial service...”, which aside from the appropriate disclosure and advice processes being conducted, it could potentially include people making complaints over circumstances of which firms have no control over, such as market fluctuations.</p> <p>Also, SIA members may speak to a client multiple times per week, and it is not uncommon for clients to give negative feedback that can easily be resolved, for example, on Anti-Money Laundering and Countering Financing of Terrorism requirements. SIA members believe the current wording, therefore, creates an unnecessary administrative burden to separately record such matters which have no relationship to financial advice regulation.</p>	<p>consequences and ensure that “any” does not capture every action not appropriate to resolving the complaint.</p> <p>(b) SIA recommends that the standard is limited to complaints that are potentially relevant to a failure to meet a regulation under the Financial Services Legislation Amendment Act (FSLAA), or the Code of Professional Conduct for Financial Advice Services.</p>
Condition 3 - Regulatory returns	<p>(a) We agree in principle with the proposed standard condition; however, as it stands, we are uncertain as to what the methodology for the Regulatory returns will be given we have not reviewed the Regulatory Framework.</p> <p>Therefore, we support the intention of the standard condition subject to suitability of the methodology, including that there is a clear framework to show it is limited to the purposes of what it is intended and required to gather. There is a risk that broadly or excessively gathering information could</p>	<p>(a) SIA welcomes the opportunity to consult with FMA to ensure there is a suitable framework established that outlines the details required for adequate reporting and effective capture of relevant information for the Regulatory returns standard condition 3.</p>

	consolidate significant intellectual property of firms in a competitive environment.	
Condition 4 - Outsourcing	<p>(a) We agree with the proposed standard condition in principle; however, SIA suggests that an agreed definition is required for 'outsourcing'.</p> <p>It is our view that some of the examples of arrangements captured by the condition are too broad. For example, "the review of compliance processes to a professional services company", should not be considered as outsourcing. Rather, it is an investment made by the firm to enhance its compliance, but it is not relied upon to meet the obligations.</p> <p>We consider that outsourcing is typically considered as goods or services contracted by an outside supplier that could (or should) otherwise be done internally by the Financial Advice Provider (FAP).</p>	<p>(a) SIA recommends that a clear definition of outsourcing is provided in the explanatory note to ensure the definition of outsourcing is not unintentionally broad. We are happy to assist with refining this definition.</p>
Condition 5 - Professional indemnity insurance	<p>(a) Subject to our comments, we agree with the proposed standard condition in general.</p> <p>We are of the opinion that the following final limb of the Explanatory note should be deleted "demonstrate how you have determined that your professional indemnity insurance meets the requirements of this condition." It is unclear what is expected in these circumstances, particularly given it will depend on an array of matters, such as group structure, the size and stage of a business, its strategy and plans, risk profile and decisions, as well as its client base and assessment of the internal and external environment, for example. The level of insurance depends on its suitability to the business – firms may have processes and systems in place that significantly mitigate internal or external risk or threats.</p> <p>We are unsure whether the FMA would be satisfied with being notified that a firm's Head of</p>	<p>(a) SIA recommends that the following is deleted from the explanatory note for the reasons expressed:</p> <ul style="list-style-type: none"> • "demonstrate how you have determined that your professional indemnity insurance meets the requirements of this condition." • "past activities" from (c). <p>We also suggest that the explanatory note should be recognised that some businesses are part of a group insurance scheme.</p>

	<p>Compliance signed off on this. However, if more information is required, then we need to better understand what this looks like.</p> <p>Furthermore, with reference to point (c) in the explanatory note, it may not be possible for an insurer to insurance for “past activities” if they were not the insurer at the time an issue occurred and it is dealt with retrospectively. We suggest this is also removed.</p> <p>It should be noted that some businesses are part of a group insurance scheme, and we suggest that this acknowledged in the explanatory note so that it recognised as permitted and legitimate.</p>	
Condition 6 - Business continuity and technology systems	(a) We agree with the proposed standard condition, although we think that this is very limited in scope.	
Condition 7 - Ongoing eligibility	(a) We agree with the proposed standard condition.	
Condition 8 - Notification of material changes	<p>(a) It appears overreaching for FAPs to have to engage with FMA on material changes in the nature of, or manner in which, FAPs provide their services. Furthermore, the explanatory note creates ambiguity on what is relevant under this standard. Specifically, the explanation of “nature of your financial advice service” is confusing because a compliance system has no direct correlation with the advice that the client receives. This ambiguity creates the possibility that FAPs will engage with FMA on any systems changes or a wide range of other changes to the business that have no direct effect on the advice provided (i.e. the regulated service). We recommend this standard is deleted.</p> <p>At a minimum, we suggest that the definition of “nature of your financial advice” needs further consultation, particularly with respect to competency.</p>	<p>(a) SIA recommends that this standard is deleted for the reasons outlined, or at minimum, that FMA consults on the definition of “nature of your financial advice” to ensure there is a common understanding.</p>

<p>4.9 Financial advice provider full license classes</p>	<p>(a) SIA is comfortable with the three licence class proposal but disagrees with the proposed titles for the three licence classes.</p> <p>SIA believes that the three-class system for Financial Advice Providers as it is currently presented will only confuse customers.</p> <p>It is highly likely that customers will perceive that Class A is better than Class C and be none-the-wiser that Class C is an all-encompassing class. Whilst we know it is not intended as a grading system, the categories will be viewed by the public as such. From schooling days to quality controls, we are conditioned to think that A is a higher level than a B, or a C. Customers may think they are being offered a “C” grade service.</p> <p>Given that prejudice is likely to occur, a class system as presented does not necessarily reflect the value proposition of firms, nor the fee structure for their respective services.</p> <p>(c) It is important that the conditions are future-proofed as well as reflect the current modes of service delivery. We believe there needs to be a category that includes robo-advice, or that this is included in each of the classes, as we do not believe that it is clear where this sits in the proposed class system.</p> <p>SIA also suggests that there needs to be consistency across the license conditions, for example, Financial Services Legislation Amendment Act (FSLAA), Managed Investment Scheme (MIS) and Discretionary Investment Management Services (DIMS) licenses. So if a provider has two or more licenses, then where a condition carries across more than one license the wording is the same.</p>	<p>(a) SIA recommends that the term Class is not used, but that consideration is given for an alternative descriptor such as Provider Type:</p> <ul style="list-style-type: none"> • Sole adviser service • Multiple adviser service • Comprehensive service. <p>Alternatively, in the event the FMA maintains a strong preference to retain the class A to C categorisation, we recommend, with respect, that the classes be reversed, with the comprehensive full service being class A.</p> <p>(c) As per the recommendation for 4.9 (a), we recommend that there is provision for robo-advice, for example:</p> <ul style="list-style-type: none"> • Provider Type – Robo-advice service or that it is included in each of the categories. <p>We also recommend there is consistency across the license conditions, so that where a provider has two or more licenses, for example, FSLAA, MIS and DIMS, then the wording for a condition that applies to more than one license is the same across them all.</p>
<p>Feedback summary – <i>if you wish to highlight anything in particular.</i> ---</p>		
<p>Please note: Feedback received is subject to the Official Information Act 1982. We may make submissions available on our website, compile a summary of submissions, or draw attention to individual submissions in internal or external reports. If you want us to withhold any commercially sensitive or proprietary information in your submission, please clearly state this and note the specific section. We will consider your request in line with our obligations under the Official Information Act.</p>		

