JUNE 2023

Submissions report: Proposed guidance on CoFI intermediated distribution

Collation of written feedback received as part of the FMA's public consultation on the proposed CoFI (Conduct of Financial Institutions) guidance note on intermediated distribution

FMA
FINANCIAL MARKETS AUTHORITY
TE MANA TĀTAI HOKOHOKO

Introduction

We would like to thank all submitters for their feedback on our consultation on the proposed CoFI (Conduct of Financial Institutions) guidance note on intermediated distribution. We received written submissions from 16 stakeholders. We appreciate the points raised and the effort put into each submission.

This document contains a collation of the written submissions. We have withheld some information in accordance with the Official Information Act 1982 and the Privacy Act 2020.

We have also published a summary report setting out the key themes raised in the submissions and our response.

Submissions

1. AIA
2. BNZ
3. Dentons Kensington Swan
4. Financial Advice NZ
5. Financial Services Council NZ
6. Financial Services Federation
7. Foresight Financial Planning
8. Heartland Bank
9. Insurance Brokers Association of New Zealand
10. Insurance Council of New Zealand
11. New Zealand Banking Association
12. New Zealand Banking Association addendum
13. New Zealand Home Loan Company
14. Securities Industry Association
15. The Little Car Company
16. Wealthpoint

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14 April 2023

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By email: consultation@fma.govt.nz
Copy to: [redacted]

CONSULTATION PAPER - PROPOSED COFI GUIDANCE NOTE ON INTERMEDIATED DISTRIBUTION

This submission is made on behalf of AIA New Zealand Limited and its related entities (together **AIA NZ**). It relates to the Financial Markets Authority – Te Mana Tātai Hokohoko (**FMA**) February 2023 Consultation paper on the proposed CoFI guidance note on intermediated distribution (**Draft Guidance**) under the new conduct of financial institutions regime (**CoFI**).

About AIA NZ

AIA NZ is a member of the AIA Group, which comprises the largest independent publicly listed pan-Asian life insurance group. AIA Group has a presence in 18 markets in Asia-Pacific and is listed on the Main Board of The Stock Exchange of Hong Kong. It is a market leader in the Asia-Pacific region (excluding Japan) based on life insurance premiums and holds leading positions across the majority of its markets.

Established in New Zealand in 1981, AIA NZ is New Zealand's largest life insurer and has been in business in New Zealand for over 40 years. AIA NZ's vision is to champion New Zealand to be the healthiest and best protected nation in the world.

AIA NZ offers a range of life and health insurance products that meet the needs of over 800,000 New Zealanders. AIA NZ is committed to an operating philosophy of *Doing the Right Thing, in the Right Way, with the Right People*.

AIA NZ is a prominent member of the Financial Services Council (**FSC**).

Key submission points

AIA NZ continues to broadly support the conduct regime that has been formalised under the Financial Markets (Conduct of Institutions) Amendment Act 2022 (**CoFI Act**). We wish to acknowledge and thank the FMA for its ongoing engagement with the industry in developing the CoFI Act and its supporting regulations and guidance.

We consider the Draft Guidance strikes the appropriate balance of being risk and principles based, allowing sufficient flexibility for financial institutions (**FIs**) to implement the Draft Guidance in a manner that best suits their organisational structure and business model.

Our full submission is set out in the attached feedback form. Our key points are summarised below:

- AIA NZ believes that the Draft Guidance is helpful for developing an FI's fair conduct programme (**FCP**).
- We appreciate the additional context provided by way of examples in the Draft Guidance as these are helpful to clarify the FMA's expectations. However, we consider that larger FIs would benefit from examples that address more complex issues, particularly in instances involving complex arrangements between multiple intermediated distribution channels.
- Additional guidance on appropriate metrics and data when reviewing distribution methods would be beneficial, including examples of lead indicators. Clarification on what is meant by distribution methods would also be helpful.
- While there are intermediary relationships where shared responsibility may be appropriate, this should be at the FIs discretion, taking a risk-based and proportionate approach.
- Attestations may be suitable as one of many risk-based compliance tools for monitoring licensed FAP or corporate intermediaries (with internal compliance functions). However, we are concerned that the section on attestations could result in an unintended consequence of FIs using attestations as the sole means of monitoring intermediated distribution channels, even where risk profiles mean closer scrutiny is warranted.

AIA NZ also contributed to and fully supports the submission from the FSC.

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 FMA as it considers the next steps.

Yours faithfully

[redacted]

Feedback form

Consultation paper: Proposed CoFI guidance note on intermediated distribution

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at consultation@fma.govt.nz with 'Feedback: Proposed CoFI guidance note on intermediated distribution: [your organisation's name]' in the subject line. Thank you. **Submissions close on 14 April 2023.**

Date:	**14 April 2023**	Number of pages: **6**
Name of submitter:	[redacted]	
Company or entity:	**AIA New Zealand Limited**	
Organisation type:	**Life Insurer**	
Contact email and phone:	[redacted]	

Question number	Response
1.	Yes, we believe that the Draft Guidance is helpful for developing an FI's fair conduct programme (**FCP**). We agree that the non-prescriptive approach taken in the Draft Guidance will allow FIs to develop distribution methods that are fit for purpose whilst being consistent with the fair conduct principle. We support the proportional and risk-based approach taken throughout the Draft Guidance and agree that this is the best way to ensure that customers are treated fairly across all intermediated distribution channels. We appreciate the substantial number of examples provided in the guidance as this helps to clarify the FMA's expectations. The examples of what is **not** expected are particularly helpful, further such examples would be appreciated.
2.	We think that the Draft Guidance could be improved by making the following amendments: ***Existing products*** In our view, the Draft Guidance focuses on the development process for new products and does not sufficiently explain expectations with regards to an FI's existing and legacy products. Life insurers generally launch new products infrequently but have large existing and legacy books to maintain. For example, legacy insurance products could be decades old, were designed during a very different regulatory landscape and insurers are constrained in their ability to adjust legacy product wordings and how they operate. We therefore propose that further guidance is directed at distribution of existing and legacy products.

	Examples While we support the range of examples included, we think that FIs would benefit from examples that address wholesale distribution methods. For example, in the case of life insurance under group schemes the corporate entity or employer is the policyholder, and there is no direct contractual agreement between the insurer and the insured life (i.e., employees) and, at times, little data is held by the life insurer on the group scheme participant employees. ***Reviewing distribution methods*** Further clarification and additional guidance is needed on appropriate metrics and data when reviewing distribution methods. In addition, it would be beneficial if the Draft Guidance includes example lead indicators.
3.	AIA NZ considers there is a risk that the Draft Guidance could create unintended consequences for financial institutions in the following areas: ***Shared responsibility*** AIA NZ considers that there may be intermediary relationships where shared responsibility will not be appropriate, for example, where distribution arrangements are made with an intermediary that is not a licensed financial advice provider (**FAP**) and the said intermediary only provides for direct digital distribution on a no-advice basis or provides a white labelled referral pathway only. Where the FI needs to remediate customers in order to address an error of the FI it would be appropriate for the FI to lead the remediation approach itself. Decisions on apportioning responsibility between an FI and intermediary should be based on proportionality, the intermediary's risk profile and ultimately what is best for the customer. The section on shared responsibility could be interpreted by FIs as a requirement that applies to all distribution methods, which could place a significant burden on smaller intermediaries (in particular) or intermediaries who are not involved in the provision of financial advice and that are less able to shoulder the burden/cost of any additional steps or actions required to ensure fair outcomes for customers. In addition, the FMA should clarify its expectations of managing shared responsibility where an insurer receives a complaint from a customer about their adviser. While we agree that all intermediaries play a key part in the fair treatment of customers, we think that describing this as "shared responsibility" mischaracterises the practical relationships between the FI and intermediary, particularly those that are licensed FAPs. AIA NZ considers that FIs carry the ultimate responsibility for customer outcomes, with FAPs and their advisers required to prioritise customer interests. Adding "shared responsibility" may cause confusion and consequently add undue administrative and compliance burden on a FAP.

	AIA NZ also considers there are inherent privacy risks associated with "shared responsibility" in that the FI and the intermediary may not have access to the same information nor have appropriate consents to pass such information on. There are instances where a customer may submit a claim directly to AIA NZ and may not want their adviser to have knowledge of the claim. Likewise, there will likely be information which an adviser or intermediary has access to which is not passed on to the FI. Lastly, for FIs to give effect to "shared responsibility", agreements with intermediaries will likely need to be reviewed and potentially renegotiated. Many intermediary agreements have already been renegotiated in preparation for the FAP regime, so further unnecessary changes should be avoided where possible. ***Attestations*** AIA NZ is concerned that including a section on attestations sends an unintended message to FIs that they are an FMA expectation and are in itself a reliable tool in monitoring intermediated distribution. For example, where it is not expected to submit supporting evidence as part of the attestation it will have little value. On the other hand, it would be impractical and an undue burden on smaller intermediaries to submit supporting evidence as part of the attestation. In addition, attestation with supporting evidence would be burdensome on FIs who would have to implement additional controls and processes in order to validate the evidence submitted. We consider this time and resource would be better spent on developing proportionate and risk-based monitoring processes, using lead and lag indicators, as a way to effectively monitor intermediaries in real time.We understand the purpose of the Draft Guidance is to encourage FIs to review their distribution methods (using a risk-based and proportionate approach) rather than review individual distributors, and to avoid a 'tick box compliance exercise'. We therefore consider that references to attestations should be removed from the Draft Guidance as they potentially create unintended consequences. If the section on attestations remains, then care needs to be taken to ensure attestations provide meaningful assurance and avoid becoming a tick-box exercise. While we agree that an industry approach to attestations would reduce some of the burden on intermediaries dealing with multiple versions of attestations from different FIs, we have concerns that such an approach would prove to be unreliable as not all intermediaries will respond to attestations with the requisite care and due diligence than would be undertaken by larger, more sophisticated FAPs. As mentioned above, we further expect that attestations may still be overly burdensome for smaller intermediaries. Attestations could have a place in compliance processes, but other methods may be more effective (for both parties) in monitoring smaller intermediaries. We suggest, as an alternative approach, that it may be more appropriate for FAP intermediaries to provide an attestation via their regulatory return instead of an annual industry-led form of attestation.

