FMA
FINANCIAL MARKETS AUTHORITY
TE MANA TATAI HOKOHOKO - NEW ZEALAND

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

Submissions – Part 1

1. Acorn Insurance & Investment
2. AIA New Zealand
3. AMP Services (NZ) Limited
4. Angelo Partners
5. Apex Advice
6. Bank of New Zealand
7. Chartered Accountants Australia and New Zealand
8. Compliance Refinery
9. Consumer NZ
10. Curated Risk Limited
11. Delta
12. Dentons Kensington Swan
13. DLA Piper
14. Fairhaven Wealth

Return to FMA website: Consultation: Proposed standard conditions for financial advice provider full licences and classes of financial advice service

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: 1/7/20 [redacted] mber of pages: 1

Name of submitter:

Company or entity: Acoln Insurance + Investment Ltd

Organisation type: Insurance + investment

Contact name (if different):

Contact email and phone: [redacted]

Question number	Comment	Recommendation
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.		
class of licence	Please ensure these classes of A, B or C are not publicly notified classes. A, B or C denotes quality and a company with a 'Class C' licence will be less deserving in the public eye. Thanks [redacted]	Keep classes an internal identification only

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

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.

AIA New Zealand

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6 August 2020

Financial Markets Authority
Level 2
1 Grey Street
Wellington 6011

CONSULTATION – PROPOSED STANDARD CONDITIONS FOR FAP FULL LICENCES AND CLASSES OF FINANCIAL ADVICE SERVICE

This submission is made on behalf of AIA New Zealand Limited and its related entities (together "AIA New Zealand").

About AIA New Zealand

AIA New Zealand is part of the AIA Group, the largest life insurer in the world by market capitalisation. AIA Group is headquartered in Hong Kong and listed on the Hong Kong Stock Exchange. AIA Group is solely focused on the Asia Pacific market and currently has a presence in 18 countries.

AIA New Zealand Limited is a licensed insurer. It has been in business for over 30 years, previously operating under the Sovereign brand. AIA New Zealand Limited was acquired by the AIA Group in July 2018. AIA New Zealand previously also operated through a second licensed insurer, the AIA International Limited, New Zealand branch. On 1 January 2020, the insurance business of that company was transferred to AIA New Zealand Limited.

AIA New Zealand offers a range of life and health insurance products, as well as legacy investment products that are no longer offered to new customers. AIA New Zealand distributes its products through third-party financial advisers and also acts as a financial advice provider in its own right. AIA Services New Zealand Limited is a QFE and engages approximately 21 QFE advisers. AIA New Zealand also includes Financial Services Network Limited, a financial advisory business which focuses on insurance-related financial advice.

AIA is New Zealand's largest life insurer, helping to protect the lives of around 650,000 New Zealanders. AIA New Zealand is committed to an operating philosophy of *doing the right thing, in the right way, with the right people*.

About this submission

AIA New Zealand has a unique perspective on this consultation, given our dual roles as a current QFE who intends to obtain a "Class C" financial advice provider (FAP) licence and as a licenced insurer who will engage with third party FAPs of various sizes and structures.

We broadly support the proposed standard conditions and licence class system. However, there are a range of points that we do wish to submit on. Our key points are as follows:

1 More than any other licence type, there will be a significant range in the size and complexity of FAP business activities, and in the degree of sophistication of licensed participants. This is recognised in the three proposed licence classes, but should also be taken into account in preparing the standard conditions, licence application guides, and supporting material. Not all market participants will have ready access to internal compliance and legal resource, and external advice can be costly. Materials for this regime should be produced in such a way as to make them easily understood and implemented by even the smallest FAPs.

2 The paper asks for feedback on compliance costs. It is very difficult to provide a meaningful estimate of full compliance costs for the new regime, particularly in the absence of the full licence application guide. However, all FAPs will incur significant cost in transitioning to, and operating under, the new financial advice regime. For FAPs that are QFEs the costs of compliance will, to an extent, be a cost they are already carrying. However, for smaller FAPs, the cost impact will be significant particularly in relation to their income. We are concerned that compliance costs will see advisers exit the industry and will ultimately result in a consolidation of the industry. As a result, New Zealand consumers' access to quality financial advice will be reduced. It is important that compliance costs are minimised to avoid this outcome.

3 While we recognise that smaller FAPs may be able to achieve compliance with simpler processes and systems, it will be important for the integrity of the regime that all FAPs are held to the same standards and expectations regardless of their licence class. We would be concerned if the licensing requirements were such that smaller FAPs were not held to the same standards or expectations as larger FAPs.

4 While the standard conditions rightly focus on consumer protection, there is an opportunity to use the licence conditions (and full licence requirements) as a tool to encourage new advisers to enter the industry. One option worth considering is a requirement that FAPs should actively support the professional development of new advisers.

Our full submission is **attached**, and follows the format outlined by the Financial Markets Authority.

We would be pleased to discuss any questions you have on this submission and we would welcome the opportunity to collaborate or consult further with the Financial Markets Authority as it considers the next steps.

Yours sincerely

[redacted]

[redacted]

[redacted]

AIA New Zealand

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: 14

Name of submitter: [redacted]

Company or entity: **AIA New Zealand**

Organisation type: **Life Insurer and QFE**

Contact name (if different):

Contact email and phone: [redacted]

Question number	Comment	Recommendation
4.1	**Condition 1 - Record Keeping**	
(a)	We generally agree with this proposed standard licence condition. Record keeping is a key part of the financial advice regime and, in our experience, most providers already have systems and processes in place that should allow them to keep the records contemplated by the standard condition. We support the use of consistent wording between the transitional licence condition and the full licence condition. Please see our specific comments in section (f) below.	
(b)	The written records we currently keep are as follows: • Advice documentation; • Records of meetings and phone conversations; • Letters, emails, social media posts; • Complaints records; and • Records regarding supervisory activities such as quality assurance	

	processes, incident management, and internal governance documentation relating to adviser conduct.	
(c)	We do not think that this condition will create any additional compliance costs for our business.	
(d)	We do not think that this condition will have any other adverse impact on our business.	
(e)	We do not think that this condition will create an unreasonable barrier to entering the market.	
(f)	The standard condition does not make it clear how records should be dealt with when an adviser moves between FAPs. Under the current regime records are normally held by the specific adviser rather than the FAP. Additionally, many adviser agreements provide for an adviser to take client records with them if they choose to leave a FAP. It is not clear from the standard condition whether FAPs are responsible for record keeping by advisers before they joined the FAP. This uncertainty is causing concern in the wider industry. Records can normally be made available within 10 working days, but in some circumstances they can take longer to provide. This might occur where, for example, an adviser has moved to a different FAP and records have been retained in an archived form, or where the request involves the collation of large volumes of material. In these sorts of circumstances there is a risk of the 10 working day timeframe being breached.	We recommend that the explanatory note is expanded to make it clear what FMA expects regarding records of clients transferred between FAPs. We suggest an adviser can take records with them if they leave a FAP but that the FAP must continue to hold copies of the records, even after that adviser has left the FAP. We recommend that the explanatory note should specifically state that a FAP is only required to hold records about a client for the period where they are a client of the FAP: FAPs should not be expected to take responsibility for records that pre-date their engagement of an adviser. We recommend that the explanatory note is amended to remove the hard timeframe for the delivery of records (instead, we suggest it could provide for the availability of records "as soon as practicable in the circumstances").
4.2	**Condition 2 – Complaints processes**	
(a)	We agree with the proposed standard condition. We consider complaints handling processes to be an essential part of a well-managed financial advice business that provides valuable business insights. We support the use of consistent wording between the transitional	

	licence condition and the full licence condition.	
(b)	We currently have an internal complaints process that we consider will meet the requirements of the proposed standard condition.	
(c)	We do not think that this condition will create any additional compliance costs for our business.	
(d)	We do not think that this condition will have any other adverse impact on our business.	
(e)	We do not think that this condition will create an unreasonable barrier to entering the market.	
(f)	We have no other comments on this proposed condition.	
4.3	**Condition 3 – Regulatory Return**	
(a)	In principle we agree with this standard licence condition. As a QFE we currently provide annual reporting to FMA, and we understand that FMA needs market information to properly perform its role. However, much will depend on the specific requirements of the Regulatory Return Framework, which are not yet known.	We recommend extensive consultation on the Regulatory Return Framework to ensure it is fit for purpose and does not impose an unnecessary compliance burden. We recommend that regulatory reporting is focussed on core data points that are needed for FMA to effectively oversee the regime and is significantly simplified when compared to current QFE annual returns. The use of core data points would likely allow the use of data analytics by FMA. Additional information could be made available to FMA on request.
(b)	Until the Regulatory Return Framework is developed we are unable to estimate the cost of compliance. However, we know from our experience as a QFE that there is a correlation between the extent of detailed and qualitative data required and the cost of compliance. The current QFE annual reporting process requires a significant amount of senior resource from across the AIA business. Regardless of the degree of reporting required, we anticipate that smaller FAPs or those that have not had to undertake annual reporting in the past will incur significant additional cost, particularly for their first few regulatory returns. This cost will likely include the	To minimise unnecessary compliance costs, we recommend that regulatory reporting is focused on core data points that are needed for FMA to effectively oversee the regime and is significantly simplified when compared to current QFE annual returns. We also recommend a secure reporting portal be established by FMA as a way to minimise compliance costs.

	engagement of external consultants to ensure that questions have been sufficiently answered. For particularly small FAPs, the time required to attend to reporting will also likely involve a trade-off against time available to meet with and assist clients.	
(c)	To the extent that the Regulatory Return Framework will require FAPs to provide information sourced from product providers we are concerned about the potential adverse business impact associated with having to respond to requests for information from a significant number of FAPs in the lead-up to reporting deadlines.	We recommend that any regulatory return should be focused on matters relating to FAPs themselves, and that any reporting on products or product providers should be obtained directly from those providers through the conduct legislation currently being considered by Parliament. We believe that this will reduce duplication and still ensure that complete and accurate reporting is provided to FMA.
(d)	Provided the Regulatory Return Framework focusses on core matters we do not think that this condition will create an unreasonable barrier to entering the market.	
(e)	We have no other comments on this proposed condition.	
4.4	**Licence Condition 4 - Outsourcing**	
(a)	We generally agree with this proposed standard licence condition. Larger organisations (like ours) will almost inevitably already have arrangements in place that are consistent with the proposed standard condition. Please see our specific comments in section (f) below.	
(b)	We have limited outsourcing associated with our financial advice services. Currently our outsourced services are limited to a CRM system, Salesforce, call recording systems, adviser platform XPlan, and servicing the Ex-Sovereign Direct portfolio to an adviser group. We have previously used the services of external consultants to review our QFE Adviser Quality Assurance programme. However, we do not consider these arrangements to be outsourcing (see our comments in section (f) below).	
(c)	We do not think that this condition will create additional compliance costs for our business. However, we are concerned that smaller FAPs may incur	

	additional compliance costs. Please see our specific comments in section (f) below.	
(d)	We do not think that this condition will have a significant adverse impact on our business. However, we are concerned that there may be significant adverse impacts for smaller FAPs. Please see our specific comments in section (f) below.	
(e)	We think that there is a possibility that this condition will create a barrier for new outsourcing providers to offer services to FAPs. If a FAP is required to have a level of oversight that is not standard in the wider market, would-be outsourced service providers may decide not to offer their services to FAPs. This could push up the price of outsourced services and will create higher costs for advisers, which may create barriers to entry or be passed on to consumers.	
(f)	FAPs will not always have bargaining power when dealing with outsourced service providers. This is a particular issue for smaller FAPs, but even larger FAPs will not necessarily be in a position to negotiate terms with all outsourced providers (for example, Microsoft or Amazon cloud services). This limits a FAP's ability to require the kinds of contractual terms that the explanatory note suggests should be considered. The proposed condition requires FAPs to ensure that they are able to meet their licensee obligations at all times. In practice, there may be short times when outsourced providers are unable to provide services. This is particularly the case for technology providers – for example, where a CRM or email system is outsourced and temporarily unavailable due to a planned outage. Strictly speaking, this would put a FAP in breach of the licence. The examples provided of the types of outsourcing engagements covered by this condition are not particularly meaningful. This is a particular concern as the concept of "material" is subjective.	We recommend the bullet point in the explanatory note relating to contractual arrangements should be amended to recognise the fact that, in many cases, FAPs will have limited negotiating power. A better option would be for the explanatory note to instead suggest that FAPs should consider their ability to monitor performance, how they would respond to non-performance, and their ability to terminate the arrangement if required (i.e. without the contractual element). We also recommend that an element of "reasonableness" is included, either by way of additional wording in the explanatory note, or by providing for market service licensee obligations to be met at "all reasonable times." We recommend that more relevant examples are given in order for FAPs to more easily understand the types of outsourcing that is covered. The focus of the examples should be of outsourced