Financial Markets Authority
Level 2
1 Grey Street
Wellington 6011
New Zealand

7th August 2020

By email: consultation@fma.govt.nz

Feedback: Proposed standard conditions for financial advice provider full licences and classes of financial advice service

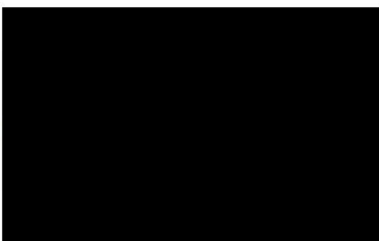
SHARE is a nationwide network of more than 70 financial advisers supported by a further 70 staff across 23 offices providing advice on Insurance, Investments, Mortgages. All SHARE advisers operate under the SHARE brand and SHARE currently provides policies, processes and procedures for advisers to follow. SHARE supports the intermediated advice model and has been approved to hold a transition FAP licence with all SHARE advisers becoming Financial Advisers under that licence.

We fundamentally agree with the outcomes being sought through the FSLAA and the Code of Professional Conduct for Financial Advice Services. We want to acknowledge that, in our view, the principles-based approach that we have seen in the FSLAA and the associated new Code of Professional Conduct for Financial Advice Services is an appropriate way to foster a professional mindset that exceeds minimum requirements rather than a strict minimum compliance culture.

Our sector is currently absorbing a number of legislative and regulatory changes that have been delivered very well in a considered, phased and measured manner through extensive consultation with industry stakeholders. Nonetheless, for those affected, this has added to costs generally and has created a significant distraction from effectively managing their business and ultimately serving customers at a time when the economic and social consequences of Covid 19 are being felt most keenly.

We are happy to discuss this in detail and also to continue offer our significant experience to FMA if they would find additional adviser perspective and knowledge helpful.

Kind regards.



Feedback: Proposed standard conditions for financial advice provider full licences and classes of financial adviser service

Please submit this feedback form electronically in both PDF and MS Word formats via email to consultation@fma.govt.nz with 'Feedback: Proposed standard conditions for financial advice provider full licences and classes of financial adviser service' in the subject line. Thank you. **Submissions close at 5pm on Friday, 7 August 2020.**

Date: 7th August 2020

Number of pages: 8 (including this one and covering letter)

Name of submitter: [REDACTED]

Company or entity: SHARE NZ Limited

Organisation type: Financial Adviser Group

Contact name (if different): [REDACTED]

Contact email and phone: [REDACTED] [REDACTED]

Question number	Comment / Recommendation
<i>You don't need to quote from the consultation document if you use page numbers. You may insert additional lines or pages - please label each additional page with your name & organisation.</i>	
Condition 1 – Record keeping	
4.1(a) Do you agree or disagree with the proposed standard condition? Please provide your reasons.	This is consistent with the transitional licence standard condition and, on that basis, we agree with the proposed standard condition.
4.1 (b) What written records do you currently keep for your financial advice business?	SHARE uses XPLAN to create, maintain and manage client data and records. We consider that this, together with SHARE's systems and processes, would be sufficient to meet the proposed condition and see no incremental cost as a result.
4.1 (c) Would the proposed standard condition create any additional compliance costs for your business? If so, please detail those costs.	No significant additional costs as a result of including this as a full licence standard condition.
4.1 (d) Would the proposed standard condition have any other adverse impact on your business? If so, please describe what this would be.	No
4.1 (e) Does this proposed standard condition create a barrier to enter the market? If so, please explain why this is the case.	The costs of an adequate CRM system (whether electronic or not) to create, maintain and manage client data and records are not insignificant. Whilst this could be considered a barrier to entry to the market, the proposed condition represents a sensible required minimum standard.

4.1 (f) Do you have any other comments on the proposed condition or how it is drafted?	No
Condition 2 - Internal complaints process	
4.2 (a) Do you agree or disagree with the proposed standard condition? Please provide your reasons.	This is consistent with the transitional licence standard condition and, on that basis, we agree with the proposed standard condition.
4.2 (b) Do you currently have an internal complaints process for your financial advice business that meets the requirements of the proposed standard condition?	SHARE has an established internal complaints resolution process that we consider would be sufficient to meet the requirements of the proposed condition.
4.2 (c) Would the proposed standard condition create any additional compliance costs for your business? If so, please detail those costs.	No significant additional costs as a result of including this as a full licence standard condition.
4.2 (d) Would the proposed standard condition have any other adverse impact on your business? If so, please describe what this would be.	No
4.2 (e) Does this proposed standard condition create a barrier to enter the market? If so, please explain why this is the case.	No
4.2 (f) Do you have any other comments on the proposed condition or how it is drafted?	No
Condition 3 – Regulatory returns	
4.3 (a) Do you agree or disagree with the proposed standard condition? Please provide your reasons.	<p>This is a sensible and necessary standard condition to include to provide information in a comparable and consistent way throughout the sector.</p> <p>We note the intention to consult further on the detail of the information to be required under this standard condition and would welcome further guidance on the depth of detail intended to be required.</p>
4.3 (b) Would the proposed standard condition create any additional compliance costs for your business? If so, please detail those costs.	Routine and high-level information will be readily available in most advice businesses without significant cost however it is difficult to comment precisely on cost without knowing the level of detail to be required.
4.3 (c) Would the proposed standard condition have any	

other adverse impact on your business? If so, please describe what this would be.	
4.3 (d) Does this proposed standard condition create a barrier to enter the market? If so, please explain why this is the case.	
4.3 (e) Do you have any other comments on the proposed condition or how it is drafted?	No
Condition 4 – Outsourcing	
4.4 (a) Do you agree or disagree with the proposed standard condition? Please provide your reasons.	Agree that this is a sensible standard condition as drafted however further detail or guidance would be useful as to what constitutes “material”. We expect that this may vary depending on the size of the adviser business holding the licence.
4.4 (b) What core financial advice services do you currently outsource?	<ul style="list-style-type: none"> • IT maintenance and email hosting • CRM and record management system (XPLAN by Iress) • Process documentation (Promapp) • AML / CFT compliance review
4.4 (c) Would the proposed standard condition create any additional compliance costs for your business? If so, please detail those costs.	No – contractual documentation already in place
4.4 (d) Would the proposed standard condition have any other adverse impact on your business? If so, please describe what this would be.	No
4.4 (e) Does this proposed standard condition create a barrier to enter the market? If so, please explain why this is the case.	No
4.4 (f) Do you have any other comments on the proposed condition or how it is drafted?	No
Condition 5 - Professional indemnity insurance	
4.5 (a) Do you agree or disagree with the proposed standard condition? Please provide your reasons.	<p>We expect that the intention of this proposed standard licence condition is to provide financial resources where consumers seek recourse to the licence holder for wrong doing.</p> <p>In that case, we support a standard condition that requires a degree of financial adequacy for the licence holder. This could be addressed either via PI cover or in other alternative ways eg balance sheet strength.</p>