4.	Similar to our points on shared responsibility above, we do not consider that remediation will necessarily require a collaborative approach. In our experience customers typically expect FIs to front up when an issue occurs, rather than use intermediaries as a conduit. FIs typically have more resources and capability to undertake remedial actions in a timely manner, which could be delayed if a full collaborative approach was required. In any event, the approach taken to remediation should be determined on a case by case basis having regard to the nature and scale of the issue, the potential customer detriment, and the time it will take to compensate the customer.
5.	See our comments on question 2 above.
6.	AIA NZ considers that the examples are useful and could be expanded as explained above.
7.	We believe numbering of sections and paragraphs in the guidance would be useful for ease of reference for setting intermediary contractual arrangements and ongoing correspondence.
8.	Yes, we agree that the overview section is useful. We consider that this section should include more of the key points from the Draft Guidance rather than simply repeating the relevant parts of the CoFI Act.
9.	We note many standard form distribution agreements outline an intermediary's obligations. There may be challenges in reviewing these agreements so soon after the extensive contract renegotiations undertaken to prepare for the FAP regime. It would be helpful if the FMA clarified its expectations regarding whether the fair conduct principles should be further incorporated into these agreements.
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.	

Regulatory Affairs
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14 April 2023

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Dear Sir or Madam

Consultation: Proposed CoFi guidance note on intermediated distribution

Bank of New Zealand (BNZ) appreciates the opportunity to comment on the proposed guidance (Guidance) note that outlines the Financial Market Authority (FMA)'s expectations when financial institutions are distributing products and services through intermediaries.

In general, BNZ considers the Guidance is a helpful tool for financial institutions that engage intermediaries. In particular, the examples and "useful questions" sections bring compliance with the obligations regarding intermediaries under the Financial Markets (Conduct of Institutions) Amendment Act 2022 (CoFi) to life and will prompt good discussions about how financial institutions should approach their compliance. However, BNZ notes the potential for disparities in the remuneration structures for people providing product recommendations and services under an intermediary model and those providing those services under a proprietary channel as a result of incentive-based remuneration guidance. BNZ submits that officials should act to ensure that these potential disparities are removed over time, to ensure that positive customer outcomes are achieved for customers regardless of the channel that they choose when fulfilling a product or service need.

We set out our feedback to each of the specific questions below, but these are largely limited to observations about the formatting and level of repetition in the Guidance which we believe could be refined.

1. Do you think this guidance will help financial institutions develop their fair conduct programmes in relation to intermediated distribution methods? Please provide reasons for your answer.

Yes. The Guidance clearly sets out what the three key relevant obligations regarding intermediaries under CoFi are. It then helpfully elaborates on the FMA's expectations for financial institutions in respect of those providing real examples and good "useful questions" for a financial institution to consider.

BNZ appreciates that the Guidance allows for significant flexibility and a proportionate approach in terms of how a financial institution implements CoFi across different types of intermediaries and agents. For example, BNZ requires that all its mortgage brokers are registered with a Financial Advice Provider, as this comes with obligations that give us a level of comfort about the standard of their services. As a result, we agree that an intermediary that holds a FAP licence will pose a reduced level of risk, that the institution’s distribution method will not meet the fair conduct principle.

2. Are there any aspects of the guidance you think are unclear or need to be improved? If so, please explain what these are and provide your suggested wording or approach to address these.

We don't think there are any aspects of the Guidance that are unclear. However, we do consider that there is a lot of repetition that may not be necessary. For example, after the Overview, then the Introduction, there's a further "brief overview" on pages 7 & 8 that doesn't add too much to the Guidance as a whole. As a result, a reader does not get to the substance of the Guidance itself until page 9. We consider some refinement of the front end of the Guidance may be helpful. Some numbering of the various sections would be useful also to assist a financial institution’s ability to discuss the Guidance.

[redacted]

3. Are there any aspects of the guidance you think may have unintended consequences?

While we support the flexibility the Guidance allows, we do consider it is likely to lead to inconsistencies with how intermediaries are treated by the financial institutions that engage them. For instance, some institutions may determine that mortgage brokers operating under a FAP pose a reduced level of risk, and therefore require only a brief mention within the financial institution's Fair Conduct Programme (FCP). Whereas others may spend a lot of time, cost and resource embedding processes to cater for mortgage brokers within their FCP. Others may land somewhere in the middle. This could result in frustrating and confusing experience for the underlying intermediary and in turn the end customer. We hope that this risk can be managed by robust oversight by the FMA providing tailored feedback and guidance to financial institutions individually as well as via this Guidance.

4. Are there any aspects of the guidance you do not agree with, or you think should not be included? Please give reasons for your view.

No.

5. Are there any additional areas you consider the guidance should address? If so, please provide details.

We consider it may be helpful for the FMA to provide examples of the evidence it would expect to give comfort that a financial institution is satisfactorily complying with CoFi in relation to intermediated distribution. For example, in addition to a financial institution's FCP, does the FMA expect to see the risk management assessments that financial institutions have conducted on their intermediaries and QA checks of intermediaries' files etc?

6.Are the examples useful? Are there any examples that you would like to see changed, clarified, or omitted? Are there any additional examples that should be included? If so, please provide your suggested wording.

As noted above, we consider the examples very helpful. Given the volume of customers now using mortgage brokers, more examples of mortgage brokers throughout the guidance would be useful and reduce assumptions.

7. Do you have any comments on the length, format, or presentation of the guidance? If so, please provide details.

Please refer to our response in relation to question 2.

8. Is the 'Overview' section summarising the guidance on a page useful? Are there any changes you would suggest to this?

Given the Guidance is not particularly long BNZ does not see any need for the "overview" section. In addition, as sophisticated financial institutions are the intended audience of the Guidance, it is not clear that a one-page summary is necessary. Financial institutions should have the resources to read and analyse the detail contained within the Guidance. However, BNZ does not have any concerns with including it.

9. Do you have any other comments on the guidance?

No

All enquiries on this submission may be directed to [redacted]

Yours sincerely

[redacted]

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13 April 2023

Submission on Consultation Paper – Proposed CoFI guidance note on intermediated distribution

1 This is a submission by Dentons Kensington Swan on the Financial Markets Authority's ('**FMA**') draft *CoFI Guidance Note: Intermediated Distribution* ('**Guidance Note**') dated February 2023. The Guidance Note relates to the new conduct regime introduced by the Financial Markets (Conduct of Institutions) Amendment Act 2022 ('**CoFI**').

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 more than 12,000 lawyers in over 200 locations.

3 We have extensive experience advising a range of banks, insurers, non-bank deposit takers, financial advice providers and financial service providers, all of which will be affected by the proposals set out in the Guidance Note.

General comments

4 The CoFI regime is new for the FMA and financial institutions. 'Best practice' expectations will necessarily evolve as both the regulator and licensed participants develop a fuller grasp on what the overarching concept of 'fair conduct' means for day-to-day operations. There will be a need for the Guidance Note to be updated regularly – it already contains a mix of high level information and more reactive feedback, such as that regarding monitoring and oversight 'surveillance'. The initial guidance provided will need to be reviewed and modified as the CoFI regime evolves and practice develops.

5 Overall, we are pleased to see the Guidance Note providing extensive leeway for financial institutions to design distribution methods tailored to the particular institution's business and fair conduct programme – essentially the FMA is confirming that it is up to each financial institution to undertake its own risk-based and outcomes-focused assessment in deciding how best to comply. However, the flexibility contained in the Guidance Note is potentially so broad as to provide little in the way of practical assistance or safe harbour confidence in setting reasonable expectations for compliance.

6 Providing stakeholders with greater certainty as to how far they need to go (and where they need not necessarily go) should be a key objective of the Guidance Note. Including additional details in the Guidance Note regarding expectations and more extensive well-considered examples covering a range of scenarios would assist financial institutions to prepare for and comply with the new CoFI regime and enhance the usefulness of the Guidance Note.

7 In particular, we would like to see more emphasis placed on the confidence financial institutions should have when distributing through other licensed financial institutions and financial advice providers. Doing so would be highly beneficial in countering the risk of an unnecessary level of compliance burden being imposed on both ends of the distribution chain.

8 Thank you for the opportunity to submit. We would welcome the opportunity to discuss any of the points we have raised.

Yours faithfully

Consultation Questions

1. **Do you think this Guidance Note will help financial institutions develop their fair conduct programmes in relation to intermediated distribution methods?**

   Given the infancy of the CoFI regime, we are highly supportive of the principles-based nature and outcomes focus of the Guidance Note. We agree that it would not be appropriate for the Guidance Note to be prescriptive in what financial institutions must do to comply with CoFI. Confirming that financial institutions have freedom to set their own parameters tailored to their particular distribution dynamics is a good outcome of the Guidance Note.

   In our view, however, the Guidance Note does not provide enough detail to meaningfully expand on what is already outlined in legislation – CoFI as well as existing fair dealing requirements under the Financial Markets Conduct Act 2013. The Guidance Note largely acts as a prompt for financial institutions to turn their minds to various aspects of their intermediated distribution processes and options available, without purporting to function as a form of tick box-checklist to work through. To that extent the Guidance Note is helpful, but the equivocal nature of some of the suggested approaches leaves financial institutions exposed to being second-guessed by the FMA, which may prompt undue caution and the development of fair conduct programmes that incorporate an unnecessary level of compliance burden.

   Taking a 'one size fits all' approach means the Guidance Note runs the risk of being too flexible to be of much practical use. Does the FMA intend to leave the development of more specific approaches to its supervisory or regulatory response arms, using feedback letters and public warnings as prompts to express additional views to financial institutions? In our view, that would be an unfortunate outcome. A better approach would be to regularly review the Guidance Note and expand on specific expectations to ensure it remains fit for purpose as the CoFI regime matures – both from an industry and regulatory practice perspective.

   The lack of detailed guidance may mean institutions inadvertently fall short of meeting the FMA's evolving expectations. For example, CoFI provides that financial institutions must have effective policies, processes, systems, and controls for designing and managing the provision of products and services to consumers. This includes regular reviews of distribution methods. Regular is not defined in CoFI nor does the Guidance Note clarify the FMA's expectations as to what 'regular' might require in different circumstances. In this sense, the Guidance Note does not really say anything that is not already set out in CoFI. It may therefore be entirely appropriate for institutions to set regular three-yearly review cycles as a sector standard. Higher risk businesses might determine it is more appropriate to operate on a two-yearly review cycle. Lower risk businesses could decide that four or five yearly 'audits' of distribution methods will suffice, based on the simple suite of products they provide.