		systems or processes that are material to the financial advice service. We recommend that the third example is replaced with an example relating to a FAP outsourcing a critical process to a professional services company (for example, outsourcing actual AML processes and compliance if the FAP is a reporting entity).
	The third example does not appear to be an example of an outsourced system or process. The review of a process by a consultant is undertaken by FAPs to ensure that a process is complaint. This type of engagement does not have the consultant complete the process for the FAP and in our view is not an example of outsourcing.	
4.5	**Condition 5 – Professional indemnity insurance**	
(a)	We generally agree with this standard licence condition. We consider that all advisers should hold professional indemnity insurance, but agree with the proposed "back stop" arrangement where this is not possible. Please see our specific comments in section (f) below.	
(b)	All persons providing advice on AIA New Zealand products are currently required by AIA's financial adviser agreement to hold professional indemnity insurance. The financial adviser agreement provides flexibility around how advisers (and adviser businesses) structure their insurance, provided our minimum requirements are met.	
(c)	We do not think that this condition will create any additional compliance costs for our business, or unreasonable costs on other FAPs.	
(d)	We do not think that this condition will have any other adverse impact on our business.	
(e)	This condition could create a barrier to entry for any FAP that does not currently have professional indemnity insurance and is unable to obtain it at a reasonable price (or at all). The proposed special licence condition (which would require disclosure of the fact the FAP does not have insurance) would adequately address the possibility of a FAP having alternate arrangements.	We recommend that the special condition ensures the transparent disclosure of alternatives to professional indemnity insurance so that consumers can make an informed decision.
(f)	As currently drafted, the condition suggests that a FAP must hold insurance itself. We consider this to be unnecessarily restrictive in that it does	We recommend that the condition is reworded to clearly allow insurance (of a level needed to comply with the condition) to be maintained by the FAP,

	not recognise a situation where (for example) the individual adviser may hold insurance.	individual adviser, or other relevant party (e.g. an advice business, where it engages with a dealer group FAP).
4.6	**Condition 6 – Business Continuity**	
(a)	We generally support this proposed standard condition. We agree that every FAP should have a plan for continuity events and that they should review them regularly. We note that many FAPs operate in their own technology environment. Please see our specific comments in section (g) below.	
(b)	We currently have a documented business continuity plan. We are reviewing the BCP following Covid-19 and will review against standard condition. Our expectation is that our BCP will align with the requirements of the standard condition.	
(c)	We currently rely on some critical technology systems to deliver a financial advice service including Salesforce and XPlan.	
(d)	We do not think that this condition will create any additional compliance costs for our business.	
(e)	We do not think that this condition will have any other adverse impact on our business.	
(f)	We do not think that this condition will create an unreasonable barrier to entering the market.	
(g)	We consider the FMA notification requirement is unnecessary and has the potential to result in a significant number of notifications to FMA being required. We note that the Privacy Act 2020 will introduce a separate breach notification regime that will apply where a FAP has a privacy breach that it believes has caused (or is likely to cause) serious harm. There are several references to materiality in the draft condition and explanatory note. However, this is a subjective term and, as such, there is a	We recommend that the notification requirement is removed or, if it is to remain, be limited to situations where the event has materially impacted systems that are used as part of the financial advice service, and not unrelated systems. We recommend that additional wording, and examples, are added to more clearly articulate the meaning of materiality in this context.

	risk that different FAPs may take different interpretations.	
4.7	**Ongoing eligibility**	
(a)	We generally support this proposed standard condition. Please see our specific comments in section (e) below.	
(b)	We do not think that this condition will create any additional compliance costs for our business.	
(c)	We do not think that this condition will have any other adverse impact on our business.	
(d)	We do not think that this condition will create an unreasonable barrier to entering the market.	
(e)	We understand FMA consider the standard conditions need to be developed before the full licensing guide can be released. However, without the benefit of the full licensing guide it is difficult to fully understand the potential impact of this condition. As a current QFE we are familiar with requirements of this nature. However, we are concerned that small FAPs or those who are new to the licensed environment may be inadvertently caught out by this condition, especially as their businesses mature and grow.	We recommend that full licence application guide is released as soon as possible. We recommend that the explanatory note is expanded to explain more directly what the condition requires rather than simply cross-referring to the Act, and to provide more practical guidance on how FAPs can comply with this condition, including specifically acknowledging that a change in policies, processes, systems and controls can occur in the ordinary course of their business and not only where there is a change to business or service arrangements.
4.8	**Condition 8 – Material change**	
(a)	We agree with this standard licence condition. Please see our specific comments in section (f) below.	
(b)	We do not think that this condition will create any additional compliance costs for our business.	
(c)	We do not think that this condition will have any other adverse impact on our business.	

(d)	We do not think that this condition will create an unreasonable barrier to entering the market.	
(e)	Subject to our comments in section (f) below there are no other material matters that we consider should be notified to FMA.	
(f)	As a current QFE we are familiar with requirements of this nature. However, we are concerned that small FAPs or those who are new to the licensed environment may be inadvertently caught out by this condition, especially as their businesses mature and grow.	We recommend that the explanatory note is expanded to avoid simply cross-referring to the Act. We recommend that more examples should be provided of the sorts of changes that would be material changes requiring notification. We also recommend that the criteria for a material change should be expanded on so that the distinction between a material and non-material change can be understood by FAPs.
	The reference to "nature of your financial advice service" is unclear. On its plan meaning, we consider it means a change to the types of advice or the products advised on. However, the explanatory note states that these matters do not need to be notified and instead the reference is intended to link to the way a FAP meets the Code's competency requirements.	We recommend the explanatory note is amended so that the reference to "nature of your financial advice service" instead refers directly to the way a FAP meets competency requirements (and any other specific matters FMA intends to capture).
	The explanatory note contemplates FMA being notified when a FAP commences engaging financial advisers or nominated representatives, or providing advice directly, but not when it ceases to do so. Ceasing to provide advice in these ways will also change a FAP's structure and risk profile. We consider this is just as important for FMA as when a FAP starts one of these engagements.	We recommend that the explanatory note be amended such that FMA notification is also required when a FAP no longer gives advice in one of the specified ways.
	We believe that the timing of the required notification has the potential to inadvertently catch out FAPs. The current draft wording requires notification within 10 working days of "commencing to implement" any material change. This wording is subjective and in many cases it can be hard to pinpoint a specific time that triggers the notification requirement.	We recommend a more objective trigger for notification is adopted. One option would be to link the disclosure obligation to the time a FAP formally approves a change.
4.9	**Licence Classes**	
(a)	We agree with that licences should be split into classes as proposed. We think it is a sensible and pragmatic response	

	that recognises the significantly different types of businesses operating in the sector.	
(b)	Any licensing regime will inherently create a barrier to entry. We think the proposal largely strikes the correct balance between minimising barriers to entry and ensuring the purpose of the regime is achieved. However, we believe that limiting a Class A licence to a single adviser is an unnecessarily high barrier to entry for particularly small FAPs. In addition, it doesn't take into account the practical realities of small businesses and raises challenges around succession planning and business continuity in the event that the sole adviser is unable to work.	We recommend that Class A licences should be expanded to cover up to three advisers with an added requirement that one of the advisers must be a director of the FAP. This would better reflect practicalities of small FAPs.
(c)	We think that naming the classes in a sequential way (A, B, C) indicates a level of superiority that is not intended. There is a risk that clients will misinterpret the distinction between the classes as (for example) a Class A licence sounds superior to a Class B licence even though a Class B licence is a wider licence. We would like more detail around how FMA will facilitate FAPs moving between classes and what FMA will expect when a FAP wishes to move classes. We also would like to ensure that a FAP is held to the same standard no matter what class of licence it holds. While different processes will exist in different classes, overall all FAPs should be held to the same standard if the regime is to operate as it was intended. Currently we are seeing a trend of attrition where QFE advisers who have been terminated by us have been able to easily register as an adviser when their practices do not meet our standards. We think that the need for all FAPs to be licensed and subject to FMA oversight will reduce the occurrence of this however it is still a risk, particularly for new Class A FAPs.	We recommend that the classes should be renamed so that they reflect the types of entities that they refer to (one option would be "small", "medium", and "large"). We recommend more detail is released about moving between classes. We further recommend that there are no differences in standards and expectations between licence classes. We recommend that the licence application guide include the need for FAPs to enquire into the disciplinary history of potential advisers and, where matters are disclosed, apply appropriate risk monitoring.
Feedback summary – if you wish to highlight anything in particular. Please see the key points outlined in our cover letter.		
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 advice provider full licences and classes of financial adviser service

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Date: 3 August 2020 Number of pages: 6

Name of submitter: [redacted]

Company or entity: AMP Services (NZ) Limited

Organisation type: Qualifying Financial Entity

Contact name (if different):

Contact email and phone: [redacted]

Question number	Comment	Recommendation
4.1 Condition 1 – Record keeping (**page 10**)	Record keeping is critical to ensure the ability to adequately review the advice provided to customers. Although much longer than the current QFE "Records" standard condition, the requirements on SC1 are, for the most part, reasonable, clear, would neither create significant increase on compliance costs nor adverse impacts, and, we consider, should not create any barriers to entry. We do, however, have recommendations for improvement and clarification to Condition 1.	• Move the explanatory note comment "within 10 working days when requested by us" to within the standard condition itself, however, it should be qualified so that if the FAP requests more time the FMA should not unreasonably deny such requests (e.g. where the request is extensive and will require a lot of time to identify specific records within a large record set). • Face-to-face verbal "class" advice, which is now in scope and considered regulated financial advice, could be problematic – records would ideally be voice recordings, but that would be considered awkward or even unacceptable by many customers. Guidance should outline that such advice may be adequately recorded by, for example, summary notes/emails provided to the customer. • The requirement to maintain an "accurate summary of the record in English" seems unnecessary if, as proposed, the FAP is also "required by [FMA, to] provide a full translation of the record into English by a translator approved by [FMA]."
4.2. Condition 2 – Internal complaints process (**page 11**)	As the proposed standard condition appears reasonable and aligned with our complaints procedures already in place, it is satisfactory as-is. The requirements are sufficiently general, yet clear, so should not cause any significant issues for existing licensees or others.	

Question number	Comment	Recommendation
4.3. Condition 3 – Regulatory returns (**page 12**)	Without the detail of the data that may be requested, which is subject to future consultation, it is hard to be unequivocal about this standard condition. Nonetheless, we note its alignment with other FMC Act licences, and, hopefully, a much lesser burden for licensees than the current Standard Conditions for Qualifying Financial Entities (especially the extensive Adviser Business Statement and Annual Report requirements). That is positive. The importance of sector and FAP data to ensure FMA's focus goes to the right areas makes this standard condition necessary.	Attention also needs to be given to consistency and fairness. Some of the comments on page 12 are not clear regarding whether the same data will be demanded from transitional licensees and full licensees. This may delay applications for full licences, so FMA should carefully consider any unwanted outcomes.
4.4. Condition 4 – Outsourcing (**page 13**)	The standard condition itself is succinct, though has some points that should be modified to ensure that FAPs do not interpret it differently. For example, "material to the provision of your financial advice service" could involve (a) both direct and indirect outsourced services, and (b) either systems which, if they failed, could cause immediate customer harm (e.g. digital financial advice systems) or, on the other hand, only minor inconvenience (such as post-advice compliance support services) with no direct customer impact.	We consider delineation is necessary in the standard condition to ensure that the more critical outsourced services, such as outsourcing of components of financial advice provision itself, are prominent. So, for example, outsourced paraplanning would be critical if the FAP was incapable of delivering the volume of advice required by its customers if that service was impacted. Indirect services, such as "review of compliance processes to a professional services company" should be considered non-customer impacting, less time critical, and more easily substitutable (and consequently arguably have less prominence). There should also be greater clarity as to how connected to the provision of a FAP's financial advice service an outsourced service needs to be before it is considered in scope. The comments refer to "non-related services, such as office cleaning", which is self-evident because it is clearly disconnected from the provision of advice. However, would mobile phone services be considered in scope? They are likely to be crucial to many FAPs, and none will be self-hosted, so will all FAPs be required to declare their outsourced mobile phone services?

Question number	Comment	Recommendation
4.5 Condition 5 – Professional indemnity insurance (**page 14**)	Although at face value demanding professional indemnity insurance of all FAPs seems prudent, the Standard Condition and Explanatory Notes raise some concerning matters, which need addressing: • Large FAPs may choose to self-insure rather than have professional indemnity insurance. It would be unreasonable for them to have to disclose to retail clients that the FAP does not have professional indemnity cover. • At times, FAPs may struggle to get cover, not due to any particular risk of theirs, but because the market for such cover in New Zealand is very small. • Unnecessary compliance costs could result if a FAP determined that the solution to this standard condition was to take out cover with a very high percentage deductible. The FAP may be able to afford the deductible, so would meet the standard condition's requirements, yet it is really holding only notional PI cover so as to avoid disclosing its lack of cover. It is also unclear whether a FAP with only financial advisers may choose to only have its financial advisers individually insured. The Standard Condition, as written, would still require the FAP itself to also hold professional indemnity insurance (for advice provision), which may be an unnecessary compliance cost.	The standard condition should be revised to add the following: Alternatively, you may demonstrate either (a) your FAP's financial means are obviously such that professional indemnity reasonably may be self-insured by your FAP, or (b) an equivalent amount of funds are held on trust, and accessible only in the event of a professional indemnity claim, which would otherwise be sufficient to meet the requirements of the condition, if fulfilled, by purchasing professional indemnity insurance. If this approach is not considered acceptable, then, at the least, the following should be "may" rather than "will", depending on the "valid reasons" provided by the FAP: i.e. "...specific condition **may** ~~will~~ require the disclosure to retail clients that the financial advice provider does not have professional indemnity cover".