	<p>The availability of PI cover may be an issue and we note provisions to address this if PI cover cannot be obtained.</p> <p>As noted in the consultation document, product supplier agreements already impose PI cover requirements so, at a practical level, this may mean little change for advice businesses assuming that required levels remain comparable to those mandated by suppliers currently.</p>
4.5 (b) Do you currently hold professional indemnity insurance covering financial advice service activities?	Yes
4.5 (c) Would the proposed standard condition create any additional compliance costs for your business? If so, please detail those costs.	No
4.5 (d) Would the proposed standard condition have any other adverse impact on your business? If so, please describe what this would be.	The ability to continue to source PI cover in the NZ market may become an issue with some recent discussion of major suppliers withdrawing from the market.
4.5 (e) Does this proposed standard condition create a barrier to enter the market? If so, please explain why this is the case.	Yes – new entrants will be less likely to be able to secure PI cover particularly if supply becomes limited or more onerous.
4.5 (f) Do you have any other comments on the proposed condition or how it is drafted?	No
Condition 6 - Business continuity and technology systems	
4.6 (a) Do you agree or disagree with the proposed standard condition? Please provide your reasons.	<p>This is a sensible and necessary standard condition.</p> <p>We note that there are numerous market solutions available to assist with cybersecurity that can be matched to the scale and scope of the advice businesses in the sector.</p>
4.6 (b) Do you currently have a documented business continuity plan?	Yes
4.6 (c) Do you currently rely on critical technology systems to deliver a financial advice service?	Yes – primarily Xplan as a CRM and record management system.
4.6 (d) Would the proposed standard condition create any additional compliance costs for your business? If so, please detail those costs.	Solutions, particularly in relation to cybersecurity will have additional cost but are considered to be a necessary investment to underpin the sustainability of the advice sector.
4.6 (e) Would the proposed standard condition have any	No

other adverse impact on your business? If so, please describe what this would be.	
4.6 (f) Does this proposed standard condition create a barrier to enter the market? If so, please explain why this is the case.	No
4.6 (g) Do you have any other comments on the proposed condition or how it is drafted?	No
Condition 7 - Ongoing capability	
4.7 (a) Do you agree or disagree with the proposed standard condition? Please provide your reasons.	This is a sensible and necessary standard condition.
4.7 (b) Would the proposed standard condition create any additional compliance costs for your business? If so, please detail those costs.	No
4.7 (c) Would the proposed standard condition have any other adverse impact on your business? If so, please describe what this would be.	No
4.7 (d) Does this proposed standard condition create a barrier to enter the market? If so, please explain why this is the case.	This condition creates a quite deliberate barrier to entry that is entirely appropriate.
4.7 (e) Do you have any other comments on the proposed condition or how it is drafted?	No
Condition 8 – Notification of material changes	
4.8 (a) Do you agree or disagree with the proposed standard condition? Please provide your reasons	Agree that this is a sensible standard condition as drafted however further detail or guidance would be useful as to what constitutes “material”. The examples in the consultation go some way towards that as does the explanation of “nature” and “manner”. We expect that “material” may vary depending on the size of the adviser business holding the licence.
4.8 (b) Would the proposed standard condition create any additional compliance costs for your business? If so, please detail those costs.	No
4.8 (c) Would the proposed standard condition have any	No

other adverse impact on your business? If so, please describe what this would be.	
4.8 (d) Does this proposed standard condition create a barrier to enter the market? If so, please explain why this is the case	No
4.8 (e) Are there any other material matters other than those detailed in the explanatory note that should be notified to FMA?	No
4.8 (f) Do you have any other comments on the proposed condition or how it is drafted?	No
Financial advice provider full licence classes	
4.9 (a) Do you agree or disagree with our approach to divide a financial advice service into three distinct licence classes? Please provide your reasons.	<p>The three classes and their associated distinctions make sense – we agree with this approach.</p> <p>It is important that the classes of licence convey that each is an appropriate to the relevant business rather than one being better or worse than another. The designation of “A, B or C” risks this implication and some other descriptor would be preferable.</p> <p>This is also relevant in ensuring that all sizes of business are accommodated on an even basis within the legislation – a point that the Minister stressed in introducing the legislation.</p>
4.9 (b) Do the proposed licence classes create a barrier to enter the market? If so, please explain why this is the case.	An ability to accommodate different scale and structure to financial services businesses is considered to be important to encourage innovation within the sector.
4.9 (c) Do you have any other comments on the proposed full licence classes?	No
<p>Feedback summary – if you wish to highlight anything in particular.</p> <p>We appreciate FMA taking a consultative and considered approach and fundamentally agree with the outcomes being sought as outlined in the Consultation Paper. We see this as an opportunity to further enhance consumer confidence in the financial services sector.</p> <p>Thank you for the opportunity to contribute to this important discussion.</p>	
<p>Please note: Feedback received is subject to the Official Information Act 1982. We may make submissions available on our website, compile a summary of submissions, or draw attention to individual submissions in internal or external</p>	

reports. If you want us to withhold any commercially sensitive or proprietary information in your submission, please clearly state this and note the specific section. We will consider your request in line with our obligations under the Official Information Act.

Thank you for your feedback – we appreciate your time and input.

Feedback: Proposed standard conditions for financial advice provider full licences and classes of financial adviser service

Please submit this feedback form electronically in both PDF and MS Word formats via email to consultation@fma.govt.nz with 'Feedback: Proposed standard conditions for financial advice provider full licences and classes of financial adviser service' in the subject line. Thank you. Submissions close at 5pm on Friday, 7 August 2020.

Date: 7 August 2020

Number of pages: 2

Name of submitter: [REDACTED]

Company or entity: Southern Cross Medical Care Society ("Southern Cross")

Organisation type: Product Provider (Insurer)

Contact email and phone: [REDACTED]

Question number	Comment	Recommendation
<p><i>You don't need to quote from the consultation document if you use page numbers.</i></p> <p><i>You may insert additional lines or pages - please label each additional page with your name & organisation.</i></p>		
4.5(a) and (f)	<p>Condition 5: Professional Indemnity Insurance</p> <p><i>Southern Cross disagrees with the requirement for organisations who already have large capital adequacy requirements to have and maintain a level and scope of professional indemnity cover that is adequate and appropriate for the provision of financial adviser service to retail clients in NZ.</i></p>	<p><i>Southern Cross recommends that organisations who already have large capital adequacy requirements be able to elect not to hold professional indemnity cover.</i></p> <p><i>Southern Cross is also of the view that if the above recommendation is adopted and organisations elect to rely on capital adequacy rather than holding professional indemnity cover, there should be no disclosure requirement relating to such election.</i></p>
4.6 (a) and (g)	<p>Condition 6: Business continuity and technology systems</p> <p><i>Southern Cross generally agrees with the requirement for organisations to have and maintain a business continuity plan, to ensure cybersecurity of material technology systems required for continued provision of the relevant financial advice service and to notify in some cases where an event has materially impacted the cybersecurity of critical technology systems.</i></p>	<p><i>Southern Cross recommends that the notification requirement be amended to reflect that notification of an event is only required where the effect is material and where the organisation expects that it will not be able to remediate it in a timely manner.</i></p>