2. **Are there any aspects of the Guidance Note you think are unclear or need to be improved?**

   A key problem is that although the financial institutions caught by the CoFI regime's net are all licensed by the Reserve Bank of New Zealand, they range vastly in scale and sophistication. Some have fairly simple business models and products whilst others are large with diverse offerings of services, products, and multiple distribution channels. We acknowledge that makes useful CoFI-wide guidance difficult to draft; it also means adding value is a challenging proposition.

   A more useful structure might be to set out a base line of 'must have' elements (albeit without prescribing what the content of those elements must entail) with suggestions for additional elements that particular types of financial institutions should have in place. For example, deposit taking credit unions should ensure any intermediaries are well attuned to the needs of vulnerable customers, not to mention

identifying them. The intermediated processes for distributing products of higher concern, such as add-on insurance or vehicle financing, could also be identified as requiring particular focus.

The Guidance Note should provide more specific and detailed assistance to financial institutions to ensure they are adequately empowered to devise their own tailored approaches to complying with their various principles-based obligations. Sector based guidance, or at least sections providing specific sector based assistance within the Guidance Note, would be useful. The Guidance Note could separately identify areas to be addressed by banks, insurers, and deposit takers, with additional focus on the size and sophistication of entities within those sectors. For example, from an intermediated distribution perspective, assisting a client to move a deposit between banks might be regarded as carrying a relatively low risk of clients being treated unfairly. In contrast, advising and assisting a client to change insurance policies or insurers has potentially adverse consequences regarding the scope of cover if the intermediary process goes wrong. Any intermediated distribution methods for insurers should expressly address that risk.

We also recommend that the Guidance Note places more emphasis on the enhanced good conduct and fair treatment assurance provided by a financial institution distributing products and services through another licensed financial institution. An intermediary that holds a CoFI licence should be treated as such, i.e. a financial institution does not need to impose controls over another financial institution's compliance with the fair treatment principle, and should be able to rely upon their regulatory status with minimal additional enquiry. While the Guidance Note highlights that a level of assurance is provided by distributing products or services through licensed financial advice providers it only briefly notes this same point, in an example, for distributing through other licensed financial institutions. This omission should be addressed and elaborated on to provide greater certainty for financial institutions and minimise the risk of duplication of compliance processes.

3. Are there any aspects of the Guidance Note you think may have unintended consequences?

The leeway and lack of certainty within the Guidance Note will inevitably lead to a conservative approach being taken – due to the risk of enforcement action in the event something goes wrong, with the FMA deciding it does not agree with a particular approach taken to intermediated distribution – adding to the ever increasing regulatory burden on financial institutions and financial advice providers and likely additional time and costs to consumers. This is evident in concerns the FMA has been raising regarding pre-emptive compliance measures financial institutions are already placing on intermediaries.

Clearer express guidance would assist to avoid such unintended consequences. An example of where we believe the Guidance Note has got this right is the express statement that the FMA does not think that external audits or independent assurance reports are necessary, and would not be expected to form part of most routine compliance measures. We support the retention of this statement. However, we would also like to see it expanded upon – in terms of confirming the ability of financial institutions being able to rely upon such assessments without further enquiry – to properly recognise the value they can provide, i.e. audits or assurance reports are not a must have but are useful in certain circumstances.

Proportionate or risk-based approaches have also recently be identified as a problem under the AML/CFT regime. The Ministry of Justice's AML/CFT review notes that where a requirement is flexible under that regime, businesses generally do not have enough information or awareness about how to apply a risk-based approach. This is due to insufficient guidance being produced. Conversely, some requirements in the AML/CFT regime are overly prescriptive which prevents a flexible risk-based approach being taken.

There is a necessary balance to be struck in the Guidance Note – elaborating on and informing the principles underpinning the CoFI regime whilst providing scope for financial institutions to adopt sector specific approaches that fit within their pre-existing product design, due diligence, and distribution arrangements.

4. **Are there any aspects of the Guidance Note you do not agree with, or you think should not be included?**

The Guidance Note suggests that financial institutions and intermediaries 'share responsibility' to treat customers fairly under the CoFI Regime. This proposition is inaccurate. Obligations regarding compliance with the fair conduct principle under CoFI fall squarely on financial institutions, not intermediaries – the fair conduct principle is that a financial institution must treat consumers fairly. Intermediaries are not directly subject to the fair conduct principle or statutory obligations related to fair conduct programmes. After all, it is financial institutions that are licensed under the CoFI regime, not intermediaries. As such, responsibilities are not 'shared'.

This position should be updated and reflected in the Guidance Note to avoid any misunderstanding of expectations imposed on intermediaries under the CoFI Regime. The expectation on intermediaries is that they adhere to the terms agreed, contractual or otherwise, with the relevant financial institution rather than legislative ones (although their contractual obligations will largely be driven by the statutory requirements being placed on financial institutions).

It is not a 'shared' responsibility between the parties to meet the fair conduct obligations, but rather a collaboration to ensure compliance and desired fair conduct outcomes for the licensed financial institutions. Attempting to put in place some sort of 'overlapping responsibility' for products and services simply creates confusion as to where the regulatory burden lies, no matter how well-intentioned.

5. **Are there any additional areas you consider the Guidance Note should address?**

The position regarding situations where a financial institution distributes through other licensed financial institutions should be clarified. Additional areas of focus to supplement the otherwise broad principled Guidance Note would also be useful.

As per our comments in response to question 3, greater weight could also be placed on the value of third party attestations and independent audits. We see external independent attestations as having a valuable assurance role to play whilst also providing a useful record of compliance. A number of financial advice providers already operate with such assurance systems in place for their own purposes, and they have a clear role to play in this context and their value should be recognised in the Guidance Note – albeit falling short of expressly requiring them.

As mentioned in the Guidance Note, independent assurance is particularly useful for higher-risk distribution arrangements. This opens the door to intermediaries obtaining a single third-party attestation that will verify the processes in place to assure fair treatment of consumers of all financial products distributed. Any financial institution that the intermediary engages with could rely upon that single attestation if they so choose. By contrast, self-certified attestation might be satisfactory for lower-risk distribution methods.

6. **Are the examples useful? Are there any examples that you would like to see changed, clarified, or omitted? Are there any additional examples that should be included?**

Overall, we consider that most of the examples are useful, if somewhat simplistic. The examples of what is and is not 'intermediated distribution' and 'likely consumers' do not really provide practical value given

how obvious they are. Further examples regarding less common situations or sectors would provide more useful assistance, such as for credit unions, member-focussed and not-for-profit insurers, and local subsidiaries or branches of global organisations.

7. **Do you have any comments on the length, format, or presentation of the Guidance Note?**

   The format and presentation of the Guidance Note is clear. Differentiating the ‘examples’, ‘useful questions’, and ‘spotlights’ through colour-coding and boxes is a useful approach that lets the reader easily move between sections.

   The Guidance Note, as currently drafted, is a little long given what little it has to say (although we acknowledge it would be longer if it had sector specific guidance). A re-edit to streamline the document, possibly omit ‘self-evident’ examples, and remove repetition would allow room for the addition of more specific guidance and examples, without detracting from the overall messaging.

8. **Is the ‘Overview’ section summarising the Guidance Note on a page useful? Are there any changes you would suggest to this?**

   The ‘Overview’ section is useful to the reader as a summary of the Guidance Note (and can be updated as the document evolves, which we believe it should).

9. **Do you have any other comments on the Guidance Note?**

   We have no further comments on the Guidance Note.

Feedback form

Consultation paper: Proposed CoFI guidance note on intermediated distribution

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at consultation@fma.govt.nz with 'Feedback: Proposed CoFI guidance note on intermediated distribution: [your organisation's name]' in the subject line. Thank you. **Submissions close on 14 April 2023.**

Date: [ ] Number of pages: 2

Name of submitter: [redacted]

Company or entity: Financial Advice NZ

Organisation type: Industry Association

Contact name (if different):

Contact email and phone: [redacted]

Question number	Response
1	We believe the guidance notes provide clarity to financial institutions on the interpretation of CoFI. The examples add further clarity and the Page 19 'what you do not expect' provides a line for the financial institutions.
2	The guidance notes could include more refence to those who provide advice under FSLAA. There are points of clarification which distinguish those advisers but we believe this could be more prominent throughout the guidance notes. Page 13 – 'Determining what product information or training will be provided'. There needs to be more clarity that financial institutions are only responsible for competency, knowledge and skill of financial advisers relating to financial products of their institutions and not all the competency, knowledge and skills required to provide financial advice. In addition to this the last point more clarity could be provided that Financial Institutions are **not** required to monitor that a FAP are meeting their Code of Professional Conduct. Page 15 – Avoid 'set and forget' Where you have stated the processes and data and metrics the language can be softened to may. In the current form it implies a directive or must. Page 16 – Examples of factors that may increase risk. "Likely consumers are likely to have a higher number of vulnerability characteristics". We have concerns that the word vulnerability now has a wide definition and could encapsulate more consumers than maybe intended and financial institutions take a conservative approach by assuming all customers have some vulnerability. Therefore putting all FAP's in the increase risk category. Page 19 – There would be greater clarification if the guidelines stated that an audit is not expected. This could be added on the 3rd point – institutions supervising or auditing intermediaries legal compliance.

3	Page 16 – Examples of factors that may increase risk. "Likely consumers are likely to have a higher number of vulnerability characteristics". We have concerns that the word vulnerability now has a wide definition and could encapsulate more consumers than maybe intended and financial institutions take a conservative approach by assuming all customers have some vulnerability.
4	As per above.
5	No
6	We believe the examples are extremely useful and an important part of the guidance notes.
7	It is about right in terms of length, format and presentation.
8	Overview is a helpful summary.
9	The financial institution and the FAP should have a collaborative approach, however, there is a disparity in the power and control between the two parties. In some instances, this has created significant friction between the parties. Sometimes a lack of consultation and finding a 'common ground' for good outcomes has not always being achieved. We hope that these guidelines allow for open dialogue between financial institutions and financial advisers to allow each party to meet its legislative requirements but more importantly allow access by consumers to financial advisers to get the best outcomes. We would like to acknowledge the significant investment the FMA has made in the consultation process to develop these guidelines. The consultation process was considered and respectful for all participants across the sector. These guidelines reflect the discussions held over the last few months and will provide significant guidance for the sector.
Feedback summary – *if you wish to highlight anything in particular*	

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

Financial Services Council NZ

Grow the financial confidence and wellbeing of New Zealanders

Friday 14 April 2023

Financial Markets Authority
Level 2 1 Grey Street
Wellington

Financial Markets Authority
Level 5 Ernst & Young Building
2 Takutai Square
Britomart
Auckland

By email: consultation@fma.govt.nz

Proposed CoFI guidance note on intermediated distribution

This submission on the Financial Markets (Conduct of Institutions) Amendment Act 2022 (CoFI) guidance note, intermediated distribution (the Draft Guidance), is from the Financial Services Council of New Zealand Incorporated (FSC).