Question number	Comment	Recommendation
4.6 Condition 6 – Business continuity and technology systems (**pages 15 and 16**)	For many FAPs, especially larger entities or ones otherwise already licensed (e.g. MIS managers), this Condition is unlikely to present many significant challenges, though the Explanatory note seems necessary rather than explanatory.	The expected strictness of interpretation of "... you must at all times ensure that cybersecurity for those systems – being the preservation of confidentiality, integrity and availability of information and/or information systems – is maintained" could be problematic. It is common to flex security controls in specific scenarios (for example, temporarily changing a password policy to respond to problems emerging from COVID-19 response, or the accessibility from various locations to platforms, which increases the attack surface). If FMA expects a considered risk differential to compensate for outage / loss of availability, that's a tenable and practicable expectation. It that is so (i.e. "... cybersecurity of your critical technology systems should be managed within the risk tolerance set through your governance processes..."); moving this explanation to be part of the Condition itself would be an improvement. For some smaller FAPs the scale and scope of their financial advice service may be so small that a templated approach to BCP and technology would aid them. The FMA should consider a guidance note to assist such FAPs, which will help to ensure that costs, inefficiencies, and lack of standardisation are avoided.
4.7 Condition 7 – Ongoing eligibility (**page 17**)	-	The FAP licencing guide is needed to determine whether there are any issues with this Condition.

Question number	Comment	Recommendation
4.8 Condition 8 – Notification of material changes (**pages 18 and 19**)	This Condition appears to be similar to the current 1.5 of the QFE Standard Conditions, i.e. "The QFE must maintain and keep current a written ABS, in accordance with the current QFE ABS Guide…." However, there are some aspects of this Standard Condition that we consider require refinement.	Notification "within 10 working days of commencing to implement any material change" may be challenging and/or ambiguously interpreted – e.g. is it (a) 10 days *prior to* the implementation commencing, or (b) within 10 days *after* implementation has commenced? Further, "Our comments" (page 19) suggest that "material changes" are in fact limited to changes that would impact controls and oversight of advice only. If that is the case, the Standard Condition should be re-titled "Notification of material changes to controls and oversight", and the content of the Standard Condition should be updated accordingly if only changes to controls and oversight are the triggers for such notification.

<table>
<tr><th>Question number</th><th>Comment</th><th>Recommendation</th></tr>
<tr><td>4.9 Financial advice provider full licence classes</td><td>We expect there to be many views around use of “A”, “B”, and “C” as the licence classes’ categories. In principle, demarcating classes is preferable, reflecting the clear differences between, for example, a sole individual FAP versus what is, today, a large QFE.

As the classes are not likely to be presented publicly, it is probably of little consequence what the licence classes are coined, be it “1”, “2”, and “3” (as is done for New Zealand driver licences, for example), or “A”, “B”, and “C”. However, we consider there may be a better approach, as noted in the Recommendation column.</td><td>It may be useful to attribute each of the bullets on pages 6 and 7 to a letter, and, in combination, use those letters to identify the range of regulated financial advice mechanisms each FAP may use. To illustrate:

<table><tr><th>Initial</th><th>Endorsement</th></tr><tr><td>P</td><td>on a financial advice Provider’s own account</td></tr><tr><td>A</td><td>through one or more financial Advisers</td></tr><tr><td>N</td><td>through one or more individuals nominated as Nominated representatives</td></tr><tr><td>E</td><td>through an Engaged entity</td></tr><tr><td>S</td><td>through a Sole adviser practice structure</td></tr></table>
This would make it easier to see at a glance what structures *are* permitted, rather than those that only *may* be. That is because under all classes in the proposed “A”, “B” and “C” categories there is an “and/or”; this means it is not immediately clear what *is* allowed (for example, whether an engaged entity is allowed under a “Class C” FAP).

Resulting common types from using the endorsements system we propose would then be:

• S, where an individual adviser only is operating
• A, where a FAP engages financial advisers only and does not provide any advice itself
• PA, where a business provides advice on a website and engages financial advisers, and
• PAN, which would be similar to many QFEs today, where a large entity provides advice, has financial advisers engaged for more complicated matters, and also has nominated representatives utilised, often on the phone.</td></tr>
<tr><td colspan="3">Feedback summary – *if you wish to highlight anything in particular.*</td></tr>
<tr><td colspan="3">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.</td></tr>
<tr><td colspan="3">Thank you for your feedback – we appreciate your time and input.</td></tr>
</table>

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: 23 Juy 2020 Number of pages: 1

Name of submitter: [redacted]

Company or entity:

Organisation type:

Contact name (if different):

Contact email and phone: [redacted]

Question number	Comment	Recommendation
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.*		
2.2	The classes of financial advice service proposed (ie. classes A,B, C) fail to consider generic financial advice - for example non-personalised financial advice provided in newsletter form. For example equity research services providing analysis on certain companies and stocks to give analyst ratings would fall into this category. The classes proposed only consider personalised financial advice and therefore create an unreasonable burden on services that produce generic advisory material for a range of investors	Introduce an additional class of financial advice service to cover generic, newsletter and research services that are not required to meet the compliance burden directed at those facing personal clients

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

The new regime does not fairly provide for generic advisory research and newsletter services.

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 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: Apex Advice

Organisation type: Financial Advice

Contact name (if different):

Contact email and phone: [redacted]

Question number	Comment	Recommendation
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.		
Proposed Condition #3 *Regulatory Returns*	*As long as the regulatory returns don't stop the business to do what it needs to do. i.e.: having the business to go out of its way to collect specific information.* *Please define the datapoints and the frequency of the data to be gathered so we can plan around it.*	*Also, will this regulatory return work as the "AML Annual Report Obligation"? with an online portal for the participant to fill out the information needed? I believe it would be the best option to ensure there is consistency in the method and frequency of reporting.*
Proposed Condition #4 *Outsourcing*	*How does this not overlap with the Proposed Condition 6? In your comments the FMA brings out an example of a hosting service. Clearly most technology these days is material for the provision of our financial advice service one way or another.*	*Rather, this condition should be clear on what does it cover. For example, FAPs that have ABs, Interposed persons and/or other key third party's material to the provision of the financial advice service (that are not technology providers) must make arrangements to meet your market service licensee obligations at all times.* *In this way there would be a clear distinction versus Proposed Condition 6 and would avoid overlap or confusion.*
Proposed Condition #6 *Business Continuity and Technology*	*What will be the framework of reference? Adhering to the PSR? (https://protectivesecurity.govt.nz/), if so what will be the transition period? Or can we use a light version of it for Financial Services curated by the FMA?* *And if so, will the FMA provide guidance about how much of the NZISM should the Financial Services Industry take on board? (https://www.nzism.gcsb.govt.nz/)* *Also, regarding cybersecurity wouldn't be more efficient to channel any notifications via CERT*	*I think that we should not re-invent the wheel and aim to optimise the use of resources and guidance that has already been put out there by the NZ Government for this very specific purpose.* *Also, a transition period to take on board these frameworks of reference should be put in place. Finally adhering to these frameworks of reference will further future proof the Financial Services industry as in theory will enable us in a future to exchange data with*

	NZ? (www.cert.govt.nz) and/or sending you a copy of the report?	*Government departments to further enhance the customer experience.*
Proposed Condition #7 Ongoing Eligibility	*How does this not overlap with the Proposed Condition 3? Condition 3 itself asks for information needed to monitor the ongoing capability.* *Also, ongoing eligibility needs to be further defined for us to consider how to incorporate these requirements into our processes.*	*I think Ongoing Eligibility should be part of Condition 3 subject to spot audits by the FMA based on the FAP licensee risk.*
Proposed Condition #8 Notification of Material Changes	*I believe that we need further guidance on what qualifies as "material change" for the FMA.*	*The FMA could provide a set of principles or a formula or a flow chart to enable us to self-assess if a change would be "material" for the FMA.* *Also, this test could be included on the proposed condition 3 regulatory returns.*

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

The insurance industry and privacy laws have not helped this country on data sharing matters. I think the FMA should spearhead the way to setup or enable a "data exchange" to be born for all participants in the industry to tap into. Reason being that simply the current approach is not customer focused, there is plenty of re-processing to identify, service and follow up with customers. All of this can be streamlined if there were a unified "data exchange" for the Financial Services industry for all participants to work with.

Think about it as the "Eftpos" or "Master Cards / Visa" of the Financial Services industry. Before Eftpos customers would have been forced to have multiple cards to be able to access the different banks or group of banks and merchant networks. Today, a single card regardless of the bank/merchant allows the customer to deal with most market participants.

Why can't we have something similar for the Financial Services industry so no matter where the customer gets their advice basic information can be passed from one provider to another to provide the very best service enabling customers to have a mix of services with different providers if the customer wishes so. Literally shopping around advice in an efficient and effective manner.

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

Bank of New Zealand's response to the FMA's consultation on Proposed standard conditions for financial advice provider full licences and classes of financial advice service

07 August 2020

1 Introduction

1.1 Bank of New Zealand ('BNZ') has prepared this response to the Financial Markets Authority's ('FMA's') consultation: proposed standard conditions for financial advice provider full licences and classes of financial advice service (Consultation).

1.2 BNZ agrees with the proposal to impose standard conditions under the full licences for financial advice providers (FAPs) and has noted only a few comments below. The focus of our comments is to ensure consistency across regimes where possible which will create smoother processes for customers and staff who are helping them.

1.3 BNZ is aware that the New Zealand Bankers Association ('NZBA') has also made a submission on the Consultation. BNZ has contributed to and supports that submission.

1.4 Should the FMA have any questions in relation to this submission, please contact [redacted]

[redacted]

2 Condition 1 – Record keeping

2.1 Do you agree or disagree with the proposed standard condition? Please provide your reasons.

BNZ supports the introduction of a record keeping condition as a licensing requirement for financial advice services. BNZ considers that record keeping requirements should be consistent across regulatory regimes and there is an opportunity for greater alignment through these standard conditions. In particular, we consider that proposed record keeping conditions should be amended to align with the CCCFA regime. Without this, there is the potential for confusion for frontline staff which will inevitably impact the way we discuss products and services with customers, and this may be adverse from a customer's perspective. It will also impact on the way we build our record keeping systems and processes. In particular:

(i) Condition 1(c) requires that 'your records must be available for inspection by us at all reasonable times'. The requirement to 'be available' is distinct from the requirement in s9CA CCCFA which is based on the premise of 'must make available'. We would prefer this to be amended to align with the CCCFA requirement to reflect that it may take some time to pull the records together from different systems to make them available.

(ii) The above ties in with the requirement in the explanatory note that 'Your records should be readily available to you, and in any event within 10 working days when requested by us'. The timeframe of 10 working days is very tight particularly if a request related to several customers. It is also inconsistent with CCCFA – s 9CA(7) requires that a "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 this standard record keeping condition timeframe is extended to 20 working days to align with the CCCFA requirement, and to acknowledge that a longer period may be specified by the FMA. This is to recognise that while we expect financial service providers to prioritise regulatory requests and deliver the material as soon as possible, sometimes requests may extend to thousands of customer records over a significant period, and in these circumstances the request cannot be turned around, even in 20 working days. It is important to have some flexibility here, so a more appropriate timeframe can be agreed with an entity.

2.2 What written records do you currently keep for your financial advice business?

All BNZ AFAs currently keep records of their financial advice as required under the Code of Professional Conduct for Authorised Financial Advisers. Other retail staff currently keep records of any "financial health checks" they offer customers, and all non-AFA bankers generally are required to keep records of meetings, advice and interactions with customers. BNZ is currently reviewing its record keeping processes and systems to ensure customer interactions are recorded in a consistent manner.

2.3 Would the proposed standard condition create any additional compliance costs for your business? If so, please detail those costs.

BNZ considers that significant investment may be required to implement new systems to ensure we are meeting the record keeping obligations under various regulations on an ongoing basis including, for example, voice recording technologies. A full scoping of the costs has not yet been completed. However, ongoing improvements to the way we interact with customers to ensure good outcomes are being achieved is part of BNZ's strategy and adequate record keeping is part of that strategy. With that in mind, BNZ considers that the benefits will outweigh the costs.

2.4 Would the proposed standard condition have any other adverse impact on your business? If so, please describe what this would be.

The main adverse impact would be if the condition is not consistent with the CCCFA record keeping requirements and we have different systems and processes set up for the different regimes. BNZ would urge the FMA to consider the overlapping requirements here and align the timing for compliance.

BNZ has no further comments on this section.

3 Condition 2 – Internal complaints process

3.1 Do you agree or disagree with the proposed standard condition? Please provide your reasons.

BNZ supports the introduction of a condition for an internal complaints process as a licensing requirement for financial advice services. The Hayne Final Report and the

reviews by the Reserve Bank of New Zealand ('RBNZ') and the FMA into the retail banking and insurance industries have focussed organisations on uplifting their policies and procedures to ensure they deliver good customer outcomes. A big part of this is ensuring that complaints handling is fair, timely and transparent, and that learnings are taken and acted on in areas where complaints may indicate and underlying product or service issue.