	<p><i>However, Southern Cross would like the notification requirement to be amended to apply where the event meets the materiality threshold and cannot be resolved in a timely manner.</i></p>	
<p>Feedback summary – <i>if you wish to highlight anything in particular.</i></p> <p>Please see above.</p>		
<p>Please note: Feedback received is subject to the Official Information Act 1982. We may make submissions available on our website, compile a summary of submissions, or draw attention to individual submissions in internal or external reports. If you want us to withhold any commercially sensitive or proprietary information in your submission, please clearly state this and note the specific section. We will consider your request in line with our obligations under the Official Information Act.</p>		
<p>Thank you for your feedback – we appreciate your time and input.</p>		

[REDACTED]

From: [REDACTED]
Sent: Tuesday, 14 July 2020 11:16 AM
To: questions@fma.govt.nz;questions@fma.govt.nz
Subject: RE: PI insurance for Financial advisers
Attachments: image003.png; image009.png; image007.png; image001.jpg; image005.png; image010.gif

Dear Sir

I wish to make a submission about the proposed requirement under the new Financial Adviser licence rules requiring a FA to have PI insurance.

We are a one man insurance broker dealing mainly with Extended warranty and Computer insurance for the Education and Consumer markets.

As you can see we were forced to pay [REDACTED] for PI insurance this year.

We submit that for the class of business we service PI insurance is not required.

Please advise your thoughts.

We have obtained terms from your existing insurer [REDACTED], which we have detailed fully within this report. The premium has increased from [REDACTED] as well increasing the policy excess from [REDACTED]. There are two new endorsements which have been applied this year.

1. Institute Cyber Attack Exclusion Clause which clarifies claims arising from cyber breaches aren't covered under your Professional Indemnity policy. This exposer can be covered under a separate Cyber policy. We have included an indication within the report for you to review.

2. Sanctions Limitation and Exclusion Clause - this is now a standard market endorsement.

In light of the changes to the policy this year, we have performed a remarket to ensure that you are still getting the best premium and coverage available. Unfortunately we have been unable to obtain alternative terms. Overview of markets approached below:

AIG Insurance New Zealand Limited Do not write Professional Indemnity cover for Insurance Brokers

Ando Insurance Group Limited Do not write Professional Indemnity cover for Insurance Brokers

Delta Insurance New Zealand Limited Do not write Professional Indemnity cover for Insurance Brokers. Will continue to offer terms for General Liability & Statutory Liability

Dual New Zealand Limited Do not write Professional Indemnity cover for Insurance Brokers

[REDACTED]
NZI, a business division of IAG New Zealand Limited

Do not write Professional Indemnity cover for Insurance Brokers

Vero Liability Insurance Limited Do not write Professional Indemnity cover for Insurance Brokers

The renewal terms for your General Liability and Statutory Liability policies are the same as last year with no increase to premium. All terms and conditions are as per expiry.

Should you wish to discuss these options in more detail or seek an alternative option not yet presented, then please do not hesitate to call me.

3

At the end of this report you will find enclosed an acceptance form which we would ask that you complete and return to us to enable us to bind cover.

Premium Funding

Crombie Lockwood is able to access competitive terms for funding insurance policy premiums. Please let us know at the time of instruction if you wish to pay the premium over monthly instalments.

We look forward to reviewing these terms with you, and assisting you with your insurance requirements again this year.

Regards

[REDACTED]

[REDACTED]

<http://www.ssrisk.co.nz>

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Feedback: Proposed standard conditions for financial advice provider full licences and classes of financial adviser service

Please submit this feedback form electronically in both PDF and MS Word formats via email to consultation@fma.govt.nz with 'Feedback: Proposed standard conditions for financial advice provider full licences and classes of financial adviser service' in the subject line. Thank you. Submissions close at 5pm on Friday, 7 August 2020.

Date: 15/07/2020

Number of pages: 2

Name of submitter: [REDACTED]

Company or entity: Steelsands Credit Union Inc

Organisation type: Non Bank Deposit Taker

Contact name (if different):

Contact email and phone: [REDACTED]

Question number	Comment	Recommendation
<p><i>You don't need to quote from the consultation document if you use page numbers.</i></p> <p><i>You may insert additional lines or pages - please label each additional page with your name & organisation.</i></p>		
4.1 a	Agree with the need for reporting but would need clarification as to whether what we are doing currently is enough	
4.1 b	Application form for our own products	
4.1 c	We would not know if there was any additional cost until we knew the level of reporting required	
4.1 f	As with previous answers it is hard to know the impact and costs if any involved until we know the level of reporting required.	Further clarification on the type of reporting that will be required
4.3	Currently have a complaints process through FSCL as well as robust internal process to investigate complaints	
4.3 a-e	In our case we already report to the RBNZ on many of these requirements would be cumbersome to have to report the same or similar information twice. In our case the risk of breach appears minimal as we only advise on our own products and do not provide planning services.	
4.4	We don't intend to outsource any services so should be able to meet this condition	
4.5	We are currently covered for our existing products	
4.6	We have an existing BCP which is required by legislation	That current BCP be considered adequate rather than having to separate for this as well
4.7	Doesn't seem to differ much from existing legislation and requirements that we already meet	
4.8	Seems reasonable for FMA to expect this from us	
4.9	Agree in the sense that there needs to be differentiation between the levels of complexity within the industry. The	Suggest the Classes are reversed C being, the simplest form of license and A being the most complex. Add in note on how old licensing

	wording does seem to create confusion though the everyday retail customer may have trouble understanding who can provide what service	translates into to new licensing
Feedback summary – <i>if you wish to highlight anything in particular.</i>		
<p>Please note: Feedback received is subject to the Official Information Act 1982. We may make submissions available on our website, compile a summary of submissions, or draw attention to individual submissions in internal or external reports. If you want us to withhold any commercially sensitive or proprietary information in your submission, please clearly state this and note the specific section. We will consider your request in line with our obligations under the Official Information Act.</p>		
Thank you for your feedback – we appreciate your time and input.		

[REDACTED]

Company or entity: Steelsands Credit Union Inc

Feedback: Proposed standard conditions for financial advice provider full licences and classes of financial adviser service

Please submit this feedback form electronically in both PDF and MS Word formats via email to consultation@fma.govt.nz with 'Feedback: Proposed standard conditions for financial advice provider full licences and classes of financial adviser service' in the subject line. Thank you. Submissions close at 5pm on Friday, 7 August 2020.