As the voice of the sector, the FSC is a non-profit member organisation with a vision to grow the financial confidence and wellbeing of New Zealanders. FSC members commit to delivering strong consumer outcomes from a professional and sustainable financial services sector. Our 112 members manage funds of more than $95bn and pay out claims of $2.8bn per year (life and health insurance). Members include the major insurers in life, health, disability and income insurance, fund managers, KiwiSaver, and workplace savings schemes (including restricted schemes), professional service providers, and technology providers to the financial services sector.

Our submission has been developed through consultation with FSC members and represents the views of our members and our industry. We acknowledge the time and input of our members in contributing to this submission.

We welcome the opportunity to provide feedback on the exposure draft of the Draft Guidance. The overarching feedback from FSC members who attend a newly created FSC CoFI Focus Group is that this is helpful, useful, and workable guidance. Appreciation was expressed following the constructive FMA workshops where feedback was clearly noted and included. Our members also appreciated that this Draft Guidance was signalled ahead of time and the clear articulation the FMA does not expect constant surveillance of intermediaries. For intermediated distribution we support a dynamic approach that evolves over time rather than a static or prescriptive approach.

We note that a financial institution's oversight of intermediaries forms part of a financial institution's fair conduct programme (FCP) and there are resourcing challenges ahead and residual uncertainty as to the level of detail required. In addition, not all intermediaries are equally resourced or engaged and smaller intermediaries may have challenges with meeting the expectations set out in this Draft Guidance. We encourage consideration of a highlights summary which could be provided to intermediaries explaining why financial institutions are asking this of them to ensure an equal playing field across these distribution channels.

We have also surveyed our Regulation and Professional Advice Committee members to ascertain their views on using attestations and exploring whether there is appetite for the creation of an industry

standard template as a method to ensure industry consistency and reduce compliance burdens. The general feedback supported further discussions to work through the various issues and detail. Our members also expressed willingness to engage further with the FMA to discuss options and approach and we look forward to the FMA joining our May CoFI Focus Group.

We welcome continued discussions and engagement. [redacted] to discuss any element of our submission. We encourage further engagement, not only on CoFI but other consultations that the FMA undertakes.

Yours sincerely

[redacted]
Financial Services Council of New Zealand Incorporated

Consultation paper: Proposed CoFI guidance note on intermediated distribution

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at consultation@fma.govt.nz with 'Feedback: Proposed CoFI guidance note on intermediated distribution: [your organisation's name]' in the subject line. Thank you. Submissions close on 14 April 2023.

Date: 14 April 2023

Number of pages: 4 (including a 2 page covering letter)

Name of submitter: [redacted]

Company or entity: Financial Services Council of New Zealand

Organisation type: Non-profit member organisation

Contact email and phone: [redacted]

1. Do you think this guidance will help financial institutions develop their fair conduct programmes in relation to intermediated distribution methods? Please provide reasons for your answer.

We support this Draft Guidance as useful and workable guidance to help financial institutions develop their FCPs. The non-prescriptive approach in the Draft Guidance will allow financial institutions to develop distribution methods that are fit for their particular purpose whilst being consistent with the fair conduct principle. It is helpful that financial institutions can follow a proportionate and risk based approach when assessing the appropriate level of oversight over their intermediated distribution methods for purposes of fair customer treatment.

We note that some of our members have concerns that the information provided within the Draft Guidance is very high level and does not clearly articulate expected standards which may then lack the level of information required to help develop an entity's FCP. Whilst the questions and examples provided within the guidance do help support some of the early thinking, we consider the guidance would benefit from further positive examples of what "good" looks like.

2. Are there any aspects of the guidance you think are unclear or need to be improved? If so, please explain what these are and provide your suggested wording or approach to address these.

Page 5 of the Draft Guidance extends the definition of "intermediaries" to include: "all third parties that are involved in the sale and distribution of financial institutions' products and services to consumers. Examples of intermediated distribution are listed, including mortgage or insurance advisors, motor vehicle dealers selling vehicle financing and insurance, and retail stores selling add-on insurance products". The examples appear to be in line with the 'sale' component. What is less clear, is what amounts to 'distribution' in the context of this broader definition. Including examples of what 'is not' considered to be intermediated distribution could help clarify this. For instance, it is unclear whether the following 'distribution' example would be captured under the fair conduct principle requirements:

A health insurer specialises in group insurance through employee schemes. A broker attends the workplace of an employer who purchased group insurance for the benefit of their employees a couple of times a year to introduce the insurance plan to eligible staff. In between these visits, the employer's HR department promotes the insurance to new staff, providing copies of the plan information. The HR staff may also facilitate the completion of application forms by providing these to the employee, and potentially passing this on to the insurer on behalf of that employee.

The current drafting of the guidance would suggest that the HR staff involved in the above example would be captured under the "intermediaries" definition. It is unclear whether this is the intention. It would be difficult, in the context of the above example, for the health insurer to have controls in place to ensure that, when promoting the insurance offer to the employer's staff, the HR staff operate in a manner that is consistent with the fair conduct principle.

Some of our members consider the Draft Guidance is sufficient and contains the appropriate level of detail. Other members suggest possible further examples may be helpful on the following:

- Clarity on how expectations for intermediated distribution are set and the weightings that can be applied. For example, whether complexity of the product takes precedence over size of the entity, complex products, mass market product, licensed intermediaries, and unlicensed intermediaries.
- What constitutes a proportionate risk based approach may be helpful. For example, consideration of the number of employees, number of customers, complexity of the product and nature of the intermediaries.
- Additional detail around the use of metrics and data in the review of distribution methods. Financial institutions may benefit from additional examples of lead and lag indicators.

When considering the above, any additional detail needs to be balanced to ensure that flexibility for financial institutions is retained, and worded in such a way that it does not have the effect of becoming prescriptive in nature. We also understand the FMA's approach of principles based guidance and therefore suggest further FMA workshops or individual sessions could perhaps be held given the variety of products and distribution arrangements that exist.

3. Are there any aspects of the guidance you think may have unintended consequences?

The provision of only one example, namely the development of a distribution strategy, in the "Our expectations" section (in reference to s446J(1)(b)(i)) may inadvertently give organisations the indication that this is the only way to meet the FMA's expectations, when this may not be the case. We encourage the provision of other examples of how to meet the FMA's expectations for this requirement.

There may be an unintended assumption that FAPs are lower risk in all cases, when by their nature all FAPs vary considerably in their risk profile. We suggest the reference to an intermediary that holds a FAP license on page 8 of the Draft Guidance, should also reference the table of factors to consider when assessing distribution risks (page 16). This will provide clarity that financial institutions should take additional steps for FAPs that they consider to be higher risk.

An unintended consequence of the Draft Guidance is that the comments around attestations and audits not being necessary may lead to pressure from intermediaries to drop these as a tool. There needs to be a range of tools and options available, particularly for higher risk distribution arrangements, rather than limiting these.

4. Are there any aspects of the guidance you do not agree with, or you think should not be included? Please give reasons for your view.

Whilst we appreciate the FMA's guidance that contractual obligations and the requirements of the financial advice regime underpin the shared responsibility approach to compliance, there may be practical difficulties in implementing a shared responsibility approach when only financial institutions have legal obligations for fair treatment of consumers under CoFI. We agree that everyone plays a part in the fair treatment of customers, however shared responsibility could be seen to create an additional duty on intermediaries.

We support the concept of shared responsibility requiring a collaborative approach, which in some situations is vital to ensure fair customer outcomes. For example, remediations where intermediaries are involved in the handling of client money or where intermediaries are responsible for communication with customers. We suggest further explanatory detail is required in the Draft Guidance as there could be unintended consequences if intermediaries misunderstand the concept of 'shared responsibility'. However, it is important to balance this further detail whilst articulating that the financial institution has the ultimate responsibility for fair customer outcomes as detailed in their FCP. Customers expect financial institutions to address issues when they occur without being hindered by needing to consult with intermediaries when it is unnecessary and may slow finalising remediation plans.

We note there is a significant amount of information in the Draft Guidance that has been lifted from other sources, such as CoFI, other earlier guidance or information sheets. We suggest this could be cross referenced, shortened, summarised, or omitted.

5. Are there any additional areas you consider the guidance should address? If so, please provide details.

We note the Draft Guidance does not address custodial platforms and financial institutions will not have this visibility. We appreciate the Draft Guidance is risk based but it would still be helpful to have guidance in this space.

It would be helpful if the FMA confirmed whether they would still consider a FAP as lower risk in a distribution arrangement where the FAP is not providing financial advice and is only providing information support. For example, does the fact that the entity has obtained a FAP licence and therefore has processes in place to adhere to the financial advice regime (with oversight from the FMA) sufficiently mitigate the risks to customers even when the intermediary is not providing financial advice?

There may be practical difficulties in applying the concept of shared responsibility where financial advisers move between FAPs after an insurance policy is issued to the customer. For example, where remediation is required, the customer's financial adviser may no longer have access to their records. Similarly, where customer information is kept by an Adviser Association that the adviser is no longer associated with, and the latter refuses them access to their customers' information.

6. Are the examples useful? Are there any examples that you would like to see changed, clarified, or omitted? Are there any additional examples that should be included? If so, please provide your suggested wording.

We support the use of examples, comparable to that of the FMA's guide to good conduct, which are considered useful and help clarify the FMA's expectations. We also support the inclusion of examples that address more complex issues, similar to the examples of what the FMA does not expect in the intermediated distribution space.

Some of our members suggest possible further guidance and examples may be helpful for some life insurers who launch new products infrequently and have large books of existing products. Examples demonstrating the FMA's expectations for intermediated distribution of financial institutions' existing products along with managing intermediated distribution of existing or legacy products may be helpful.