3.2 Do you currently have an internal complaints process for your financial advice business that meets the requirements of the proposed standard condition?

Yes, complaints processes were reviewed as part of the RBNZ and the FMA review into the retail banking and insurance industries. We are continuing to work with the Banking Ombudsman on the development of an industry complaints dashboard. We are confident that our current processes and procedures will meet the requirements of the condition as drafted.

3.3 Would the proposed standard condition create any additional compliance costs for your business? If so, please detail those costs.

We do not expect considerable increases in compliance costs as a result of this condition.

BNZ has no further comments on this section.

4 Condition 3 – Regulatory returns

4.1 Do you agree or disagree with the proposed standard condition? Please provide your reasons.

In principle BNZ agrees with the proposed standard condition. However, clarity is needed as to the Regulatory Return Framework and Methodology before we can comment fully on this proposed standard condition, and also so that we can design a system to capture the required information. Clearly a manual process to pull data on business volumes and services types, numbers of customers, numbers and types of breaches, and complaints information would not be efficient.

We also consider it is important that the FMA, MBIE and the Commerce Commission work in collaboration to ensure, particularly in relation to financial advice given in relation to consumer credit contracts, that banks are not having to meet two separate reporting standards / requirements. We know already that the annual return requirement for CCCFA is going to require significant systems development to extract data, build and provide reports. BNZ submits that the reporting requirements for Financial Advice Providers should be aligned with the CCCFA requirements where that makes sense to enable the best design and avoid duplication of effort.

Some initial observations/questions about the content of the regulatory return include:

- How confidentiality of commercially sensitive / or privacy of any personal information required can be protected given the FMA is subject to the OIA.

- Ensuring consistency in drafting of the types of information that may overlap with other reporting requirements including:
    - Business volumes vs statistical information (including about the loan book);
    - Information about complaints;
    - Numbers of unique customers.

BNZ appreciates that the FMA will consult with industry prior to publication of the Regulatory Return Framework and Methodology that will form part of the standard conditions.

We also consider that this condition would require a significant lead in period for implementation.

4.2 Would the proposed standard condition create any additional compliance costs for your business? If so, please detail those costs.

Any additional compliance cost will depend on the final terms of the Regulatory Return Framework and Methodology and what new systems if any need to be built to pull the required data.

BNZ has no further comments on this section.

5 Condition 4 – Outsourcing

5.1 Do you agree or disagree with the proposed standard condition? Please provide your reasons.

BNZ agrees with proposed standard condition requiring a FAP to have outsourcing arrangements in place. Where possible, this condition should be aligned with banks' existing obligations under the RBNZ's outsourcing policy (BS11).

We would also welcome further guidance on what is considered 'material to the provision of the financial advice service'. For example, we would not expect standard IT products and services should be captured by the condition (e.g. the use of Microsoft Outlook or other email services). For arrangements like standard IT products and services we would expect that businesses should be able to engage those products and services on terms and conditions as they see fit.

BNZ has no further comments on this section.

6 Condition 5 – Professional indemnity insurance

6.1 Do you agree or disagree with the proposed standard condition?

BNZ has no objection to the proposed standard condition requiring a FAP to maintain professional indemnity insurance.

However, we note that the condition is framed as an obligation "you must have and maintain…", but the explanatory note and FMA comments indicate that some applicants may not be required to have any cover. We query whether this gives rise to potentially inconsistent standards and could be unhelpful for market confidence.

BNZ has no further comments on this section.

7 Condition 6 – Business continuity and technology systems

BNZ has no objection to the proposed standard condition requiring a FAP to maintain a business continuity plan ('BCP'). BNZ considers this is core requirement of any reputable business and the value of a good business continuity plan has been borne out during the COVID-19 pandemic.

However, we note that this condition is not in other Financial Markets Conduct Act licence types (e.g. Managed Investment Scheme and Discretionary Investment Management Service licence conditions). So, although we agree with the idea that a BCP should be a core component for any reputable business, the reason to include this condition in this particular licence (and not others) is not clear to us.

We also consider that the term 'information security' would be better term to use than 'cybersecurity' as 'information security' 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. Accordingly, we suggest the second sentence of this condition is rephrased as follows:

"*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~~ information security for those systems – being the preservation of confidentiality, integrity and availability of those systems ~~information~~ and/or information processed or stored on them ~~systems~~ – is maintained*."

BNZ has no further comments on this section.

8 Condition 7 – Ongoing capability

BNZ agrees with the proposed condition for a FAP to meet eligibility requirements.

However, as this condition (and the requirements of this condition) are based on the Financial Advice Provider Licensing Application Guide, which hasn't yet been published, we look forward to reviewing and providing feedback on the Licensing Application Guide (which in turn may affect our commentary on this condition).

9 Condition 8 – Notification of material changes

BNZ agrees with the proposed standard condition requiring a FAP to notify FMA of material changes. We assume that FAPs could test their understanding of what should be considered 'material' in this context with their relationship partners at the FMA.

10 Financial advice provider full licence classes

BNZ agrees with the division of financial advice services into three distinct licence classes.

BNZ considers that the names of the licence classes should be changed to reflect the nature of the licence and the types of entity it applies to (including the complexity of that entity's business). We note that the proposed naming conventions may be open to some consumer confusion – for example a "Class A" licence might suggest to members of the public that it governs a superior or "better class" of licensee.

CHARTERED ACCOUNTANTS™
AUSTRALIA + NEW ZEALAND

7 August 2020

Financial Markets Authority
Level 5 , Ernst & Young Building
2 Takutai Square, Britomart
59 Tyler Street
Auckland 1010

By email: consultation@fma.govt.nz

Dear Sir / Madam

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

Thank you for the opportunity to comment on the Financial Markets Authority proposed standard conditions for financial advice provider licences and the classes of service (the draft).

About us

Chartered Accountants Australia and New Zealand (CA ANZ) represents more than 125,000 financial professionals, supporting them to build value and make a difference to the businesses, organisations and communities in which they work and live. Around the world, Chartered Accountants are known for their integrity, financial skills, adaptability and the rigour of their professional education and training.

In formulating its submissions, Chartered Accountants Australia and New Zealand takes a best practice, public policy perspective. That is, we endeavour to provide comment on a "what is best for New Zealand" basis. Our public policy perspective means we endeavour to provide comment free from self-interest or sectorial bias.

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CA ANZ members in New Zealand are also members of the New Zealand Institute of Chartered Accountants (NZICA), who is their regulator in New Zealand.

Summary

It is important that any regulatory regime balance the public interest of regulation of service providers with considerations of practicality and scale. In our view, the proposed conditions largely achieve that balance.

However, we are concerned about the volume of regulation for financial advisors. Many are subject to more than one regulatory regime and we believe that a whole of Government approach should be adopted to ensure that regulation is more streamlined in the medium term.

Overall comments

The proposals aim to impose conditions on the operation of those holding licences to provide financial services (regulated financial advice) to the public (retail clients in New Zealand). We believe this is appropriate and in the public interest. New Zealanders need to diversify their investment and retirement savings outside of residential property[1]. Financial advisors play a key role. We expect that the proposed conditions, as part of the new regime, will help engender trust in financial advisors.

Regulation must be balanced with compliance costs and we have also considered whether the proposals strike an appropriate balance between ensuring consumer confidence and compliance costs for financial advice businesses. We believe the proposals are commensurate with the level of risk. However, this is subject to our comments below.

Volume of regulation

Our members who are financial advisors are subject to two stringent regulatory regimes and may be subject to additional compliance regimes/obligations where they offer a Discretionary Investment Management Service (DIMS) or are managers of a registered scheme. We believe Government should consider whether it is appropriate to have so many layers of regulatory regimes and consider consolidation or streamlining.

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[1] Noted in the Tax Working Group Interim Report https://taxworkinggroup.govt.nz/sites/default/files/2018-09/twg-interim-report-sep18.pdf, including table 6.1 on page 31.

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Overlaps for Chartered Accountants

Chartered Accountants are already subject to regulation and review.

Examples of the overlaps for our members are:

- Members who hold a Certificates of Public Practice (CPP) are already required to hold professional indemnity insurance[2].
- All members are required to retain records for an appropriate period[3] .
- All members must maintain an internal complaints process[4].

CA ANZ members in New Zealand are also required by NZICA to undertake ongoing professional development relevant to their role.

When CA ANZ members apply for licenses as financial advice providers, we would request that the FMA recognise that CA ANZ members are already subject to regulatory requirements in respect of the above and take this into consideration when assessing the application.

In our view Government should work to streamline regulatory regimes so that businesses are not subject to multiple levels of regulation, with the potential for additional compliance cost. This is particularly important in respect of core regulations which have shared objectives.

Licensing Guide

We understand that the Financial Advice Provider Licensing Application Guide is yet to be published. This has meant that some of our comments are necessarily more general in nature as it is difficult to comment in specific detail without the Guide. It may be appropriate to re-consult once the Guide has been published.

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[2] NZICA Rules, Appendix IV, Paragraph 2.10.
[3] NZICA Code of Ethics 113.1 (a) and (b) require compliance with "technical and professional standards". PS-1Quality Control sets requirements and guidelines about a firm's quality control system including record keeping and internal complaints process. Document retention requirements are in PS-1 paragraph 53.
[4] PS-1 paragraphs 61 and 62.

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Comments on proposed conditions

Our comments on the conditions proposed are as follows:

1. Record keeping

- The proposed standard includes a requirement to retain records for a period of seven years. This is appropriate and in line with current commercial practice.
- However the seven year period commences from the later of (i) the date the record is made; and (ii) the date the financial advice to which the record relates is given; and (iii) the date any later record is made that refers to or relies upon information in the record
- In practice, this may be difficult to track. It is likely to require a manual system to determine whether a later record has referenced an earlier record.
- In addition, information included in old records is likely to become obsolete. It is unlikely that financial advisors will be providing advice based on information obtained more than ten years ago.
- We recommend that the catch-all provision (iii) be rethought/removed due to practical difficulties in establishing nexus/relevance of original information and whether relied on, or a fixed overall cap be provided.
- Apart from our comments above, we agree that financial advisors should be required to keep records and believe the condition is sensible and appropriate.

2. Internal complaints process

- We believe this condition is sensible and appropriate.
- Members of CA ANZ in New Zealand will already have such processes in place.
- If financial advice businesses are faced with extra cost to implement the process we believe this is appropriate provided that the cost is reasonable for the risk involved.
- We concur with your comment that an internal complaints process does not have to be complex.

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3. Regulatory returns

- We agree that financial advice providers should have to comply with regulatory requirements and believe this condition is sensible and appropriate. Our expectation would be that absent one-off requirements for specific and additional information, this would be in the form of recurring reporting (likely on an annual basis) in a standard format based on a regulatory return framework.

4. Outsourcing

- We agree that those who provide advice to the public should have to take responsibility for the services that are outsourced. The responsibility for meeting licence obligations rests with the financial advice provider.
- Overall, we believe the proposed condition is sensible and appropriate.

5. Professional indemnity insurance

- We agree that those who provide advice to the public should have appropriate professional indemnity insurance.
- We appreciate that the rules allow sufficient flexibility to address situations where an applicant can demonstrate valid reasons for not having cover.
- We believe that the notification requirement, where insurance or an appropriate level of insurance cover is not obtained, is sensible and protects financial advice clients.
- We believe the proposed condition is sensible and appropriate.

6. Business continuity and technology systems

- We agree that those who provide advice to the public should have appropriate technology systems and a business continuity plan.
- We believe it would be appropriate to further define what is meant by "regularly tested" ie what is required to satisfy the condition that the plan has been tested?
- Apart from this, we believe the proposed condition is sensible and appropriate.

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7. Ongoing capability

- We agree that those who provide advice to the public should meet the capability requirements at all times (and not just at a particular point in time).
- We believe the proposed condition is sensible and appropriate.

8. Notification of material changes

- We agree with the mandatory notification requirement and believe that the matters outlined in the explanatory note are appropriate.

We would be happy to discuss our submission with you. Please contact [redacted]

Yours sincerely

[redacted]

Chartered Accountants Australia and New Zealand
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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: 9 August 2020
Number of pages:15
Name of submitter: [redacted]
Company or entity: Compliance Refinery
Organisation type: Compliance Services
Contact name (if different):
Contact email and phone: [redacted]

Question number	Comment	Recommendation
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.*		
See below		

Feedback summary – *The one area in particular we wanted to focus on was a better solution or approach to PI Insurance. Please see our notes regarding a creative option.*

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.