Date: 7th August 2020

Number of pages: 4

Name of submitter: [REDACTED]

Company or entity: Stewart Financial Group

Organisation type: Financial Advisers

Contact name (if different):

Contact email and phone: [REDACTED]

Question number	Comment	Recommendation
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You don't need to quote from the consultation document if you use page numbers.

You may insert additional lines or pages - please label each additional page with your name & organisation.

4.1 Record Keeping

4.1 (a)	Agree	Every financial adviser needs to track a clients goals/planning objectives but also have a reliable data source in the event of litigation or a request for information by the client.
4.1 (b)	All interaction with clients and suppliers is maintained on our CRM	
4.1 (c)	No additional compliance costs	
4.1 (d)	No adverse impact	
4.1 (e)	Yes	Creating a barrier to entry is not a negative outcome. Financial advice is a professional business. The operations of the provider of financial advice should be equally professional.
4.1 (f)	File back up	Any file that is of a hardcopy in nature should be backed up in a electronic form or be duplicated at an alternative site

4.2 – Internal Complaints Process

4.2 (a)	Agree	Having a robust documented internal complaints process ensures client dissatisfaction is documented and that there is a procedure to find a resolution and/or engage a dispute resolution provider
4.2 (b)	Yes currently have an internal complaints process embedded in our CRM	
4.2 (c)	No additional cost	
4.2 (d)	No adverse impact	

4.2 (e)	No it is just a process	
4.2 (f)	No comment	
4.3 – Regulatory Returns		
4.3 (a)	Agree	It is an essential part of monitoring and oversight to provide a functioning financial advice industry
4.3 (b)	Yes due to additional resource diverted to reporting	
4.3 (c)	No adverse impact	
4.3 (d)	No	
4.3 (e)	Will issues such as director ongoing capabilities be covered in the return?	Ongoing disclosure of issues, e.g. Director being sued etc – items all very well covered in the current AFA application
4.4 - Outsourcing		
4.4 (a)	Agree	There needs to be satisfactory due diligence before trust is placed in a 3 rd party to hold valuable financial information
4.4 (b)	Custody of assets, CRM, compliance consultancy, risk profiling, investment and insurance research software	
4.4 (c)	Yes, additional due diligence	Many using outsourcing arrangements don't have direct access to the provider in contract form, they will have to enter into agreements with a resulting subscription cost
4.4 (d)	No adverse impact	
4.4 (e)	No barrier to entry	
4.4 (f)	The drafting of the condition is good	We would like to see more examples of arrangements that are captured by the condition
4.5 – Professional Indemnity Insurance		
4.5 (a)	Agree	The financial interests of retail clients need to be protected from instances of financial advice not meeting professional standards. Ultimately should an adviser or their business fail it protects the State/Taxpayer from having to ultimately underwrite redress of poor behaviour (If an adviser was to be without means to defend their actions) If PI insurance wasn't a requirement then FAPs would need to carry adequate capital reserves.
4.5 (b)	Yes we have PI insurance covering advice, cyber, D&O, and trusteeships	
4.5 (c)	No additional compliance cost	PI cover is currently trending upwards in cost. With the additional complexity of PI cover on the FAP and individual adviser the expectation would be that costs will rise higher as evidenced by other countries who are further down the regulatory path

4.5 (d)	No adverse impact	
4.5 (e)	Yes, and it should. The retail client and the State needs to be protected	
4.5 (f)	Yes	Seeing a worked example would have merit so that advisers and FAPs can understand the minimum expected requirements
4.6 – Business Continuity and Technology Systems		
4.6 (a)	Agree	Many advice businesses are single adviser businesses. Without a written business continuity plan and processes for safe keeping of electronic data then illness, economic conditions and/or cyberattacks will leave retail clients in a very vulnerable position
4.6 (b)	Yes, have business continuity plan	
4.6 (c)	Yes, we have critical technology systems	
4.6 (d)	No additional compliance cost	
4.6 (e)	No adverse impact	
4.6 (f)	Yes creates a barrier to entry	This is not a negative barrier to entry. A FAP needs to have the resource to invest into adequate planning and technology infrastructure critical to meeting the needs of their clients
4.6 (g)	No comment	
4.7 – Ongoing Capability		
4.7 (a)	Agree	Continuous improvement and planning for change are vital strategic considerations to ensure the FAP at all times meets its licence conditions.
4.7 (b)	No additional compliance cost	
4.7 (c)	No adverse impact	
4.7 (d)	No barrier to entry impact	
4.7 (e)	No comment	
4.8 – Notification of Material Changes		
4.8 (a)	Agree	The nature and manner in which financial advice is provided are central to the awarding of a FAP licence. Should change occur that affects the licence then the FMA should be notified
4.8 (b)	No additional compliance costs	
4.8 (c)	No adverse impact	
4.8 (d)	No barrier to entry	
4.8 (e)	Condition 8 along with the other conditions are sufficient	
4.8 (f)	No additional comments	
4.9 – Financial Advice Provider Full Licence Classes		

4.9 (a)	disagree with dividing into licence classes	The naming convention should be reconsidered. A, B, C, 1,2,3 or Gold, Silver, Bronze implies a ranking. Specific licence conditions would work. E.g. Class 'S' Single Adviser, Class 'M' Multi Advisers or Authorised Bodies, Class 'R' Authorised Bodies & Nominated Representatives
4.9 (b)	No barrier to entry	
4.9 (c)	Getting the naming convention correct (if used) is vital. Mistakes were made in the past with RFA, AFA & QFE designations causing confusion in the market and an overall lack of trust by consumers	The selection of non-ranked names is key or the public will deem a ranking
Feedback summary – With regard to the comment on page 17 (ongoing eligibility) of the consultation paper referring to the 'Financial Advice Provider Licencing Application Guide'. Is the document expected following the feedback of this consultation document?		
Please note: Feedback received is subject to the Official Information Act 1982. We may make submissions available on our website, compile a summary of submissions, or draw attention to individual submissions in internal or external reports. If you want us to withhold any commercially sensitive or proprietary information in your submission, please clearly state this and note the specific section. We will consider your request in line with our obligations under the Official Information Act.		
Thank you for your feedback – we appreciate your time and input.		

Submission on

Proposed standard conditions for financial advice provider full licences and classes of financial adviser service

My submission relates to only 2 points in the proposed standard conditions, and they are:

Ref: Paragraph 2.2. (pages 5-8 of the consultation document)

Classes Of Financial Advice Service. The general approach is sound and the 3 classes of licence are sensible. I support the view that the most comprehensive class should be labeled with what the public would perceive as highest level. That is, Class A should refer to the most comprehensive and wide-ranging licence with Class C applying to the most restrictive level of licencing. Public perception is as integral to public participation and confidence as the actual regulatory regime itself.

Ref: Paragraph 5. (page 14 of the consultation document)

Professional Indemnity Insurance. The draft standard conditions simply have this wrong, and in my view this condition should be eliminated entirely. The rationale for saying so is that the apparent intent of the requirement cannot be met by the suggested solution.