7. Do you have any comments on the length, format, or presentation of the guidance? If so, please provide details.

It appears that some of the information provided is not new and as such the final guidance could be made shorter. We also consider some parts of the Draft Guidance are very high level and akin to an information sheet rather than guidance.

We encourage numbering of sections and paragraphs in the guidance which would be very useful and make the guidance more user friendly.

8. Is the 'Overview' section summarising the guidance on a page useful? Are there any changes you would suggest to this?

We support and encourage the useful approach of summarising sections. We would also support including more of the key points from the guidance rather than simply repeating the relevant parts of the legislation as noted under question 4 of this submission. Whilst CoFI underpins this Draft Guidance we think that the overview should give readers the key points of the guidance. This would make the overview much more useful for financial institutions.

We also recommend a highlights summary which could be provided to intermediaries explaining why financial institutions are asking this of them to ensure an equal playing field across these distribution channels.

9. Do you have any other comments on the guidance?

We note distribution agreements cover a lot of the detail and obligations on intermediaries. There will be challenges in having these re-signed to include conduct provisions and agreements may not be able to be renegotiated in time for the commencement of the regime in early 2025. There should be clauses in these agreements to make variations with permitting provisions, however this may not always be the case which can add complexity.

Some intermediaries have been reluctant to agree to the inclusion of provisions in distribution agreements which have the intended effect of providing confidence to the financial institution that those intermediaries will operate consistently with the fair conduct principle when distributing the financial institution's products. Whilst we appreciate the FMA's guidance notes that it is considered "good practice" to have contractual agreements in place, it would be helpful if the FMA provided a firmer view of the importance of incorporating fair conduct principles into these agreements, where appropriate.

FINANCIAL SERVICES FEDERATION

14 April 2023

Financial Markets Authority
Wellington, New Zealand

By email to: consultation@fma.govt.nz

Dear Madam/Sir,

Re: **CoFI Intermediated Distribution Consultation Paper**

The Financial Services Federation ("FSF") is grateful to the Financial Markets Authority ("FMA") for the opportunity to respond on behalf of our members to the consultation paper on the proposed CoFI Guidance note on intermediated distribution ("the consultation paper") recently published by the FMA.

By way of background, the FSF is the industry body representing the responsible and ethical finance, leasing, and credit-related insurance providers of New Zealand. We have over 85 members and affiliates providing these products to more than 1.7 million New Zealand consumers and businesses. Our affiliate members include internationally recognised legal and consulting partners. A list of our members is attached as Appendix A. Data relating to the extent to which FSF members (excluding Affiliate members) contribute to New Zealand consumers, society, and business is attached as Appendix B.

Introductory Comments

The FSF wishes to commend the FMA on a very useful piece of guidance. Overall, our members have had very positive feedback on the guidance in its current form however there are a couple of points on which the FSF and its members would like further clarification. In particular the FSF would like separate guidance for FAP intermediaries and Non FAP intermediaries as well as giving entities more clarification on the use of external audits. All consultation questions have been answered at the end of the submission.

Separate guidance for FAP Intermediaries and Non FAP Intermediaries

The FSF submits that intermediaries with FAP licenses are different to intermediaries who do not hold FAP licenses, and they should not be lumped into the same category. It is impossible to compare FAP licensed intermediaries with intermediaries such as motor vehicle dealers who cannot hold FAP licenses.

The FSF particularly takes issue with the FMA's suggestion that whether or not an entity has a FAP license could make it higher or lower risk. These are two completely different classes of entity and should be treated as such. While the FSF understands that the FMA is trying to keep its guidance as broad as possible in order to apply to all entities this doesn't work in

this instance due to models such as finance companies or insurance providers distributing through car dealerships.

Financial Institutions in the model mentioned above often employ full time staff members to travel the country and provide effective face to face training to their dealers. While they do not have a FAP license due to their business model it is unfair to penalise them when they do proactively take a lot of steps to ensure responsible intermediated distribution.

Failing to separate FAP intermediaries from Non FAP intermediaries could lead to unintended consequences such as unfairly penalising certain business models such as the one mentioned above. This goes directly against the FMA's outcomes-based objective.

External Audits

The FSF and its members have found the guidance around external audits to be confusing and contradictory. The guidance states that "we would expect this type of tool to be considered only for higher-risk distribution methods or to respond to a specific risk or issue that has triggered an independent review, rather than as a routine compliance measure". The FSF and its members have some concerns about the phrasing of this.

The way this is written leads us to believe that the FMA would expect to see external audits for what they consider to be higher risk distribution methods which as mentioned above many of our members could fall into due to the current characterisation of FAP versus Non FAP intermediaries. External audits are incredibly costly and prescriptive. This will have the opposite effect to the FMA's outcomes-based approach. There are already issues with finding auditors to meet the requirements of the Anti-Money Laundering and Countering the financing of Terrorism Act (and the quality of these audits is widely variable) so requiring external CoFI audits will be very difficult for institutions and intermediaries to comply with.

The FSF submits that this paragraph should be clarified and the FMA should define clearly what they consider to be an external audit. These changes would minimise confusion and ensure that entities have all the information they need in order to comply.

Consultation Questions

1. *Do you think this guidance will help financial institutions develop their fair conduct programmes in relation to intermediated distribution methods? Please provide reasons for your answer.*

   Yes, the FSF believes this guidance will be very helpful for financial institutions.

2. *Are there any aspects of the guidance you think are unclear or need to be improved? If so, please explain what these are and provide your suggested wording or approach to address these.*

   The FSF submits that as discussed above the guidance is contradictory in some places. In particular its example pertaining to external audits which contradicts the FMA's statement that they want to avoid imposing unnecessary compliance costs on financial

institutions. While the guidance is useful more work needs to be done to ensure it follows through with the ideas that the FMA are trying to achieve.

3. *Are there any aspects of the guidance you think may have unintended consequences?*

   Please see the answer to question 2.

4. *Are there any aspects of the guidance you do not agree with, or you think should not be included? Please give reasons for your view.*

   We believe it would be useful to separate FAPs versus Non FAPs as they are completely different so lumping them into one definition will have negative effects for those financial institutions who distribute their products through Non FAP intermediaries.

5. *Are there any additional areas you consider the guidance should address? If so, please provide details.*

   Please see the answer to question 4.

6. *Are the examples useful? Are there any examples that you would like to see changed, clarified, or omitted? Are there any additional examples that should be included? If so, please provide your suggested wording.*

   Yes, the FSF believes the examples that the FMA has provided are useful, but they can also be expanded upon to suit a wider variety of entities. The FMA could do this by providing examples that are specific to each type of entity, for example there could be a Non-Bank Deposit Takers example, an insurance example and a bank example.

7. *Do you have any comments on the length, format, or presentation of the guidance? If so, please provide details.*

   The FSF submits that the guidance would benefit from being smaller and more concise.

8. *Is the 'Overview' section summarising the guidance on a page useful? Are there any changes you would suggest to this?*

   The FSF submits that the overview section is very useful for financial institutions but as mentioned in our answer to question 2 there are some contradictions to the actual content of the guidance. More work needs to be done to ensure that the guidance is taking a cohesive approach.

9. *Do you have any other comments on the guidance?*

   The outcomes-based approach referenced in the introduction is very vague. It would be helpful for financial institutions to have more specific guidance about what the FMA is/ is not looking for from the entities it supervises.

Overall, the FSF would like to commend the FMA on a very relevant and useful piece of guidance for financial institutions.

Please do not hesitate to reach out if you wish for us to speak further on any of the points made in this submission.

Yours sincerely,

[redacted]
[redacted]
Financial Services Federation

Appendix A

FSF Membership List as at April 2023

Non-Bank Deposit Takers, Specialist Housing Lenders, Leasing Providers	Vehicle Lenders	Finance Companies/ Diversified Lenders	Finance Companies/ Diversified Lenders, Insurance Premium Funders	Affiliate Members	Affiliated members cont'd. and Credit-related Insurance Providers
XCEDA (B) Finance Direct Limited ➢ Lending Crowd Gold Band Finance ➢ Loan Co Mutual Credit Finance Credit Unions/Building Societies First Credit Union Nelson Building Society Police and Families Credit Union Specialist Housing Lenders Basecorp Finance Limited Liberty Financial Limited Pepper NZ Limited Resimac NZ Limited Leasing Providers Custom Fleet Euro Rate Leasing Limited Fleet Partners NZ Ltd ORIX New Zealand SG Fleet	AA Finance Limited Auto Finance Direct Limited BMW Financial Services ➢ Mini ➢ Alphera Financial Services Community Financial Services Go Car Finance Ltd Honda Financial Services Kubota New Zealand Ltd Mercedes-Benz Financial Motor Trade Finance Nissan Financial Services NZ Ltd ➢ Mitsubishi Motors Financial Services ➢ Skyline Car Finance Onyx Finance Limited Scania Finance NZ Limited Toyota Finance NZ ➢ Mazda Finance Yamaha Motor Finance	Avanti Finance ➢ Branded Financial Basalt Group Blackbird Finance Caterpillar Financial Services NZ Ltd Centracorp Finance 2000 Finance Now ➢ The Warehouse Financial Services ➢ SBS Insurance Future Finance Geneva Finance Harmoney Humm Group Instant Finance ➢ Fair City ➢ My Finance John Deere Financial Latitude Financial Lifestyle Money NZ Ltd Limelight Group Mainland Finance Limited Metro Finance	Nectar NZ Limited NZ Finance Ltd Personal Loan Corporation Pioneer Finance Prospa NZ Ltd Smith's City Finance Ltd Speirs Finance Group(L &F) ➢ Speirs Finance ➢ Speirs Corporate & Leasing ➢ Yoogo Fleet Turners Automotive Group ➢ Autosure ➢ East Coast Credit ➢ Oxford Finance UDC Finance Limited Insurance Premium Funders Elantis Premium Funding NZ Ltd Financial Synergy Limited Hunter Premium Funding IQumulate Premium Funding Rothbury Instalment Services	Affiliate Members Buddle Findlay Chapman Tripp Credisense Ltd Credit Sense Pty ltd Experian Experieco Limited EY FinTech NZ Finzsoft Happy Prime Consultancy Limited KPMG Lendscape Ltd Loansmart Ltd LexisNexis Motor Trade Association One Partner Limited PWC Simpson Western	Credit Reporting, Debt Collection Agencies, Baycorp (NZ) Centrix Credit Corp Debt Managers Debtworks (NZ) Limited Equifax (prev Veda) Gravity Credit Management Limited IDCARE Ltd Illion (prev Dun & Bradstreet (NZ) Limited Quadrant Group (NZ) Limited Credit-related Insurance Providers Protecta Insurance Provident Insurance Corporation Ltd Total 91 members

Appendix B

FINANCIAL SERVICES FEDERATION (FSF)

THE NON-BANK FINANCE INDUSTRY SECTOR - 2022

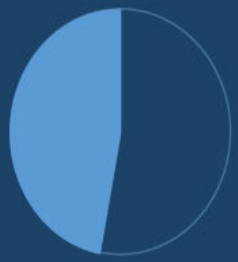
48%

of personal consumer loans are financed by the **non-bank sector** represented by FSF members.