Condition 1 – Record keeping

1. Record keeping

Condition:	**Explanatory note:**
You must create in a timely manner and maintain adequate records in relation to your financial advice service. Your records: (a) must be kept in a form (which may be electronic) and manner that ensures the integrity of the information and enables it to be conveniently inspected and reviewed by us; (b) may be in any language 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 by a translator approved by us; (c) must be available for inspection by us at all reasonable times; and (d) must be kept for a period of at least 7 years from the later of: (i) the date the record is made; and (ii) (ii) the date the financial advice to which the record relates is given; and (iii) (iii) the date any later record is made that refers to or relies upon information in the record.	Records will be adequate if they clearly demonstrate (together with your systems, process and controls) how you, and any person engaged by you, and the regulated financial advice given to your retail clients by you or on your behalf, met the requirements relating to financial advice and financial advice services in the FMC Act, FMC Regulations and the Code of Professional Conduct for Financial Advice Services. Your records should include (without limitation): • a record of all regulated financial advice given to retail clients, by you or on your behalf • records relating to how you, and any person engaged by you, has complied with the financial advice duties. Your records should be readily available to you, and in any event within 10 working days when requested by us. Records available for inspection and review may be reviewed by us at your premises or elsewhere. For example, we may request copies of records and review these at our offices. Your arrangements must ensure that your retail client's consent to us viewing or obtaining your records. 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 retrieve the records if required.

(a) Do you agree or disagree with the proposed standard condition? Please provide your reasons.

Agree. Keeping accurate client records of relevant interactions is part of being a professional. Recently my dentist blew me away with his use of CRM and record keeping in a manner similar to how I have seen good advisers also operate. He explained it to me as so:

'Even though I try to get to know my clients, I cannot remember everything all the time. Without this system I would be very inefficient and wasting not only my own but also my clients time.'…. 'I have a family and work really hard and need to take holidays. I can actually relax knowing that unless it is an absolute emergency the business can run without me being here.'

It is an important protectionism to help demonstrate that advisers have done the right thing as due to the emotive nature of the industry, complaints do happen.

(b) What written records do you currently keep for your financial advice business?

This will vary B2B however the 'big-ticket' items as we see them would be as follows:

- File notes for relevant client discussions and at key point in advice process (including email correspondence)
- Data Collection Documents
- Advice Documents (including reviews)
- Disclosure documents.
- Underwriting or implementation documents

Since advice is not required to be provided in written format this should be expanded beyond 'written'.

(c) Would the proposed standard condition create any additional compliance costs for your business? If so, please detail those costs.

Adviser Businesses operating at a higher level are currently operating in this format. One would argue that with increased record keeping standards it will be more efficient for businesses. There are still some business that have limited technological capability and / or paper files, but they are becoming the outliers and we don't' see value in trying to keep them operating in this manner.

No. However, where keeping *detailed* records is not habitual will require further time to integrate this into processes.

(d) Would the proposed standard condition have any other adverse impact on your business? If so, please describe what this would be.

For some practices where again this is not habitual, having to keep more detailed records may require capital expenditure on CRM's which may add efficiencies.

(e) Does this proposed standard condition create a barrier to enter the market? If so, please explain why this is the case.

No. Those that do not want to act professionally may see the above as a disincentive.

(f) Do you have any other comments on the proposed condition or how it is drafted?

No. It is good to see this as a more specific requirement across the board for all advisers rather than just AFA's. We have little sympathy for those who have not made adjustments to meet the standard. However, it would be good to see some examples to aid compliance. Example: It is rare for us to see file notes on some of the very important trade off discussions that advisers have with clients should insurance underwriting come back with terms. As this is often a subject of complaints (but also potentially requiring a change to advice strategy) spelling out that such items should be part of records would be of assistance. No-one wants to debate the meaning of words such as *reasonable* and *adequate* as it can be subjective.

Condition 2 – Internal complaints process

Condition:	**Explanatory note:**
You must have an internal process for resolving client complaints relating to your financial advice service that provides for: (a) complaints to be dealt with in a fair, timely and transparent manner; and (b) records to be kept of all complaints and any action taken in relation to them including the dates on which: (i) each complaint was received; and (ii) any action that was taken in relation to that complaint	A complaint relating to your financial advice service is *an expression of dissatisfaction made to you or to a person engaged by you, relating to your financial advice service (including any regulated financial advice given to a retail client by you or on your behalf), or the complaints handling process itself, where a response or resolution is explicitly or implicitly expected.* A complaint includes a complaint about a failure to provide a service or give advice. Any disclosure requirements relating to your internal complaints process are set out in the FMC Regulations. **Where no action is taken in respect of a complaint received, the record should include the reasons for not taking any action**. If a complaint cannot be resolved, the complainant must be informed about taking the matter to your dispute resolution scheme.

(a) Do you agree or disagree with the proposed standard condition? Please provide your reasons.

Agree. Clients need an avenue to challenge whether their best interests have been considered or not and where negligence may have taken place. Like all professionals, advisers need to be kept accountable especially considering their fiduciary duty to clients and that the importance of a person's financial affairs.

(b) Do you currently have an internal complaints process for your financial advice business that meets the requirements of the proposed standard condition?

No, as we are consultants we do not. However, all clients that we have dealt with to date do.

(c) Would the proposed standard condition create any additional compliance costs for your business? If so, please detail those costs.

No – this should have been carried out anyway by participants with the providers themselves providing much useful information and tools to assist.

(d) Would the proposed standard condition have any other adverse impact on your business? If so, please describe what this would be.

No

(e) Does this proposed standard condition create a barrier to enter the market? If so, please explain why this is the case.

Only a small one and would deter less honest people.

(e) Do you have any other comments on the proposed condition or how it is drafted?

It is good to see a definition that can be applied consistently as often we have debated a similar definition with clients in the past with many 'not realising' the definition, which has an impact on registers kept. It would be good to provide examples of what is a complaint and what is not, this is very poorly understood in the industry as a whole. The broadness of the definition is often a barrier to adviser understanding.

Also, it should be noted that complaints schemes often market that they are Adviser friendly. It appears the structure might be somewhat conflicted in the sense that they are competing with one another for business and a key metric is how often they side with Advisers.

Condition 3. Regulatory returns

Condition:	**Explanatory note:**
You must provide us with the information we need to monitor your ongoing capability to effectively perform the financial advice service in accordance with the applicable eligibility criteria and other requirements in the Act. This will include updated information on the nature, size and complexity of your financial advice provider service. Information must be provided in accordance with any Regulatory Return Framework and Methodology we issue under subpart 4, part 9 of the Act.	In future, you will be asked to provide information to the FMA on a periodic ongoing basis, or on request, in accordance with the requirements set out in a Regulatory Return Framework and Methodology. Under section 412 of the FMC Act you have obligations to **report various matters to the FMA as soon as practicable, including any material change of circumstances.** This standard condition is **in addition** to those reporting obligations and any other reporting obligations that may be imposed in regulations. The regulatory returns will help the FMA to understand the profile of your business and to focus its resources appropriately. This is likely to require reporting of factual business information, such as business volumes and services types, numbers of customers, numbers and types of breaches, and complaints information. FMA will consult with industry prior to publication of the Regulatory Return Framework and Methodology.

(a) Do you agree or disagree with the proposed standard condition? Please provide your reasons.

Agree with the condition. As outlined previously, it is similar to that provided by AFA's in the past which we feel meant important areas where public harm can be caused were not treated with the same scrutiny. This condition also talks to having suitable governance frameworks in place to be able to identify issues and to front foot them with the Regulator which we feel is a positive marker of conduct and transparency.

(b) Would the proposed standard condition create any additional compliance costs for your business? If so, please detail those costs.

Not for AFA's as it is something they should have done now for many years. For RFA's that did not complete such an exercise it would add time to answer the questions and potentially consultation fees for assistance.

(c) Would the proposed standard condition have any other adverse impact on your business? If so, please describe what this would be.

Again, we feel this may provide a disincentive for any advisers of dubious character. It is important that the FMA actively promote the value created by the returns, Advisers sometimes feel these returns are 'lost in space' which creates general frustration to compliance and about the FMA.

(d) Does this proposed standard condition create a barrier to enter the market? If so, please explain why this is the case.

As above. As many of our team have completed these returns in the past, completing such as exercise can be a good time to reflect on your business and assist with forward planning.

(f) Do you have any other comments on the proposed condition or how it is drafted?

No

4. Outsourcing

Condition:	**Explanatory note:**
If you outsource a system or process that is material to the provision of your financial advice service, you must ensure that your arrangements enable you to meet your market service licensee obligations at all times.	This condition only covers those outsource arrangements where you rely on the outsource provider to meet your market service licensee obligations as they relate to your financial advice service (licensee obligations). Important matters that you should consider in respect of your outsource arrangements: • Being satisfied that **each provider is, and remains, capable of performing** the service to the standard required to enable you to meet your financial advice service licensee obligations. • 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. • Ensuring that any **records** held by providers pertaining to your financial advice service obligations **are readily available to you** and

	to us in accordance with standard condition 1 (Record keeping). • Regular **reviews of your outsource arrangements, at a frequency** appropriate to the risk involved.

4.4 Condition 4 – Outsourcing

(a) Do you agree or disagree with the proposed standard condition? Please provide your reasons.

Yes. If FAP's are ultimately responsible for meeting their obligations then there needs to be a system for holding outsourced providers to account.

(b) What core financial advice services do you currently outsource?

Clients we deal with will outsource the following:

- Data storage, CRM services
- Custody
- Portfolio management
- Advice process
- Document destruction

(c) Would the proposed standard condition create any additional compliance costs for your business? If so, please detail those costs.

Yes. Putting in place the relevant agreements will often require the assistance of a legal professional. Time to collate the data pertaining to the agreements and systems to monitor performance along with carry them out. All time out of the business.

(d) Would the proposed standard condition have any other adverse impact on your business? If so, please describe what this would be.

Possibly the time taken, and client impact should there be a failure by the outsourced provider that we cannot control and where recourse may be costly and time consuming. Practices can carry out detailed due diligence top try to avoid this but there is always residual risk.

(e) Does this proposed standard condition create a barrier to enter the market? If so, please explain why this is the case.

No. It may help as advisers will not feel like they must solve everything (obligations) themselves.

(f) Do you have any other comments on the proposed condition or how it is drafted?

Regarding large multinational corporations, it might be a good idea to reduce the burden on FAP's regarding these entities. They typically will not interact or customise contracts or obligations to even large companies, let alone smaller customers. In some cases, there are few alternatives except a similar large multinational company. Doing outsourcing due diligence can be futile and frustrating for unsophisticated smaller entities.

Condition 5 – Professional indemnity insurance

Condition:	**Explanatory note:**
You must have and maintain a level and scope of professional indemnity insurance that is	This condition requires that you must have adequate professional indemnity cover

adequate and appropriate for the provision of your financial advice service to retail clients in New Zealand.	continuously in place for all activities related to the provision of regulated financial advice to your retail clients in New Zealand, including the activities of all those you engage to provide financial advice on your behalf. We are not prescribing a specific level of cover in this condition as we believe that it requires each financial advice provider to consider their particular scope of advice, financial advice product mix, client demographics, and advice operating structure. Suitable professional indemnity insurance: (a) has limits of indemnity, in aggregate and for any one claim, that are adequate and appropriate for the nature, scale and complexity of the financial advice service you provide to retail clients in New Zealand, and the extent to which the indemnity limits of your insurance are individually accessed or shared with others; and (b) has a level of policy excess or deductible that you are able to meet with your financial resources; and (c) provides cover for all activities undertaken for your financial advice service to retail clients in New Zealand including, where necessary, past activities; and (d) includes those you engage to provide regulated financial advice to retail clients on your behalf. We expect you to be able to demonstrate how you have determined that your professional indemnity insurance meets the requirements of this condition

4.5 Condition 5 – Professional indemnity insurance

(a) Do you agree or disagree with the proposed standard condition? Please provide your reasons.

Disagree (at this stage). Mainly because in our discussions with industry providers have no idea how they are going to tackle this and there are mixed messages. E.g. quote from industry group leader:

I have talked to Provider A who is the broker behind the Big Group PI scheme and they said that it is not necessary to have PI cover for your transitional FAP until the legislation comes into force, that being at this stage set in jelly for March 2021.

They also said that when this happens the professional indemnity obligation will fall upon the FAP and not the individual adviser (s). HOWEVER individual advisers still need to have PI cover for their potential run-off claims, that is claims originating from prior to the FAP operating and having PI cover. These premium they said would over time reduce each year as the likelihood of claims reduces. After seven years potentially no need to have cover.

This is not consistent with what Provider B have said. They said you need FAP professional indemnity insurance from 1 July and if the FAP has a sole financial adviser that's all that will be required. However if it is a FAP with two or more advisers each adviser will also need PI.

So I am basically none the wiser

This is probably the most contentious piece, the ramifications of the dual (or tri) licensing regime make this complex structurally (as shown above). The ramifications of the structure are that clients could have competing PI Providers pointing the finger at the other.

Overall, PI has some value but often does not pay out. However, the alternative seems worse (some type of capital requirement), this would be difficult to meet for many small businesses to maintain. Especially with potentially having a poor economic outlook.

There is also a reality that the Australasian PI market has reduced from 5 to 3 providers, excesses have increased as have premiums. With fines increasing exponentially not sequentially, providers are wary to take on new clients.

Larger businesses should have the opportunity to self-insure, realistically their premiums are through the roof and excesses are likely to be higher than a retail complaint would cover.