Your comments on the purpose of this requirement are: *"The purpose of this standard condition is to ensure that retail clients can be compensated for financial loss as a result of a breach of a professional duty by a financial advice provider and those they engage"*

Yet the actual contract wordings generally exclude precisely this. That is, PI Insurance policies exclude reparation, restitution or compensation to consumers. It is not the intent of PI policies to be a compensation scheme, and it is an erroneous belief on the part of policy makers, regulators and financial services institutions to somehow continue to believe that despite the contractual exclusion it will provide some form of redress to consumers.

It does not.

For example, the wording from my own PI contract (provided by one of the two dominant insurers in this space) says under "exclusions" and that when it comes to "fines and penalties" then *"any liability to pay taxes, fines or penalties, aggravated, multiple, punitive or exemplary damages"* are an excluded cover condition.

The only occasion in practical terms whereby a PI Insurance policy may contribute to compensation or damages to a consumer is when the PI Insurer (and they alone have this right; not the insured or any external party) makes a commercial decision to settle a matter outside of any legal proceedings.

In simple terms a PI policy is a "defence costs" policy. A professional effectively insures the legal costs, and perhaps statutory penalties, arising from the necessary defence of a legal action in relation to the performance of their professional duties when they institute a PI policy.

So this proposed standard condition is suggested as a means to resolve an issue which the PI Insurance simply will not resolve. That moves the proposed standard condition into the realm of being an additional mandatory operational cost for no discernible benefit to the consumers or regulators.

There is no doubt that many practitioners will make a commercial decision to have PI cover given the costs involved in defending allegations and disputes, and the ease with which consumers can launch grievances which must be defended at the practitioners cost via

DRS's. That is where the decision on the usefulness of PI Insurance should sit however – with the commercial assessment of the practitioner.

The industry's professional body (Institute of Financial Advisers) went down this path in about 2008 or so of mandating PI Insurance for members. Once they realised the exclusion provisions and the inability to create compensation or restitution for consumers they abandoned the idea and have never gone back to it. Policymakers proposed this as an operating condition for advisers soon after when the Financial Advisers Act and Code were drafted and circulated for submission, and the requirement was removed by them too at that time.

The reason that the regulator and professional bodies removed the requirement at that time has not changed. The same situation continues to exist. It does not deliver the solution policymakers seek.

Furthermore, even if this insurance policy could deliver the outcome policymakers sought, there would remain a question as to whether this would be the appropriate way address it. There will be many significant Financial Advice Providers to whom a PI Insurance policy is meaningless. We have witnessed countless examples of banks and financial institutions successfully resolving multi-million dollar liability issues entirely from with their own resources. So the question of a FAP's resources, reserves, balance sheet or committed lines of credit should be considered as being relevant to whether PI Insurance is even necessary. For many it would simply be a cost impost without benefit to any party other than the PI insurer who will never need to manage a claim. PI Insurance for many large FAP's is irrelevant, and adds nothing but a cost with no benefits.

For smaller FAP's there remains a legitimate question as to whether PI Insurance has a commercial benefit. There are some lines of business that PI Insurers simply refuse to insure, or set exorbitant pricing to deter coverage in those business lines. Imposing a standard condition for FAP's in these circumstances creates the probability of an expensive extortion racket for PI Insurers.

It should also be a concern that the PI Insurance market in NZ is relatively small and dominated by just a couple of providers. There is a paucity of evidence on actual claims costs to justify premiums charged, and there is an international tendency for mandated PI Insurance costs to escalate alarmingly once PI Insurance is enshrined as an operating condition. Delivering a captive market to a duopoly does not strike me as delivering a good outcome for FAP's.

Essentially this proposed standard condition is a mis-founded one. It is premised on the misunderstanding of what a PI Insurance policy is, and does (or perhaps more accurately what it does not do or does not provide).

This proposed standard condition should be dropped. Its inclusion adds no certainty for consumers other than the certainty that there will be a willingness on the part of litigation specialists to escalate disputes. It should also be dropped from all agency agreements put in place by financial institutions with their FAP distributors.

Your name and organisation

Name	
Company	Willis New Zealand Limited

Introduction

Willis New Zealand Limited (**Willis Towers Watson New Zealand**) is an Insurance Intermediary and Risk Management Consultancy.

We have been operating as an insurance broking business in New Zealand since 1965. With six corporate offices and over 100 staff, we provide advice across Corporate Risk and Broking, Risk Consulting & Core Analytics, Health and Benefits, Alternative Risk Transfer and Claims Management.

We are part of the Willis Towers Watson group (NASDAQ: WLTW), a leading global advisory, broking and solutions business that helps clients around the world turn risk into a path for growth. With roots dating to 1828, Willis Towers Watson has 45,000 employees serving more than 140 countries and markets.

We recognise the challenges of developing a regulatory regime to cover all types of financial advice to the very diverse range of clients now defined as ‘retail’ from March 2021. Insurance broking is a specialist form of advice distinct and separate from other forms.

Full License Conditions – 8 Proposed Minimum ‘FAP Standards’

PROPOSED FULL LICENSE CONDITION 1: RECORD KEEPING

Question	Comment	Recommendation
4.1 (a) Do you agree or disagree with the proposed standard condition? Please provide your reasons.	Yes, we agree that the principle that the maintenance of timely and adequate records is a suitable corporate governance condition that supports evidencing Adviser Duties, Code Standards and Disclosure Regulations.	See 4.1 (f)
4.1 (c) Would the proposed standard condition create any additional compliance costs for your business? If so, please detail those costs.	Yes, as noted in 4.1(f). Enhanced record-keeping capability to meet the additional requirements of this open-ended requirement – will create additional record generation costs which are likely to be significant (in terms of time and cost). The cost of creating necessary records should not be out-of-proportion to the financial adviser’s reward for the financial advice given – otherwise this will lead to a reduction in financial advice being provided to retail clients.	See 4.1 (f)
4.1 (d) Would the proposed standard condition have any other adverse impact on your business? If so, please describe what this would be.	Yes, as noted in 4.1 (c) the open-ended scope will have additional resource impact both in terms of time and costs	See 4.1 (f)
4.1 (e) Does this proposed standard condition create a barrier to enter the market? If so, please explain why this is the case.	Yes, as noted in 4.1 (c) the additional costs in terms of time and actual record-keeping costs, could make providing some low-level financial advice cost prohibitive.	See 4.1 (f)
4.1 (f) Do you have any other comments on the proposed condition or how it is drafted?	Yes, there are a number of specific issues which need to be addressed	
	Drafting of Condition part b “may be in <u>any language</u> providing you create and keep an accurate summary of the record in English and, if required by us, provide a full translation of the record into English	