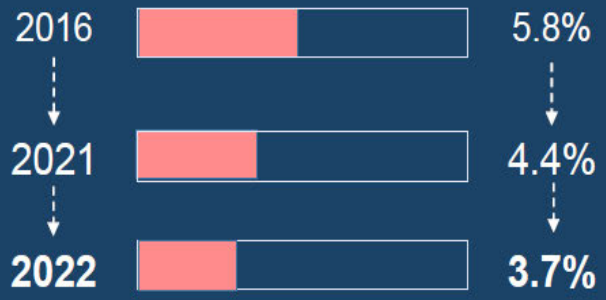
Setting industry standards for responsible lending, promoting compliance and consumer awareness.

Percent of Loan Requests Approved

46%



Percent of Loan Book in Arrears



KEY FACTS: THE NON-BANK FINANCE INDUSTRY SECTOR

FSF Members (as at 28 Feb 2022)

Number of Members	57
Number of Employees	3,561
Applications Processed	1,085,739
Loan Requests Approved	495,434
Percent of Loan Book in Arrears	3.7%

Bank Sector (as at 28 Feb 2022)

Value of Mortgage Loans	$329B
Value of Consumer Loans	$7.6B
Value of Business Loans	$118B

Non-Bank Sector Share (as at 28 Feb 2022)

% of Total Mortgage Loans	0.4%
% of Total Consumer Loans	47.7%
% of Total Business Loans	5.9%

Insurance Credit Related (as at 28 Feb 2022)

Number of Employees	237
Number of Policies	311,409
Gross Claims (annual)	$27.2M
Days to Approved Claim	20 days

Consumer Loans (as at 28 Feb 2022)

Total Value of Loans	$8.1B
Number of Customers	1,699,683
Number of Loans	1,584,984
Monthly Instalments:	$330M
Average Value of Loan:	
Mortgage	$171,932
Vehicle Loan	$12,393
Unsecured	$2,467
Other Security	$5,754
Lease Finance	$2,804
Average Monthly Instalment:	
Mortgage	$257
Vehicle Loan	$463
Unsecured	$144
Other Security	$302
Lease Finance	$241

Business Loans (as at 28 Feb 2022)

Total Value of Loans	$7.3B
Number of Customers	136,830
Number of Loans	264,827
Monthly Instalments:	$590M
Average Value of Loan:	
Mortgage	$443,784
Vehicle Loan	$28,869
Unsecured	$7,443
Other Security	$32,374
Lease Finance	$24,921
Average Monthly Instalment:	
Mortgage	$2,281
Vehicle Loan	$1,064
Unsecured	$799
Other Security	$11,044
Lease Finance	$939

Feedback form

Consultation paper: Proposed CoFI guidance note on intermediated distribution

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at consultation@fma.govt.nz with 'Feedback: Proposed CoFI guidance note on intermediated distribution: [your organisation's name]' in the subject line. Thank you. **Submissions close on 14 April 2023.**

Date: 27/02/23 Number of pages: 1

Name of submitter: [redacted]

Company or entity: Foresight Financial Planning

Organisation type: FAP

Contact name (if different):

Contact email and phone: [redacted]

Question number	Response
1	*It should help but whether it will is another matter, especially with how some institutions act*
2	*Why have investment products not been included; what about banks churning KiwiSaver from one to the other without them providing advice or using unfair practices to get clients to move. An example of someone with a KiwiSaver account should have been included in the example on page 7*
3	*See previous question – are the FMA going to continue allowing the banks to switch clients KiwiSaver accounts without any due diligence*
4	*See parts 2 and 3*
5	*See parts 2 and 3*
6	*See answer in 2) above*
7	*No – all good*
8	*Overview section is well written*
9	*None*

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.

14 April 2023

Financial Markets Authority
Level 5, Ernst & Young Building
2 Takutai Square
Britomart
Auckland 1143
Via email: consultation@fma.govt.nz

Submission to the Financial Markets Authority on the 'Consultation: Proposed CoFI Guidance Note on Intermediated Distribution'

1. Heartland Bank Limited (**Heartland**) welcomes the opportunity to submit on the 'Consultation: Proposed CoFI guidance note on intermediated distribution' published by the Financial Markets Authority (**FMA**) on 20 February 2023 (**Draft Guidance**).

2. The New Zealand Banking Association – Te Rangapū Pēke (**NZBA**), of which Heartland is a member, has submitted separately on the Draft Guidance. Heartland supports the points made in that submission.

3. Like the NZBA, Heartland is supportive of the Draft Guidance. As the NZBA states, the Guidance is appropriately high level, flexible and not overly prescriptive and can apply to its broad audience. We are also supportive of the Draft Guidance's recognition that institutions can comply in a proportionate way to avoid unnecessary compliance costs to themselves or their intermediaries.

4. However, Heartland wishes to make its own submission in relation to one point:

    a. The Draft Guidance, in a number of places, notes that an intermediary that holds a financial advice provider (**FAP**) licence will pose a reduced level of risk of unfair treatment to customers compared to an intermediary that does not hold a FAP licence.

    b. Heartland acknowledges that an intermediary that holds a FAP licence is subject to their own set of conduct duties under the financial advice regime in the Financial Markets Conduct Act 2013.

    c. However, this on its own does not automatically mean that an intermediary without a FAP licence is of a higher risk compared to an intermediary with a FAP licence.

    d. Intermediaries with a FAP licence are licensed because they are providing regulated financial advice. Other intermediaries (such as car dealers in Heartland's case) are not licensed as they are involved in the chain of distribution as a contractual counterparty, with associated obligations and controls, to collect information from the customer and pass it on to Heartland via its systems for Heartland's lending assessment. They are not advising the customer or making lending decisions, but are simply facilitating a customer need (being that the customer needs a loan to purchase a car).

    e. These intermediaries are not necessarily high risk provided they are managed correctly and there are appropriate controls in place, which can be imposed contractually. The

Draft Guidance currently reads as though intermediaries without a FAP licence cannot be low risk (or, in other words, are always high risk) when that is not necessarily the case given the different role they play in the chain of distribution and the contractual requirements and other supervision in place which a financial institution imposes.

f. Heartland submits that the Draft Guidance should be amended to place less emphasis on an intermediary with a FAP licence being lower risk. Regardless of whether an intermediary has a FAP licence, the obligation is on the financial institution to factor in the relevant intermediaries and their particular risk profiles, as assessed by the financial institution, when designing its fair conduct programme.

5. Heartland is willing to engage further with the FMA with respect to the Draft Guidance, and if considered appropriate, to meet and discuss this submission.

6. If you would like to discuss any aspect of this submission further, [redacted]

Kind regards,

[redacted]

20 April 2023

Financial Markets Authority
Level 2, 1 Grey Street
Wellington

By email: **consultation@fma.govt.nz**

Feedback: Proposed CoFI guidance note: Intermediated distribution – Insurance Brokers Association of New Zealand Inc submissions

1. Please find attached to this email (in both PDF and MS Word format) the submissions of the Insurance Brokers Association of New Zealand Inc (IBANZ) on the proposed *CoFI guidance note: Intermediated distribution*.

2. IBANZ has over 100 member firms operating in the general (non-life) insurance market. IBANZ members employ approximately 5,000 staff of which approximately 2,500 staff are currently financial advisers.

3. IBANZ members place general insurance cover equating to approximately 50% of all general insurance premiums ($4.1 billion) for approximately 1 million New Zealand customers and for approximately 14 of the 30 general insurers operating in New Zealand. The total New Zealand gross written general insurance premiums in the 12 months to 30 September 2022 were more than $8.2 billion.[1]

4. IBANZ has provided its responses below to the nine consultation questions contained in the FMA's *Consultation: Proposed CoFI guidance note on intermediated distribution* (February 2023).

5. Please let us know if you would like us to expand on any of IBANZ's submissions.

Yours sincerely,

[redacted]

[redacted]

[redacted]

[1] Insurance Council of New Zealand Market Data. An additional approximately $400 million of cover was placed through Lloyds.