Most smaller to medium size businesses have some type of cover in place and have for a while in a group scheme. Which brings up another issue as group schemes are often aggregate schemes. Therefore, if they did have to settle a large case the scheme would no longer cover the advisers in that scheme and they would not be meeting the standard conditions. In that case it would likely be tough for them to get additional cover. The current writing in the standard condition does not cover what adequate cover is, there is a variety of covers and types, additional clarity should be included.

This area was problematic without the change in structure of the regime. Now that complexity could provide increased costs and a higher chance clients get a poor outcome.

This area seems to have no good solutions to an issue. Potentially you could create options based on the Class system that businesses must choose and self-regulate.

The easiest structural assessment is for Class A, B and C can get more difficult.

(b) Do you currently hold professional indemnity insurance covering financial advice service activities?

We are compliance consultants and do not provide Financial Advice services.

(c) Would the proposed standard condition create any additional compliance costs for your business? If so, please detail those costs.

Potentially yes as there may be two policies (or three (AB's) that need to be run adding addition costs. It is very hard to say though based on the lack of certainty. Also, with premiums increasing, at some point it might be more economic to self-insure. (the point where premiums are likely to be greater than potential complaints.)

(d) Would the proposed standard condition have any other adverse impact on your business? If so, please describe what this would be.

Confusion and lack of certainty as we have tried to highlight.

(e) Does this proposed standard condition create a barrier to enter the market? If so, please explain why this is the case.

Yes, it potentially could, as noted above.

(f) **Do you have any other comments on the proposed condition or how it is drafted?**

As above, there does not seem to be a good solution for this issue.

This issue may be worth a rethink, a creative solution would be that FAPs and / or Advisers contribute to a fund to reimburse clients, if a FAP becomes insolvent, that is maintained independently. Examples would be countries with deposit Insurance or investment protection (https://www.cipf.ca/). This would likely provide the most long-term value and increase confidence in the industry.

Condition 6 – Business continuity and technology systems

Condition: You must have and maintain a business continuity plan that is appropriate for the scale and scope of your financial advice service. 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 those systems – being the preservation of confidentiality, integrity and availability of information and/or information systems – is maintained. You must notify us within 5 working days of you discovering any event that materially impacts the cybersecurity of your critical technology systems and provide details of the event, the impact on your financial advice ser	**Explanatory note:** Your business continuity plan includes the documented procedures that guide you to respond, recover, resume and restore to a pre-defined level of operation following disruption. This plan should provide for the continuity of your financial advice service generally – not just the recovery of your technology systems. It should also encompass any outsource arrangements. Your plan should consider the loss of availability of your key resources, including staff, records, systems, suppliers and premises. The extent of your business continuity plan should reflect the size and complexity of your financial advice service, operational arrangements and exposure to disruptive events. A small business with simple processes and technology may only need a relatively brief plan covering a more limited range of likely disruptive events. A larger or more complex business, relying more extensively on technology systems and possibly operating from multiple locations, will need to consider a wider range of disruptive events and reflect this in a more comprehensive business continuity plan.

	Irrespective of the complexity of your circumstances, it is important that your business continuity plan is maintained, reviewed, and **regularly tested** – at least annually. Critical technology is that which supports any activity, function, process, or service, the loss of which would materially affect the continued provision of your financial advice service or meeting your licensee obligations. This condition requires that you maintain the cybersecurity of your critical technology. This includes: (a) regularly identifying and reviewing your risks and cyber threats; and (b) implementing measures that maintain the level of cybersecurity necessary for your risk profile; and (c) having effective processes that monitor and detect activity that impacts your cybersecurity; and (d) including in your business continuity plan your predetermined procedures for responding to, and recovering from, events that impact on your cybersecurity. The cybersecurity of your critical technology systems should be managed within the risk tolerance set through your governance processes. We recommend that you use an appropriate, recognised cybersecurity framework for this purpose. You must have arrangements in place to notify us in the event of a material cybersecurity breach. You do not need to notify us of minor events, such as receiving a 'phishing' email. A material event is one where the confidentiality, integrity or availability of your information and/or your technology systems has been compromised.

4.6 Condition 6 – Business continuity and technology systems

(a) Do you agree or disagree with the proposed standard condition? Please provide your reasons.

Yes. Considering the CHC earthquakes and recent COVID-19 pandemic businesses should be aware of the importance of BCP and are more prepared than ever.

(b) Do you currently have a documented business continuity plan?

Yes. We also work with clients to make sure this is part of their policies and procedures in light of the FAP regime.

(c) Do you currently rely on critical technology systems to deliver a financial advice service?

Not as a business ourselves. However, our clients all rely on such technology in various capacities. As the world has largely moved to cloud technologies, portable devices and mobile phones the risks of lack of access to systems are generally minimal.

(d) Would the proposed standard condition create any additional compliance costs for your business? If so, please detail those costs.

Where this has not already been done to date, the time taken to put together a BCP communicate it with staff and to test it. There are adequate resources to complete this for free online, however, the capability to complete these can be poor.

(e) Would the proposed standard condition have any other adverse impact on your business? If so, please describe what this would be.

No. We feel this will help push those that have been putting it off to be in better stead when the next event occurs.

(f) Does this proposed standard condition create a barrier to enter the market? If so, please explain why this is the case.

No

(g) Do you have any other comments on the proposed condition or how it is drafted?

Only that some of the requirements would be catered for in separate policies and procedures (e.g. cyber-attacks may very well be covered within a broader IT policy) rather than in the BCP itself.

Condition 7 – Ongoing capability

Condition:	**Explanatory note:**
You must at all times meet the eligibility and other requirements set out in section 396 and, if applicable, section 400 of the FMC Act.	Sections 396 and 400 of the FMC Act specify the matters in respect of which the FMA must be satisfied in order to grant a licence, or authorise an entity as an authorised body. This condition requires you to continue to meet those requirements **at all times**. It does not prevent you from making changes to your business or the scope of your service (subject to your applicable licence class), provided you can continue to meet those requirements. **You will need to ensure that you will keep your policies, processes, systems and controls**

	up to date and that they reflect any changes you may make to your business or service arrangements. You will also need to ensure that your directors and senior managers, and any other relevant parties, are and remain fit and proper persons to hold their respective positions. **If you have authorised bodies under your licence, you (as the licence holder) must also continue to have suitable arrangements in place to ensure that you have appropriate control or supervision over the services those authorised bodies provide**. For further information in relation to the eligibility and other requirements see the Financial Advice Provider Licensing Application Guide.

4.7 Condition 7 – Ongoing capability

(a) Do you agree or disagree with the proposed standard condition? Please provide your reasons.

Yes. We feel it helps place the onus on FAPs that they are responsible for those operating on their behalf.

(**b) Would the proposed standard condition create any additional compliance costs for your business? If so, please detail those costs.**

Yes – where such policies and procedures have not been implemented to date, there would be considerable costs associated with implementing whether time spent developing internally or seeking external consulting.

We estimate the costs to be in the ballpark of $5 -10k per year, depending on product provider requirements.

(c) Would the proposed standard condition have any other adverse impact on your business? If so, please, describe what this would be.

In our discussions with advisers we have observed that many are more prepared to operate on their own than be responsible for others.

(d) Does this proposed standard condition create a barrier to enter the market? If so, please explain why this is the case.

See above.

(e) Do you have any other comments on the proposed condition or how it is drafted?

No

Condition 8 – Notification of material changes

Condition:	**Explanatory note:**
You must notify us in writing within 10 working days of commencing to implement any material change to the nature of, or manner in which you provide, your financial advice service.	Sections 410 to 412 of the FMC Act and regulation 191 of the FMC Regulations require certain matters to be notified to us and apply to all FMC Act licences. This standard condition is in addition to those statutory notification obligations. **It applies where you materially change the nature of your financial advice service or manner in which you provide your financial advice service**. 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. By the nature of your financial advice service, we mean **how you or any of those engaged by you, meet the competency requirements of the Code of Professional Conduct for Financial Advice Services.** An example of a material change in this context would be changing your compliance approach to relying on your systems, processes and expertise (rather than individual qualifications) for demonstrating competence, as contemplated by the code. You are not required to notify us if you change the **types of financial advice you provide**, or the **types of financial advice products** that you advise on. By manner in which you provide your financial advice service, we mean the way in which you provide regulated financial advice to retail clients. For example, a material change would include commencing to (where you did not previously, and you are permitted to do so within you relevant licence class): • engage any financial advisers to provide regulated financial advice on your behalf; or • engage any nominated representatives to provide regulated financial advice on your behalf; or

	• provide regulated financial advice directly to your clients, for example through automated digital systems. You are **not required** to notify us if you change the number of financial advisers/nominated representatives you engage, or you cease to engage financial advisers/nominated representatives or you cease providing advice directly to your retail clients.

4.8 Condition 8 – Notification of material changes

(a) Do you agree or disagree with the proposed standard condition? Please provide your reasons.

Agree to most of it. We understand that you are not always able to know when such changes are taking place, so it makes sense to be informed. However, we find the material change example provided as confusing. Could this not be covered in the return itself?

(b) Would the proposed standard condition create any additional compliance costs for your business? If so, please detail those costs.

Only if required and the time taken to work through the relevant administration in conjunction with the FMA. Some business will seek external expertise to determine if events are material, which would come at an additional cost.

(c) Would the proposed standard condition have any other adverse impact on your business? If so, please describe what this would be.

It is yet *another thing* for Directors to be cognizant of - so some anxiety. They will require additional training and must increase their sophistication.

(d) Does this proposed standard condition create a barrier to enter the market? If so, please explain why this is the case.

No.

(e) Are there any other material matters other than those detailed in the explanatory note that should be notified to FMA?

Your example of a material change could be noted in common language, a large number of Advisers / Directors in smaller businesses will struggle to understand what that means.

(f) Do you have any other comments on the proposed condition or how it is drafted?

As outlined in question (a).

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.

Yes, if they are only used as an administration function at your end. Many advisers are worried that if they are required to be made public a B or C class license will be interpreted poorly by clients.

(b) Do the proposed licence classes create a barrier to enter the market? If so, please explain why this is the case.

Yes, by their definition.

(c) Do you have any other comments on the proposed full licence classes?

Although not related (and we have asked a question directly on this) some see this as possible perceived as a hierarchy of the quality of advice provided. For example: C class has a negative connotation; A class positive…., when C is a more comprehensive licence class and has nothing to do with adviser quality. We understand that this is something that could easily be explained away but only if you get the opportunity to do so (the client may not engage due to perception) and hope it is not a license condition that has anything to do with disclosure.

We found it interesting that digital advice providers were class A, this adds an odd amount of complexity to an otherwise very simple arrangement.

7 August 2020

Financial Markets Authority
Level 2/1 Grey Street
Wellington 6011

By email: consultation@fma.govt.nz

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

1. Introduction

Thank you for the opportunity to make a submission on the consultation paper. This submission is from Consumer NZ, New Zealand's leading consumer organisation. It has an acknowledged and respected reputation for independence and fairness as a provider of impartial and comprehensive consumer information and advice.

Contact: [redacted]

2. Comments

Our comments on the consultation paper are as follows:

2.1 **Licence classes**: We support the three licence classes but consider using the letters A, B and C to describe the licences could give the impression a class A licence is superior. We therefore suggest the licence classes be renamed to avoid the potential for confusion.

2.2 **Record keeping**: We acknowledge the requirement to keep records for seven years is consistent with record-keeping obligations under other legislation. However, the requirement could be problematic when complaints arise about mis-selling and the provider no longer has records available of the advice given. We therefore suggest further guidance should be provided on record keeping.

2.3 **Outsourcing:** We consider there should be greater clarity about what the FMA considers to be "material outsourcing".

2.4 **Complaints process**: We suggest the licence conditions should restate the requirement to advise customers about complaint processes.

2.5 **Professional indemnity insurance:** We support the professional indemnity insurance obligation. However, if the FMA waives the requirement, clients should be clearly advised the provider doesn't have insurance and the implications of this.

2.6 **Fair treatment**: We consider the obligation to treat customers fairly should be restated in the standard conditions.

2.7 **Regulatory returns:** We consider regulatory returns should be publicly available and suggest this is included in the standard conditions.

Thank you for the opportunity to make a submission. If you require any further information, please do not hesitate to contact me.