	<p>We fully support diversity and the inclusion of different languages within advice conversations to improve communication and assist those vulnerable to misunderstandings.</p> <p>Client ‘Understanding’</p> <p>Financial products and policies that a client will be signing are in the ‘de facto’ language of New Zealand, English. The Code requires evidencing a client’s comprehension and understanding of their legal commitments and resulting obligations.</p> <p>Unnecessary Duplication</p> <p>FAP’s and advisers should not have a mandatory need to duplicate a summary of advice, if a full translation can be provided in the future if one is required.</p>	<p>We recommend that records should be maintained in an official language of New Zealand.</p>
	<p>Drafting of Condition part c: “must be available for inspection by us at all reasonable times”</p>	<p>We support the IBANZ submission: “when lawfully required” should be added.</p>
	<p>Explanatory note: "include (without limitation)...<u>all</u> regulated financial advice"</p> <p>“All” goes well-beyond reasonable and “adequate”, the breadth is unnecessarily burdensome and excessive. IPP1 of the Privacy Act 2020 prohibits collection of “identifying information” if not <u>necessary</u> for purposes. ‘Potential’ advice communication/conversation can occur at any-time, in the workplace or out and about – in brief face-to-face meetings or phone calls which were for unrelated matters.</p> <p>Record and evidence gathering, and retention for all possible interactions will be time-consuming and costly. If done manually (which will often be required in the circumstances), obtaining ‘Privacy Consent’ to collect, and</p>	<p>We recommend:</p> <ul style="list-style-type: none"> • When the “scope of advice to be given becomes known” which triggers the initial disclosure regulation, is the point that record-keeping is necessary. • Records to be kept of all material financial advice given. • Records should not be created and retained purely to negatively prove that ‘no advice’ was given.

	<p>record verbatim all discussions is distracting and time-consuming; and detracts from the customer experience.</p> <p>Records should be kept of all <u>material</u> financial advice given (so trivial, incidental or immaterial financial advice can be excluded).</p> <p>On a cost-benefit analysis, keeping immaterial advice cannot be justified.</p> <p>Examples of immaterial advice might include telephone price- inquiries or estimates (which can often be brief and limited in scope) and may not lead to an actual quote or subsequent financial advice service.</p>	
	<p>Explanatory note: "include (without limitation)..how...complied with... advice duties"</p> <p>Beyond the necessary compliance with the disclosure regulations – the repetitive recording of general compliance with duties is not necessary or beneficial for each and every interaction.</p> <p>This is addressed more efficiently in ways other than recording compliance statements which can often become self-serving and repetitive.</p> <p>Alternatives such as training, certifications, monitoring, and supervision may be more effective and cost-efficient.</p>	<p>We support the IBANZ submission that, in the interests of cost-effectiveness, the explanatory note should:</p> <ul style="list-style-type: none"> Expressly permit records relating to financial advisers' compliance with advice duties to be the form of general policies, procedures and controls, rather than specifically and repetitively recording compliance steps for every individual advice conversation. Clearly state that the scope of this requirement should be a decision for the FAP, so they can decide the best (and most cost-efficient) way to demonstrate compliance.
	<p>Explanatory note: "within 10 working days when requested by us"</p>	

	<p>Depending on the nature and scope of the record request by the FMA a fixed 10 working day deadline may not be achievable.</p>	<p>We support the IBANZ recommendation to amend the Explanatory note to “Your records should be readily available, and in any event within ten (10) working days (or such longer timeframe that we agree) when lawfully requested by us.”</p>
	<p>Explanatory note: “Your arrangements must ensure that your retail clients consent to us viewing or obtaining your records.”</p> <p>There is no materiality, reasonableness, or lawful need limitations to this mandatory consent to access.</p> <p>This consent would have to be right at the very beginning of client discussions, when seeking to collect information on the scope of advice to be given – this is a barrier to starting the initial client conversations.</p> <p>Requiring all retail clients to consent to the FMA reviewing or obtaining all their records should be limited to relevant advice records.</p> <p>Clients should be able to decide if they do proceed with a financial advice service whether their financial advice and all information, they have confidentially shared – be automatically fully available to a regulator.</p> <p>As noted by IBANZ overriding fundamental rights should be a matter for Parliament.</p>	<p>We recommend that:</p> <p>Access be limited to reasonable requirements materially relevant to regulated advice.</p>

PROPOSED FULL LICENSE CONDITION 2: INTERNAL COMPLAINTS PROCESS

Question	Comment	Recommendation
4.2 (a) Do you agree or disagree with the proposed standard condition? Please provide your reasons.	<p>Yes, this is a suitable corporate governance condition. However, there is no obligation for a FAP to be a ‘full service’ provider. FAP’s can limit nature and scope of advice.</p>	<p>Failure to provide a service or give advice needs to be limited to the FAP’s FMA approved advice activities</p>

PROPOSED FULL LICENSE CONDITION 3: REGULATORY RETURNS

	Question	Comment	Recommendation
4.3 (a)	Do you agree or disagree with the proposed standard condition?	Yes, periodic regulatory returns are a suitable condition.	Full Consultation on the Framework and Methodology is essential.
4.3 (b)	Would the proposed standard condition create any additional compliance costs for your business?	Yes, additional and new Reporting will mean increased compliance costs for all FAP's. With no actual details on any framework, there is no content to review and cost.	See 4.3(a)
4.3 (c)	Would the proposed standard condition have any other adverse impact on your business?	The impact is dependent on the scale and detail of required reporting.	See 4.3(a)
4.3 (d)	Does this proposed standard condition create a barrier to enter the market? If so, please explain why this is the case.	Again, this is dependent on the scale and detail of required reporting.	See 4.3(a)

PROPOSED FULL LICENSE CONDITION 4: OUTSOURCING

	Question	Comment	Recommendation
4.4 (a)	Do you agree or disagree with the proposed standard condition?	Yes, we agree that outsourcing obligations are a suitable corporate governance condition as they are a key element of operational resilience – and potential critical weakness.	N/A
4.4 (c)	Would the proposed standard condition create any additional compliance costs for your business? If so, please detail those costs.	As noted in 4.4(f) if FAP's are restricted to only outsource to suppliers where they can impose contractual terms – the limitation of options will increase costs.	See 4.4(f)
4.4 (d)	Would the proposed standard condition have any other adverse impact on your business?	See 4.4(f)	See 4.4(f)
4.4 (e)	Does this proposed standard condition create a barrier to enter the market?	See 4.4(f)	See 4.4(f)
4.4 (f)	Do you have any other comments on the proposed condition or how it is drafted?	Explanatory note: “contractual arrangements with each provider... to meet your licensee obligations at all times” Many FAP's will have limited ability to impose contractual conditions on service providers – e.g. Cloud Based Storage, Software & Hosting Technology, and Professional Services.	We support the IBANZ submission: <ul style="list-style-type: none"> Contractual conditions and the availability of records subject to “to the extent reasonably practical”. Extra guidance on “material”