Feedback form

Consultation paper: Proposed CoFI guidance note on intermediated distribution

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at consultation@fma.govt.nz with 'Feedback: Proposed CoFI guidance note on intermediated distribution: [your organisation's name]' in the subject line. Thank you. **Submissions close on 14 April 2023 but an extension was granted to IBANZ to 30th April 2023.**

Date: 20 April 2023 Number of pages: 13

Name of submitter: [redacted]

Company or entity: **Insurance Brokers Association of New Zealand Incorporated**

Organisation type: Incorporated Society

Contact name (if different):

Contact email and phone: [redacted]

Question number	Response
1. Do you think this guidance will help financial institutions develop their fair conduct programmes in relation to intermediated distribution methods? Please provide reasons for your answer.	As a general comment, IBANZ considers that the proposed guidance is very helpful, particularly as it indicates that: • insurers and other financial institutions (**FIs**) are not expected to oversee FAP intermediaries' compliance with their financial adviser duties; and • FAP intermediaries' financial adviser duties (especially the Code requirement to treat customers fairly) substantially reduce the fair conduct risks for FAPs and their engaged financial advisers (**FAP intermediaries**), and therefore mitigate the need for FIs to extend their fair conduct measures to their FAP distribution channels. The FMA guidance also helpfully acknowledges that there are legitimate concerns that some FIs may have responded to CoFI by imposing unduly onerous compliance measures on FAP intermediaries, particularly those FIs who responded to early drafts of the legislation (which failed to recognise sufficiently the significant overlap between the objectives of the CoFI and FSLAA legislation). The FMA's guidance rightly encourages FIs to review their settings in light of the evolution of CoFI Act, and

	make adjustments, to reflect FAP intermediaries' lower risk levels that results from the recently introduced FSLAA obligations. It is important that these messages (including the statements of what the FMA does not expect on page 19) are not diluted in the final version of the guidance, and that these concepts are reinforced consistently throughout the guidance. Also, as discussed in the submissions below, the guidance does not go far enough to discourage FIs from utilising the power imbalance that typically exists between FIs and intermediaries to: • impose disproportionate burdens on FAP intermediaries out of excess caution; and • include FI's fair conduct requirements in their distribution agreements in a manner which does not account for FAP intermediaries' statutory duties (causing unnecessary inefficiency and compliance costs), and may have unintendedly encouraged FIs to believe that FIs CoFI obligations are a "shared responsibility" (for example in the third "useful question" on page 14) rather than that FIs' CoFI and FAP intermediaries' FSLAA duties create a separate, but aligned, responsibility for fair conduct outcomes for consumers through their respective and independent duties (which is more clearly recognised on pages 5 and 6). Accordingly, as submitted in the response to question 2, the guidance should specify that: • a FAP intermediary should be assumed to be treating consumers fairly in the ordinary course and, therefore, should not be subject to review by an FI, except where the FI has reasonable grounds to believe that the intermediary is not treating consumers fairly; and • FIs must ensure that reviews of FAP intermediary channels are conducted in a manner that is reasonable in the circumstances.
2. Are there any aspects of the guidance you think are unclear or need to be improved? If so, please explain what these are and provide your suggested wording or	**FAP intermediaries should be assumed to be treating consumers fairly in the ordinary course** FAP intermediaries should be assumed to be treating consumers fairly in the ordinary course With respect to the requirement that FIs regularly review whether distribution methods are operating in a manner that is consistent with the fair conduct principle, FIs should not be expected to review (including obtaining attestations) their FAP intermediaries' operations in the ordinary course. Those FAP intermediaries must already comply with financial service and market services licensee obligations which provide corresponding consumer fair conduct protections; as the guidance acknowledges.

approach to address these.	Accordingly, the guidance should state that: • FAP intermediaries should be assumed to be treating consumers in a manner consistent with the fair conduct principle, unless the FI has reasonable grounds to believe otherwise; and • FIs should not therefore conduct reviews (or require their FAP intermediaries to do so) into their FAP intermediaries' operations, unless reasonable grounds exist that the FAP intermediary is not treating consumers in a manner consistent with the fair conduct principle. This approach is consistent with the proportionate risk based approach adopted by the FMA. FIs should be encouraged to reasonably assume that distribution through FAP intermediaries is operating in a manner that is consistent with financial advice regime obligations imposed on those FAP intermediaries, which corresponds with the fair conduct principle. Under the new financial advice regime, FAP intermediaries (including the authorised bodies, financial advisers and nominated representatives operating under their licences) are subject to financial advice service and market service licensee obligations that ensure clients are treated fairly. Along with all other FAP intermediaries, IBANZ member firms: • are highly regulated as licensed providers of a financial advice service, supervised by the FMA; • must ensure that they, and the persons who provide regulated financial advice on their behalf, comply with the duties and obligations under subpart 5A, Part 6, of the FMCA, which relate to their conduct and are targeted at ensuring good customer outcomes, including (amongst other things): - the duty to comply with the Code of Professional Conduct for Financial Advice Services, which requires (amongst other things) that a person who gives financial advice to retail clients must **treat clients fairly**, must always act with integrity, must ensure they have competence, knowledge and skill and undertake continuing professional development; - the duty to ensure that the client understands the nature and scope of advice when giving regulated financial advice to retail clients;

	- the duty to give priority to clients' interests by taking reasonable steps to manage any conflicts of interests; and • are required to have policies, procedures and controls designed to support the giving of regulated financial advice, the provision of client money or property services (if applicable), and to ensure compliance with the duties and obligations under the financial advice regime; • have comprehensive complaint processes under the standard FAP licence conditions, which require that complaints are dealt with in a "fair, timely and transparent" manner; and • are subject to the enforcement and liability regime under Part 8 of the FMCA, which includes civil liability for contraventions of duty provisions. Given these existing extensive obligations, applying the risk based proportionate approach, there is no justification for a FI to conduct reviews into a FAP intermediary, unless the FI has reasonable grounds to believe the FAP intermediary has not been distributing in a manner which is consistent with the fair conduct principle - for example, because the FI reasonably considers that the FAP intermediary may have breached its FAP obligations and any such breach gives rise to material risks that consumers have not been treated fairly. If FIs are required to review their FAP intermediaries when there are no such reasonable grounds, this would unnecessarily duplicate the regulatory burden imposed on the FAP intermediaries. • FAP intermediaries are already subject to review obligations, pursuant to standard licence condition 6, which requires FAP licensees to "at all times continue to satisfy the requirements section out in section 396 and, if applicable, section 400 of the FMC Act" (these include being satisfied that they are capable of effectively performing the service, and there is no reason to believe they are likely to contravene their obligations). • As part of the licence application process, a FAP intermediary is required to demonstrate that it has documented policies and processes in place to ensure compliance with its ongoing obligations, including having an approved documented process to review its conduct and the conduct of all persons providing financial advice under its licence. In its Guide to Financial Advice Provider licence requirements and

	application kit (March 2023), the FMA explains that this means: *We expect FAPs to conduct themselves in a way that serves the needs of customers. This means a focus on their duties under the FMC Act, including but not limited to:* • *treating customers fairly in all interactions* • *recognising and prioritising customer interests and effectively managing conflicts of interest that arise* • *giving customers clear, concise and effective information* • *distributing products that are suitable, work as expected and as represented, and are targeted at appropriate customers* • *ensuring adequate after-sales care, including complaints and claims handling, and not imposing unnecessary barriers to switching or exiting product or services* • *effective monitoring of their own conduct, and where relevant, the conduct of suppliers and distributors, to ensure mistakes can be identified, rectified and learnt from.* The financial advice service and market services licensee obligations that FAP intermediaries must already comply with mean that there is no conduct gap with respect to them that needs to be filled by CoFI. In short, FAP intermediaries are already covered by the FMCA if they do not treat consumers fairly. Further, if FIs are able to assume that FAP intermediaries are operating in a manner consistent with the fair conduct principle (unless the reasonable grounds described above exist), the FIs would be able to devote more resources to reviewing distribution through non-FAP intermediaries, which the Guidance correctly recognises generally pose a higher risk level than compared to FAP intermediaries.

	If a FI has reasonable grounds to believe the FAP intermediary is not treating consumers in a manner consistent with the fair conduct principle, FI review methods should be subject to a "reasonableness" requirement The guidance should state that FIs must ensure that the review methods are reasonable in the circumstances. The guidance acknowledges concerns that some FIs may be responding to CoFI by imposing compliance measures on intermediaries that go beyond what the FMA thinks is needed under a risk-based approach. The FMA states that it encourages FIs to review their settings in light of this guidance and consider whether any adjustments may be appropriate to reflect the risk level, and notes that there needs to be a balance between managing risk and not adding unnecessary cost or reducing product and service choice for consumers. However, the draft guidance does not go far enough to prevent FIs from continuing to go beyond what is justified under a risk-based proportionate approach. Rather, in stating that FIs are best able to determine the review methods and what types of information they should gather, along with it emphasising that FIs have flexibility to design their Fair Conduct Programmes, the guidance creates the prospect that FIs will continue to impose unduly onerous compliance measures on FAP intermediaries, thereby imposing unnecessary costs and reducing consumer choice. Further, unduly onerous compliance measures by FIs have the propensity to compromise the commercially and legally separate relationship between FIs and intermediaries through effectively enabling the FIs to intrude and intervene in the intermediaries' internal operations, and may enable them to access information which is subject to privacy or confidentiality obligations, or which is commercially sensitive because it concerns other insurers or because the FI distributes products directly. For example, while a FI may reasonably request a FAP intermediary to provide information about how the FAP intermediary's complaints handling process operates, it would not be reasonable for the FI to require the intermediary to provide information about specific complaints that concern only the intermediary's financial advice service, unless it has reasonable grounds to believe that the intermediary's complaints process is not being complied with and that this gives rise to a material risk that the FIs' consumers are not being treated fairly. As noted above, FAP intermediaries are obligated under their licences to have comprehensive processes that ensure complaints are dealt with in a "fair, timely and transparent" manner. If the FAP intermediary client

	is dissatisfied with how their complaint has been handled by the internal complaints process, the client has a right to complain to the approved dispute resolution scheme to which the FAP intermediary is a member. Similarly, it would not be appropriate for FIs to request FAP intermediaries to routinely provide copies of the financial advice given to their clients. This advice could also cover competitor insurer's products or the FAP intermediaries' intellectual property. Rather FIs should be able to request copies of financial advice only to the extent that the FI can demonstrate that access to the financial advice is reasonably required for the FI to comply with that FI's CoFI obligations. As a general rule, if a FI already possesses sufficient information or data to comply with these obligations, the FI should not be able to request the financial advice be provided. By contrast, it might be reasonable for a FI to request the financial advice given to particular consumers where, on the basis of information or data the FI holds, the FI reasonably considers that those consumers have not been treated fairly and that reviewing financial advice is reasonably required to confirm this. Permitting FIs to request copies of financial advice which is not reasonably required for the FIs to comply with their CoFI obligations would be unduly onerous and impose unjustified costs on FAP intermediaries. Further, there are obvious privacy or competition concerns, given that the financial advice may contain sensitive personal information or competitor information. A particular concern is that the risk of being subject to unduly onerous reviews by FIs may exert pressure on general insurance intermediaries thereby compromising their ability to advocate for their clients in dealings with FIs, which would in turn increase the power imbalance between FIs and consumers. To better safeguard against FIs imposing unduly onerous compliance measures, the guidance should state that such measures must be "reasonable" in the circumstances, having regard (amongst other things) to: • the level of the risks that consumers are not being treated fairly; • the nature of the relevant product or service (including its value); • the intermediary's role in relation to the product or service (including the extent to which its actions could expose the consumers to not being treated fairly);

- the costs to the intermediary and their clients;
- any other compliance measures imposed by the FI;
- the respective resources and capabilities of the FI and the intermediary;
- what other information or data the FI already possess, including that already provided by the intermediary;
- whether there are other less onerous or intrusive measures reasonably available; and
- the intermediary's legal obligations, including complying with the Privacy Act 2020, competition law, and confidentiality obligations.