Yours sincerely

[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: 6 August 2020 Number of pages: 3

Name of submitter: [redacted]

Company or entity: Curated Risk Limited

Organisation type: Financial Service Provider

Contact name (if different):

Contact email and phone: [redacted]

Question number	Comment	Recommendation
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.*		
4.5 Condition 5 a	I agree with the imposition of the standard condition requiring Financial Advice Providers to hold Professional Indemnity insurance covering all activities which they undertake to retail clients.	
4.5 Condition 5 b	*Yes I do.*	
4.5 Condition 5 c	*Yes I believe that the condition will require not only financial advisers but their financial advice provider entity to carry professional indemnity insurance and therefore there will be increased premium costs to the business, also I believe that there would be additional cost incurred in undertaking advice to ensure that the level and scope of cover is adequate.*	
4.5 Condition 5 d	*I do not believe it would.*	
4.5 Condition 5 e	*I believe that the condition would not increase the level of barriers to entry that already exist.*	
4.5 Condition 5 f	I have concerns around the assessment and determination that a specific professional indemnity insurance policy is adequate for the financial advice service which a licenced provider will undertake. Professional Indemnity polices vary markedly in both the scope of coverage they offer and the way in which any claim for compensation will be dealt with by the insurer. 1. **Current professional liability programmes for financial advisers and financial advice services, may cover all activities undertaken, however policy**	

	exclusions negate coverage for risks which the professional indemnity insurance market sees as uninsurable. For example, most policies contain substantial Investments Exclusion clauses. These clauses exclude cover for the failure to appreciate or diminution in value of Investments. The policy subsequently endorses, or provides a write-back, for a limited cover to provide a legal costs benefit to the adviser, in order to defend and settle a claim. Therefore, there is little scope for the policy to settle a compensatory claim by retail client. 2. The standard condition requiring these professional indemnity policies to provide cover for all activities that the financial advice provider undertakes, relies heavily on the disclosure of financial advice provider. They must be certain that all activities that they, and their engaged professionals, undertake, have been accepted as covered by the insurer under the policy. Such activities that are not agreed can fall outside the scope of cover and the policy will not respond to any claim directly or indirectly from these activities and could go as far as voiding the policy. 3. All policies in the market will grant control of the claim, including how and when it is resolved, to the insurer. Accordingly, irrespective of the cover obtained, control of any third-party claim, is not with the financial advice provider.	

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

The purpose of condition 5 – Professional Indemnity Insurance, as outlined in the consultation document refers to ensuring retail clients can be compensated for financial loss.

A professional indemnity insurance contract is primarily an Indemnity policy for the adviser not a compensatory policy for a third party. My concern is that a retail client may see the mere existence of a policy as providing some false hope that their financial loss will be compensated, due to perceived breaches of professional duty by their financial advice service provider.

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.

Strictly Private and Confidential

To
The Financial Markets Authority

Attention
The Consultation Committee for Financial Advice Provider Licences
(by email to consultation@fma.govt.nz)

[redacted]

[redacted]

[redacted]

Date
7 August 2020

Financial Advice Provider Licence Conditions and Classes

1. Introduction

1.1 We act as legal adviser to Delta Insurance New Zealand Limited and Delta Property Insurance Limited (together, **Delta**).

1.2 Both companies will be seeking a Financial Advice Provider Licence (transitional and full) (**FAP Licence**) from the Financial Markets Authority (**FMA**).

1.3 This letter is to provide the FMA with:

(a) information regarding the unique positioning of Delta in the context of the Financial Markets Conduct Act 2013 as amended by the Financial Services Legislation Amendment Act 2019 (the **Amended FMCA**); and

(b) brief feedback regarding the conditions and classes of the FAP Licence from the perspective of Delta.

2. About Delta

2.1 Delta's business entails selling insurance products in New Zealand in its capacity as a Lloyd's coverholder (**Lloyd's Coverholder**).

2.2 Lloyd's is a specialist insurance market whereby syndicates of underwriters join together to share risk in insurance products (**Lloyd's Syndicates**). A copy of this letter has been provided to Scott Galloway, who is the Lloyd's General Representative in New Zealand and a Partner at Hazelton Law, specialising in insurance law.

2.3 As a Lloyd's Coverholder, Delta is subject to specific underwriting authority mandates with

the Lloyd's Syndicates, which regulate what Delta can and cannot offer in the New Zealand marketplace.

2.4 Delta is not a direct insurer, but rather is an agent selling "contracts of insurance" (within the meaning of section 6 of the Amended FMCA) on behalf of the Lloyd's Syndicates.

2.5 Please see www.deltainsurance.co.nz and www.lloyds.com for further details.

3. The provision of financial advice and Delta's application for a FAP Licence

3.1 Importantly, Delta is not in the business of providing financial advice to retail clients (who are often referred to in the industry as the "insured"). Rather, the insureds will rely on insurance brokers for this purpose (who are external to Delta and not part of its staff).

3.2 Delta still operates a very customer centric service model that includes direct liaison with the insureds, including by:

(a) attending meetings with the insured and their broker; and

(b) corresponding with the insured in connection with claim administration.

3.3 In the above scenarios, Delta foresees that there may be the 'potential' for it to provide financial advice by responding to queries from the insured as to whether:

(a) a particular claim would be covered under a policy offered by Delta; and

(b) whether certain costs that the insured will incur under a claim would be covered by the relevant policy.

3.4 Because of the:

(a) 'one and done' application of the Amended FMCA, whereby the provision of 'any' financial advice necessitates the holding of a FAP Licence; and

(b) possibility that financial advice on contracts of insurance may be provided by Delta (even if inadvertently),

Delta has made the decision to apply for the FAP Licence as a legal safeguard.

3.5 Delta also takes a highly rigorous approach to legislative and regulatory compliance, which includes holding monthly compliance meetings. The seeking of the FAP Licence is therefore in line with this approach that it takes to its operations.

4. Conditions and classes of the FAP Licence

4.1 The conditions and classes set out in the FMA's Consultation Paper, dated 17 June 2020, are tailored for operators that are in the business of providing financial advice, such as the brokers that work with the insureds.

4.2 The Amended FMCA also imposes substantial new legal duties and disclosure obligations on operators that provide financial advice. The Amended FMCA does not specifically contemplate operators such as Lloyd's Coverholders who do not routinely provide financial advice as part of their business but could potentially do so (even if peripherally and/or unintentionally).

4.3 Compliance with the Amended FMCA and FAP Licence conditions will impose a large compliance burden and cost on Delta, despite the possibility that it (along with some other Lloyd's Coverholders) may never actually provide any financial advice.

4.4 Whilst this is fully accepted by Delta, it considers that the FMA should be aware of the following when it is considering the conditions and classes for the FAP Licence:

(a) That Delta, as a Lloyd's Coverholder and as a matter of course, does not provide financial advice as part of its business.

(b) That it is the brokers who provide financial advice to their retail clients, being the persons who will ultimately enter into contracts of insurance with the Lloyd's Syndicates.

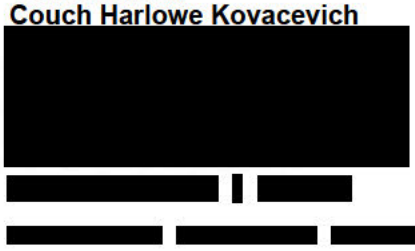
(c) The burden and cost of compliance with the Amended FMCA and FAP Licence conditions will be significant, and they will be the same for Lloyd's Coverholders as operators that are in the specific business of providing financial advice.

(d) Delta will be seeking FAP Licences primarily as a legal safeguard even though financial advice may never be provided by them.

4.5 If the FMA would like to engage direct with Delta or myself on any of the content contained in this letter, we would be more than happy to do so.

4.6 A positive working relationship with the FMA is desired and we want to be of assistance to the FMA if it ever requires further understanding of the unique role that Lloyd's Coverholders play in the market and the impact of this on their regulatory compliance.

Yours faithfully
Couch Harlowe Kovacevich



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7 August 2020

Financial Markets Authority
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PO Box 1179
Wellington 6140

By email: consultation@fma.govt.nz

Submission on Consultation Paper – Proposed standard conditions for financial advice provider full licences and classes of financial advice service

1 This is a submission by Dentons Kensington Swan on the Financial Markets Authority ('FMA') *Proposed standard conditions for financial advice provider full licences and classes of financial advice service* consultation paper dated 17 June 2020 ('Consultation Paper').

About Dentons Kensington Swan

2 Dentons Kensington Swan is one of New Zealand's premier law firms with a legal team comprising over 100 lawyers acting on government, commercial, and financial markets projects from our offices in Wellington and Auckland. We are part of Dentons, the world's largest law firm, with over 10,500 lawyers in 184 locations.

3 We have extensive experience in financial services law issues, with a specialist financial markets team acting for established major players as well as niche providers and new entrants to the market. We assist a number of financial institutions with their regulatory obligations and conduct and culture initiatives, as well as a range of financial advice businesses involved in the distribution of products and services provided by financial institutions, including brokers, financial advice providers, insurance and mortgage advisers and other financial market participants.

General comments

4 Our submission on the Consultation Paper is **attached** as a schedule to this letter. We have only included comments or recommendations in response to consultation questions where we believe there is a legal or regulatory issue to address or consider further, and have not provided feedback on the questions that are aimed at industry participants.

5 We generally support the FMA's proposed standard conditions and classes of financial advice service. However, we believe some adjustments are required to ensure a more appropriate balance is struck to ensure that the obligations placed upon licensees are not unduly burdensome and to make the conditions more workable in practice. We anticipate some of the issues identified in our submission will be addressed in the FMA's Financial Advice Provider

Licensing Application Guide, but appreciate the opportunity to provide input now while that Guide is being developed.

6 In addition, we recommend the FMA consider engaging with the industry in relation to the potential inclusion of a fair conduct licence condition. Such a condition may obviate any need to impose additional conduct obligations on licensed financial advice providers, as contemplated under the Financial Markets (Conduct of Institutions) Amendment Bill (once eventually passed). Where licensed financial advice providers are concerned, we believe this would be a more efficient and appropriate response to concerns over conduct than requiring that group of providers to comply with bank and insurer fair conduct programmes in relation to a subset of their activities.

Further information

7 We are happy to discuss any aspect of our feedback on the Consultation Paper. Thank you for the opportunity to submit.

Yours faithfully

[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: 10 (including cover letter)

Name of submitter: [redacted]

Company or entity: Dentons Kensington Swan

Organisation type: Lawyers

Contact name (if different):

Contact email and phone: [redacted]

Question Number	Question and Comment	Recommendation
Record keeping		
4.1(a)	*Do you agree or disagree with the proposed standard condition? Please provide your reasons.* We support the proposed record keeping standard condition in principle, and acknowledge the importance of ensuring that each financial advice provider ('**FAP**'), including any person engaged by a FAP, maintains adequate records in relation to their financial advice service. However, we consider this condition, as drafted, to be unduly ambiguous as to what '**adequate**' means in this context. Further guidance regarding the records which will, in practice, actually be required, and how FAPs can best electronically automate record keeping to meet the FMA's regulatory expectations, would be useful. Examples include: • **Unidentifiable clients** – Confirmation of how the FMA expects a FAP to meet the requirement to 'adequately' record interactions in circumstances where the client is not identifiable, as is often the case with online digital tools. If the identity of the client is not obtained by the FAP, then a record of the regulated financial advice given by these tools cannot be linked to an identifiable individual. In our view, it should be sufficient for a FAP to be able to keep records of the regulated financial advice that a digital advice tool would hypothetically produce at any given point in time, based on the various inputs. Requiring the client's identifying particulars to be obtained is likely to reduce access to financial advice, either from clients being more	We recommend that the FMA provides greater clarity to the industry as to its expectations with regard to these issues, and consults with the industry before those expectations are formalised. To avoid including undue prescription in the explanatory notes to the standard condition, we suggest consulting on further guidance in the FMA's FAP Licensing Application Guide. For example, greater clarity would be provided if the FMA specified that FAPs are only required to maintain adequate records in relation to a financial advice service where regulated financial advice is given to an identifiable client.

Question Number	Question and Comment	Recommendation
	reluctant to enter their details, or the tools simply being withdrawn by the provider due to a disproportionate regulatory burden being imposed. Recording the relevant IP address from which the tool was accessed in cases where the client is not identifiable, which is another option we have considered, seems inherently problematic and unreliable, and unlikely to enhance the quality of a FAP's records even if it were a viable option. • **No financial advice given** – Confirmation of the extent (if at all) to which the FMA expects a FAP to keep records of interactions where no financial advice ends up being provided. For example, a client might commence an advice interaction but then run out of time before the interaction is able to progress to a meaningful point. • **Level of detail required** – An outline of the level of detail the FMA expects a FAP to keep to evidence compliance with the financial advice duties. Is it a record of the full advice provided and supporting information, or simply the fact that particular advice was provided to a client at a particular time? While we do not want to see undue prescription in the explanatory notes for this condition, our view is that more guidance is required to ensure FAPs can understand the FMA's regulatory expectations in respect of this standard condition. This will also help to ensure consistency of approach across the industry.	

Question Number	Question and Comment	Recommendation
Internal complaints process		
4.2(a)	*Do you agree or disagree with the proposed standard condition? Please provide your reasons.* We support the proposed internal complaints process standard condition in the form presented. While it will likely result in FAPs recording a greater number of complaints than might otherwise have been the case without the FMA prescribing the meaning of 'complaint' as broadly as it has done so, we do not consider this to be a significant issue. In any case, such records can be used by a FAP to identify and address potential systemic issues in particular areas of the FAP's business.	None.
Regulatory returns		
4.3(a)	*Do you agree or disagree with the proposed standard condition? Please provide your reasons.* We support the proposed standard condition for regulatory returns. However, the level of detail required to be reported under this standard condition, which is to be set out in the Regulatory Return Framework and Methodology at a later date, will determine whether it will be workable in practice and not place an unnecessary compliance burden on FAPs. The key will be to ensure that the scope of information to be reported to the FMA is kept tight, and does not result in a broad information gathering exercise involving data that is not relevant to FAP compliance.	We have no recommendations in respect of the drafting of the condition. However, we recommend that the FMA consults with the industry prior to publishing its FAP Regulatory Return Framework and Methodology, and ensures that the scope of information to be provided is limited to information that is actually required to monitor FAPs' ongoing capability and does not impose an undue information gathering burden on FAPs.