PROPOSED FULL LICENSE CONDITION 5: PROFESSIONAL INDEMNITY INSURANCE

Question	Comment	Recommendation
4.5 (a) Do you agree or disagree with the proposed standard condition? Please provide your reasons.	<p>Yes, we agree and support the condition to have <i>adequate and appropriate</i> Professional Indemnity Insurance (PII) or alternative arrangements.</p> <p>This condition is to protect both the reputation of the Industry and to provide a minimum level of retail client protection for breaches of professional conduct (FAP Duties, , Code Standards and Disclosure Regulations).</p>	
4.5 (f) Do you have any other comments on the proposed condition or how it is drafted?	<p>General Comment</p> <p>PII covers the FAP from losses arising from an error, omission or negligent act occurring in conduct of the holder's professional business.</p> <p>It does reduce the risk that retail clients will go uncompensated when a FAP has insufficient financial resources to meet claims by retail clients.</p> <p>PII does not guarantee that a retail client will be compensated for misconduct.</p> <p>As noted by ASIC [<i>RG 126 Compensation and insurance arrangements (July 2020)</i>] while PII "...plays an important role as a 'first line of defence' for consumer claims, it has limitations as a compensation mechanism. PI insurance is designed to protect licensees against business risk, and not to provide compensation directly to investors and consumers."</p>	N/A
	<p>Explanatory Notes: Suitable PII</p> <ul style="list-style-type: none"> includes those you engage to provide regulated financial advice to retail clients on your behalf. <p>We agree with the extra wording required by ASIC concerning a clear statement of cover for the conduct of ex-representatives/advisers for their actions while engaged by the FAP.</p>	<p>We recommend altering the explanatory note to read:</p> <ul style="list-style-type: none"> "includes those you engage (or engaged at the time of the relevant conduct) to provide regulated financial advice to retail clients on your behalf.

	<ul style="list-style-type: none"> • High Risk FAP's <p>Retail Clients and the New Zealand Economy need greater protection from the potential severe impact of misconduct by financial investment service providers and other market participants.</p> <p>PII for these FAPs should be more specific regarding minimum adequate and appropriate requirements.</p>	<p>We recommend expanding the explanatory note to include:</p> <p>“Additionally, specific insurance adequacy requirements may apply to licensees who are also market participants as a condition of their licence”</p>
	<p>FMA Condition Commentary ..” specific licence condition waiving this standard condition”</p> <p>This directly contradicts the “must have” wording of this condition.</p> <p>While a waiver option does allow Regulator flexibility it should be clearly stated in the ‘condition’ or its explanatory note – as this has a major impact and changes PII to being non-mandatory.</p>	<p>We recommend altering the ‘condition wording’ to include the text “or have alternative arrangements approved by the FMA”.</p>
	<p>Explanatory Notes: Add Alternative Arrangements to PII</p> <p>The FMA should clearly set out the grounds for “alternative arrangements” to protect retail clients from professional misconduct and the inability of a FAP to compensate its clients.</p> <p>An inability to obtain cover, if the FAP is not able to adequately ‘self-insure’ calls into question the validity of the FMA issuing them a licence.</p>	<p>We suggest ‘Alternative Arrangements’ include:</p> <ul style="list-style-type: none"> • Other forms of Liability Insurance that while not labelled ‘PII’ in substance adequately meet comparable protection, this includes ‘self-insurance’. • Financial Institutions licensed by the Reserve Bank who are subject to prudential requirements that fully satisfy the retail client compensation protection of this condition. • if your arrangements are not approved you must obtain PII to be licensed.

PROPOSED FULL LICENSE CONDITION 6: BUSINESS CONTINUITY AND TECHNOLOGY SYSTEMS

Question	Comment	Recommendation
4.6 (a) Do you agree or disagree with the proposed standard condition?	Yes, Resilience & Continuity is a suitable corporate governance condition for a FAP.	See 4.6(f)A
4.6 (f) Does this proposed standard condition create a barrier to enter the market?	No, it requires FAP's to plan and provide for the business risks associated with operating as a service provider.	N/A
4.6 (g) Do you have any other comments on the proposed condition or how it is drafted?	Yes, there is a specific issue which needs to be addressed "You must notify us within 5 working days" of discovering a material Cybersecurity critical systems event affecting: preservation of confidentiality, integrity and availability of information and/or information systems The timeframe for notifying the FMA of discovering any material event, with an impact assessment and remediation strategy needs to give a FAP reasonable time to focus on dealing with the issue, adequately identifying its scope and assessing if it is material.	We support the IBANZ submission that a recommended timeframe should be: 10 working days

PROPOSED FULL LICENSE CONDITION 7: ONGOING CAPABILITY

Question	Comment	Recommendation
4.7 (a) Do you agree or disagree with the proposed standard condition?	Yes, we agree.	See 4.7 (e)
4.7 (e) Do you have any other comments on the proposed condition or how it is drafted?	There should be adequate time to rectify a capability issue before a material condition breach occurs.	We support the IBANZ recommendation: "at all reasonable times" & "in all material aspects"

PROPOSED FULL LICENSE CONDITION 8: NOTIFICATION OF MATERIAL CHANGES

Question	Comment	Recommendation
4.8 (a) Do you agree or disagree with the proposed standard condition?	Yes, and we acknowledge the appropriateness that the condition applies solely to "material" changes.	See 4.8 (F)
4.8 (f) Do you have any other comments on the proposed condition or how it is drafted?	N/A	We support the IBANZ recommendation to maintain consistency a "materiality" threshold is suitable for all the other conditions.

Proposed FAP Full License Classes

FAP FULL LICENSE – PROPOSED ‘ADDITIONAL’ 3 CLASSES OF LICENCE

Question	Comment	Recommendation
<p>4.9 (a) Do you agree or disagree with our approach to divide a financial advice service into three distinct licence classes? Please provide your reasons.</p>	<p>We disagree.</p> <p>The structure of the FMA Levy classes already differentiates between the size, scale and cost of regulatory management.</p> <p>Under the new regime there are FAP’s providing advice on their own account (no real people required), Solo operators and those with more than one person involved can be any variation of 1+ advisers and/or 1+ representatives.</p> <p>Licence conditions and all other obligations apply equally to each FAP, and are technology and systems neutral.</p> <p>The additional of a separate ‘class’ structure is a reversal of the ethos of the new regime to move to an open simplified industry structure for the benefit of the retail consumer.</p> <p>Imposing a backward focused 3 tier classification structure based on the old regime is inappropriate.</p> <p>All FAP’s with 1 real person and potentially more should be registered as the proposed Class C, as this keeps all future options open.</p> <p>FAP’s that wish to limit their options are free to do so, and the FMA can add relevant restrictions & specific conditions to the individual FAPs license.</p> <p>Under the proposed licensing conditions, the FMA is notified of each material change in the manner financial advice is delivered – and any concerns regarding competency and capability can be addressed in a manner specific to the FAP.</p>	<p>We strongly support the recommendation by IBANZ that there should be only 1 FAP Licence.</p>
<p>4.9 (b) Do the proposed licence classes create a barrier to enter the market?</p>	<p>Yes, as drafted they segregate the market and changing classes has associated costs in time and resources</p>	<p>See 4.9(a)</p>