Question Number	Question and Comment	Recommendation
Outsourcing		
4.4(a)	*Do you agree or disagree with the proposed standard condition? Please provide your reasons.* We support the outsourcing standard condition as presented. We encourage the FMA to take into account all submissions from the industry regarding the practical difficulties that may arise in respect of the outsourcing condition, ensuring that this condition is workable and can be complied with in practice. It would be helpful if the FMA: • Identified with greater specificity which arrangements are intended to covered by this condition; and • in doing so, confirmed that interposed persons, authorised bodies, and financial advisers engaged by a FAP are not caught by this standard condition.	We recommend the FMA provides greater detail regarding which arrangements are intended to be covered under this condition. This could be addressed through the FAP Licensing Application Guide.
Professional Indemnity		
4.5(a)	*Do you agree or disagree with the proposed standard condition? Please provide your reasons.* We have concerns with the structure of the professional indemnity insurance ('**PII**') standard condition, and believe it may create an undue barrier to entry for new entrants to the market. As drafted, any FAP that demonstrates that it is unable to obtain appropriate cover, or have other valid reasons for not having cover, will have the PII condition waived but will then be	We recommend that the FMA takes a case-by-case approach to determining whether a FAP is required to have PII cover, consistent with the approach that was taken to other FMCA licensing. The licensing process should be sufficiently robust for the FMA to determine whether or not a condition requiring PII cover is necessary, in light of the FAP profile or proposition as presented.

Question Number	Question and Comment	Recommendation
	required to disclose to retail clients that the FAP does not have professional indemnity cover. This is a departure from the process for other licences under the Financial Markets Conduct Act 2013 ('**FMCA**'), such as managed investment scheme managers, discretionary investment management service providers, and derivatives issuers, under which applicants were able to explain why the applicant did not have PII cover (or why the applicant had decided that a certain level of cover was appropriate). Under that approach, the FMA could still impose a condition requiring insurance (or disclosure as to the absence of PII) if it considered it to be appropriate on a case-by-case basis. In our view, this approach is more appropriate and flexible than the FMA's proposed approach under the PII condition. For example, mandatory disclosures regarding PII cover not being held by a FAP may confuse consumers and place undue emphasis on that aspect, given the range of reasons for FAPs not holding cover. Some FAPs may not have cover because it is simply not available or is not available on acceptable commercial terms (particularly when the explanatory note to the standard condition states that PII should cover past activities, 'where necessary', which is itself ambiguous). Other FAPs may not have cover because they are comfortable that their financial resources are sufficient to meet any claims made and can self-insure, in light of the scope of their business. This may make it difficult to have consistency of disclosures across the industry. In addition, consumers may find it strange that FAPs disclose the fact that they do not have PII cover, when other FMCA licensees, such as DIMS providers, do not. This differing	

Question Number	Question and Comment	Recommendation
	approach will be particularly obvious when the FAP already holds a different category of FMCA licence which does not require PII cover disclosures.	
4.5(e)	*Does this proposed standard condition create a barrier to enter the market? If so, please explain why this is the case.* We believe that this proposed standard condition will be a barrier to entry, both in terms of cost and the disadvantages associated with any requirement to disclose that PII cover is not held, as outlined above. We consider that our proposed approach will avoid making PII a default requirement that is going to materially disadvantage some FAPs from participating on an even footing in the essential service of providing financial advice.	Please see our above answer to question 4.5(a).
Business continuity and technology systems		
4.6(a)	*Do you agree or disagree with the proposed standard condition? Please provide your reasons.* We support the business continuity standard condition as proposed. However, we believe that further clarification around the FMA's expectations (if any) in respect of cloud storage would be helpful, given its widespread use for storage of information. In particular, clarity regarding the circumstances that must exist for the FMA to take the view that it is a cybersecurity risk for a FAP to store information on the cloud would be useful. For example, would the FMA consider a FAP's use of a verified cloud storage company as 'secure and reliable' with no risk to	With the widespread use of cloud storage in the industry, we recommend the FMA clarify its expectations as noted (such as around cloud storage). This could be done through the licensing guide or a separate guidance note.

Question Number	Question and Comment	Recommendation
	cybersecurity, if the data was being stored outside of New Zealand?	
Ongoing capability		
4.7(a)	We support the ongoing condition as presented, subject to the requirements of the FAP Licensing Application Guide.	None.
FAP 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.* We agree with the approach taken by the FMA to classifying FAPs in accordance with a FAP's approach to structuring its business, and how it intends to provide regulated financial advice. This risk-based approach allows the licence application process to be right-sized and streamlined based on the size and complexity of each FAP's advice proposition. Our only concern with the class system is the naming conventions used. While we understand that naming will primarily be a background administrative matter between a FAP and the FMA (and that the key consideration from the consumer's perspective is that the FAP is licensed), the issue is that perception of A, B, and C does matter from a consumer's perspective. For example, consumers may intuitively assume that a Class A licence is 'better' than a Class C licence, and may question why a FAP with a Class C licence was unable to obtain a Class A licence.	We see class A, B and C licences as potentially distracting for consumers. We recommend that the FMA use descriptive terms for the three categories of licence, replacing the class concept. For example, options include: • Single adviser licence. • Multi-adviser licence. • Comprehensive licence.

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

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Date: 7 August 2020 Number of pages: 1

Name of submitter: [redacted]

Company or entity: DLA Piper

Organisation type: Law Firm (Legal)

Contact name (if different):

Contact email and phone: [redacted]

Question number	Comment	Recommendation
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(f)(Record keeping); 4.2(f) (Internal Complaints process); 4.3(f)(Regulatory returns); 4.5(f) Professional indemnity insurance, 4.8(f) (Notification of material changes) .	While the Conditions refer to the Financial Advice Provider's (FAP's) 'financial advice service', the Explanatory Notes state that the conditions only apply where the FAP is providing advice to retail clients. Other Conditions, relating to Outsourcing, (but only in respect of the need to meet licensee obligations), Business Continuity and Technology Systems, and Ongoing Eligibility do not appear to be limited to retail clients, as there is no such reference in either the Conditions or the Explanatory Notes. As you are aware, the definition of 'financial advice service' covers a service provided to both retail and wholesale clients. Based on the drafting of these Conditions, where a FAP provides advice to both retail and wholesale clients they could be required to comply with the Conditions in all cases, even though the licence is only held in respect of retail advice. As discussed with the Financial Markets Authority, questions have been raised with clients seeking clarity. We understand it is not the intention for such Conditions to apply to wholesale clients.	Our recommendation is that the wording of the Conditions rather than just the Explanatory Notes is clarified.

Feedback summary – *if you wish to highlight anything in particular.*
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 advice provider full licences and classes of financial adviser service

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Date: 7 AUGUST 2020 Number of pages: 4

Name of submitter: [redacted]

Company or entity: FAIRHAVEN WEALTH

Organisation type: FINANCIAL ADVICE (PLANNING)

Contact name (if different):

Contact email and phone: [redacted]

Question number	Comment	Recommendation
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(f) – Condition 1 – Record keeping – Do you have any other comments on the proposed condition or how it is drafted?	• The current wording of the condition ("**You** must create… and maintain… records") seems to preclude someone else from maintaining records on behalf of the licensee, although the explanatory note suggests that this is acceptable (ie, "Records may be kept by another person…"). • If an explanatory note or similar is going to be provided, I believe that it would be a good idea to provide some guidance about how this requirement to create and maintain records fits with other privacy legislation, which will have a heavy overlap with this condition. If there is an obligation to provide records to the FMA, presumably this would supersede any privacy legislation that would ordinarily prohibit sharing of personal information, but it would be good for this to be made clear – and if this is problematic, perhaps this condition might also require licensees to get appropriate permission from clients to do so.	• Reword the first sentence of the condition. • Include some guidance about the overlap between this licence condition requiring record keeping and other privacy obligations.
4.4(f) – Condition 4 – Outsourcing	I believe the condition requires too much of licensees. The standard should be whether the licensee takes reasonable steps.	Reword the condition so that the requirement is to take reasonable steps. Ie, "you must take reasonable steps to ensure that your arrangements enable you to meet your market service licensee obligations…"

4.5(a) – Condition 5 – PI insurance – Do you agree or disagree with the proposed standard condition? Please provide your reasons.	I am ambivalent about the condition requiring PI insurance, but I lean towards disagreeing with a wholesale requirement for all licensees to have professional indemnity insurance. My sense is that this type of requirement sounds like an unarguably good thing. However, I think there is an extremely high risk of significant second- or third-order effects that will be negative to the industry and ultimately Kiwis over the long-run. Requiring professional indemnity insurance as a licence condition is a significant change. My hope and expectation is that the FMA will give very deep consideration to including this condition, because I believe the consequences will be enormous over time. In fact, I believe the magnitude of this change is so high that this requirement should be imposed via legislation rather than a licence condition. At minimum, it should be the subject of dedicated consultation, not consultation as part of a broader range of licence conditions.	To give serious consideration to removing the requirement for licensees to have PI insurance, even as an interim measure, to flag for review at a later date when this can be given the deep consideration it requires.
4.5(a) – Do you currently hold professional indemnity insurance covering financial advice service activities?	Yes, I have PI insurance for these activities.	
4.5(e) – Does this proposed standard condition create a barrier to enter the market? If so, please explain why this is the case.	As it stands, this may create a barrier to entry for some existing advice businesses/prospective licensees. A BDM recently mentioned to me that “I have met a few who are struggling to get [professional indemnity insurance]. It's apparently getting harder to get. If your business model is outside the norm then it can be tricky.” Over time, I am quite certain that requiring PI insurance for all licensees will create barriers to entry. The cost of PI insurance is likely to increase. It is also likely that PI insurers will become more prescriptive about what they require of those they insure. I believe that this will result in higher barriers to entry for business models that are inherently less profitable than other models, even if they might involve lower risk. There will be very little incentive for PI insurers to distinguish these business models from similar business models that are inherently more risky. A personal example is that my business model is advice-	

	only, and does not involve implementing advice on behalf of clients. My argument is that this involves less risk for clients (and, by extension, PI insurers) because it removes risks associated with me touching client money. However, I am no under illusion that I will ever get lower PI insurance premiums, now or in the future because there is very little incentive to underwrite a business model like mine in a different manner. My understanding is that one of the major PI insurers has recently announced its intention to exit the market of covering financial advice. Eventually, the market may not have enough insurers for the market to be competitive, resulting in significantly higher premiums than would otherwise be the case (*if* PI insurance is available in the first place).	
4.5(f) – Do you have any other comments on the proposed condition or how it is drafted?	I have real concerns that a requirement of this nature will stifle innovation in the financial advice space. Although on the face of it, the requirement to have PI insurance is laudable, this effect alone could make clients worse off and result in stagnation in the financial advice industry. There is a significant the risk the advice sector will stop evolving and developing in the way it might otherwise be able to evolve and develop. In the words of the BDM I mentioned previously: "If your business model is outside the norm then it can be tricky." This is already the case. It is quite possible that the dominant models of providing advice will effectively be set in stone, even if other business and service models might have evolved over time. (On this note, I think the current status quo is not ideal, since a huge proportion of Kiwis are underserviced by the financial advice industry. Innovation is necessary and should not be unnecessarily stifled.) With new business models and approaches, I would not be surprised if PI insurers become very risk averse with underwriting these businesses, and charge higher premiums to make up for this risk – if they accept the risk at all. I will acknowledge that a lot of advisers already have PI insurance, and this is in part a function of requirements of agency agreements. However, these are advisers that operate in a more traditional fashion.	

	They might not be typical of innovative business models.	
4.5(f) – Do you have any other comments on the proposed condition or how it is drafted?	By requiring that all licensees have PI insurance, you are putting PI insurers into a position of being a *de facto* regulator. As well as meeting regulatory requirements, my prediction is that licensees will start to see an increasing number of conditions arise from their PI policies. This will create an additional overlay of compliance and complexity. These conditions are also likely to be more arbitrary than regulations implemented by legislation through elected representatives and through regulators that are accountable to these representatives.	
4.6(f) – Condition 6 – Business continuity and technology systems	In the explanatory note, it says "Your plan should consider the loss of... staff". However, the condition and the rest of the explanatory note focuses on technological issues. If there is going to be a condition of this nature, I think more consideration should be given to business continuity issues that are not technology-related – for example, what would happen if a key person in the business died or became incapacitated.	This condition should talk more about business continuity issues relating to non-technology issues, particularly staff.

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

My major concern relates to adding a requirement for professional indemnity insurance as a licence condition. This is a significant change. My hope and expectation is that the FMA will give very deep consideration to including this condition, because I believe the consequences will be enormous over time. Because of the potential implications on the industry and Kiwis in general (especially after factoring in the second- and third-order effects), I personally believe this is a change that would be more appropriately implemented via legislation than via a licence condition. At minimum, this should be considered as a discrete matter and not one of the many other matters this consultation process.

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