Such a reasonableness requirement would be consistent with the approach of the Financial Conduct Authority (**FCA**) in the United Kingdom with respect to the duty on firms to "act to deliver good outcomes for retail customers' (PRIN 2.1, Principle 12). In its guidance on Principle 12, the FCA states the duty is (*FG22/5 Final non-Handbook Guidance for firms on the Consumer Duty* (July 2022), at [4.13]):

> *underpinned by the concept of reasonableness which is an objective test. The obligations on firms will be interpreted in accordance with the standard that could reasonably be expected of a prudent firm carrying on the same activity in relation to the same product or services, taking appropriate account of the needs and characteristics of customers in the relevant target market.*

When assessing what is reasonable, the FCA requires that the following factors be considered:

- the nature of the product or service being offered;
- the characteristics of customers in the relevant target market; and
- the firm's role in relation to the product or service.

The FCA provides guidance on the application of the reasonableness concept with respect to the information sharing obligations of distributors and, in particular, states:

> *6.70 In general, we do not expect distributor firms to share information without being asked. As the information is to support a manufacturer review of a product or service, we expect the*

	manufacturer firm to consider what information would be helpful and to take reasonable steps to gather it. For example, a manufacturer firm could consider focus groups including a few distributor firms, or sending surveys to distributors. These steps could help ensure the information requests are manageable and focused on the issues the manufacturer firm wishes to cover. *…* *6.72 Firms should comply with data protection and competition laws when sharing information.* *6.73 We would not expect distributor firms to share information about individual customers which conflicts with data protection laws. They should consider providing anonymised or aggregate information instead. For example, information could relate to the proportion of customers with characteristics of vulnerability, rather than identifying individual customers with additional needs. Or a firm could provide any feedback they received, on an anonymous basis, of the reason customers cancel a product early.* It would be useful if similar statements were made in the guidance. **Remove reference to "shared responsibility" (pages 5 and 6)** On pages 5 – 6, the guidance states that the CoFI and financial advice regimes "create a shared responsibility between financial institutions and FAP licenced intermediaries for fair treatment and outcomes for consumers". The "shared responsibility" characterisation is not accurate and could potentially lead to unintended misinterpretations, and accordingly should be deleted. The achievement of fair treatment and outcomes for consumers through the CoFI regime is the sole responsibility of the FIs. The financial advice regime is the sole responsibility of the FAP intermediaries. While they have common objectives, the obligations are independent obligations, and do not require sharing. A change is necessary to make clear that CoFI is not intended to compromise the commercial and legal independence of FAP intermediaries, and moreover, to better emphasise that the costs of the CoFI regime compliance should be primarily borne by the FIs not the FAP intermediaries. Even more so, in the third "useful question" on page 14, the reference to "shared responsibility" wrongly implies that the FCP is a shared obligation when it is not.

	Scope of "consumer" with respect to insurance contracts should be clarified It would provide practical assistance if the guidance specifically deal with the boundary issues that often emerge in the context of insurance contracts. Policyholders may enter into a consumer insurance contract and either concurrently or subsequently extend that contract to cover commercial risks. For example: • vehicle owners may enter into consumer insurance contracts to cover risks arising from predominately domestic use of their vehicles, and have those contracts extended to cover risks arising from any incidental business use of their vehicles: • homeowners may initially enter into consumer insurance contracts to cover risks arising from using their dwellings as their personal residences, but subsequently change that insurance to cover risks arising from renting their dwellings. Conversely, there are commercial policies that have consumer cover elements, for example, a builder's contract works policy that also covers a consumer for a house being built for them. CoFI is unclear as to how these types of consumers should be treated. Because these policyholders will be "consumers" under section 446P, it could be argued that CoFI applies with respect to both the concurrent or subsequent commercial insurance cover. This interpretation would broaden CoFI's scope beyond what was intended – i.e., to cover only contracts of insurance entered into by a New Zealand policyholder wholly or predominately for personal, domestic or household purposes. Accordingly, to prevent this occurring, the guidance should specify that a policyholder will not be regarded as a "consumer" under section 446P to the extent that the consumer insurance contract is taken out for commercial purposes, or is subsequently varied so that it is taken out wholly or predominately for commercial purposes. It would also be helpful to clarify that when insurers are also providing financial advice or other Financial Service Provider functions that the relevant 'consumers' are solely the persons specified in (a) of the consumer definition, and not a retail client under (c).
3. Are there any aspects of the	As noted above in the response to Question 2, the draft guidance's

guidance you think may have unintended consequences?	failure to specify that FIs should be able, in the ordinary course, to assume that FAP intermediaries are treating consumers fairly could result in FIs imposing unjustifiably onerous compliance measures on FAP intermediaries, thereby compromising the FAP intermediaries' commercial and legal independence. This in turn would result in unnecessary costs being imposed on FAP intermediaries and this may in turn result in reduced consumer choice. Also the reference to "a shared responsibility" in the third "useful question" on page 14 could have the unintended consequence of implying that CoFI responsibilities are shared between FIs and FAP intermediaries, when elsewhere it recognises that FAPs are solely responsible for compliance with their FSLAA duties. Lastly, the examples of product training on page 14 fail to mention the Code's qualifications requirements which specifically require training in the particular industry on which the financial adviser is advising, and which are likely to obviate the need for additional training in most FIs' insurance products, which mostly will have terms common across the industry or are capable of being interpreted by the financial adviser without further training. Accordingly, the examples section on page 14 should require FIs to assess the financial advisers' training needs before imposing accreditation requirements or mandatory training in novel products, in the manner the last 2 examples imply.
4. Are there any aspects of the guidance you do not agree with, or you think should not be included? Please give reasons for your view.	Consistent with the response to Question 2, the guidance's 'Reviewing distribution methods' section should specify that FIs may do nothing with respect to FAP intermediaries, because they can assume that the intermediaries are treating consumers fairly in the ordinary course. In the alternative, this section should state that annual attestations are a more than adequate review mechanism for FAP intermediaries in the ordinary course, and require that such attestations be timed to minimise the compliance burden on FAP intermediaries.
5. Are there any additional areas you consider the guidance should address? If so,	Please refer to the response to Question 2.

please provide details.	
6. Are the examples useful? Are there any examples that you would like to see changed, clarified, or omitted? Are there any additional examples that should be included? If so, please provide your suggested wording.	Consistent with the response to Question 2, it would be useful for there to be: • examples clarifying that FIs can assume that FAP intermediaries are treating consumers fairly in the ordinary course, and addressing when reasonable grounds to believe that a FAP intermediary is not treating consumers fairly would exist; and • examples clarifying when a FI would not be conducting reviews of intermediaries in a manner that is reasonable in the circumstances, including with respect to requesting copies of financial advice and complaints. Consistent with the response to question 3, the examples of product training on page 14 fail to mention the Code's qualifications requirements which specifically require training in the particular industry on which the financial adviser is advising, and which are likely to obviate the need for additional training in most FIs' insurance products, which mostly will have terms common across the industry or are capable of being interpreted by the financial adviser without further training. Accordingly, the examples section on page 14 should require FIs to assess the financial advisers' training needs before imposing accreditation requirements or mandatory training in novel products, in the manner the last 2 examples imply.
7. Do you have any comments on the length, format, or presentation of the guidance? If so, please provide details.	No comments.
8. Is the 'Overview' section summarising the guidance on a page useful? Are there any changes you	The 'Overview' section is helpful. Consistent with the response to Question 2, the section should state that: • FAP intermediaries can be assumed to be treating consumers fairly and, accordingly, unless FIs have reasonable grounds to believe otherwise, FIs are not required to review FAP intermediaries (or, at most, only annual attestations at suitable times are required); and

would suggest to this?	• FIs must ensure that reviews of intermediaries are conducted in manner that is reasonable in the circumstances.
9. Do you have any other comments on the guidance?	CoFI was not meant to compromise the broker/client relationship and, to ensure that it does not, as specified in the response to Question 2, the guidance should specify that FAP intermediaries can be assumed to be treating consumers fairly in the ordinary course.

Feedback summary – IBANZ primary submission is that the guidance specify that FAP intermediaries are assumed to be treating consumers fairly in the ordinary course, for the reasons specified in the response to Question 2.

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

Insurance Council of New Zealand
Te Kāhui Inihua o Aotearoa

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14 April 2023

Financial Markets Authority
1 Grey Street
Wellington

Email to: consultation@fma.govt.nz

Dear Sir/Madam,

ICNZ SUBMISSION ON PROPOSED INTERMEDIATED DISTRIBUTION GUIDANCE

Thank you for the opportunity to submit on the proposed guidance for dealing with intermediated distribution under the CoFI regime[1] (**Guidance**).

Insurance Council of New Zealand/Te Kāhui Inihua o Aotearoa (**ICNZ**) members are general insurers and reinsurers that insure about 95 percent of the Aotearoa New Zealand general insurance market, including over a trillion dollars' worth of Aotearoa New Zealand property and liabilities. ICNZ members provide insurance products ranging from those usually purchased by individuals (such as home and contents, travel, and motor vehicle insurance) to those purchased by small businesses and larger organisations (such as product and public liability, business interruption, professional indemnity, commercial property and directors and officers insurance).

Key points raised in this submission are:

- **The Guidance is useful and reflects welcome early engagement with the industry.**
- **Some elements could benefit from expansion and/or clarification, such as guidance relating to training, communications, assessment of distribution risk, and the use of external audit methods.**
- **References to the "shared responsibility" between insurers and intermediaries are welcome, although the industry is wary of the extent to which contractual arrangements will be able to ensure responsibility is borne to an appropriate degree by each party.**
- **Understanding the FMA's approach to assessing compliance with the CoFI regime will be integral to insurers being clear about how to conduct distribution of services and products through their intermediary channels.**

QUESTIONS FROM THE CONSULTATION DOCUMENT

1. Do you think this guidance will help financial institutions develop their fair conduct programmes in relation to intermediated distribution methods? Please provide reasons for your answer.

We believe the Guidance will be helpful for financial institutions developing fair conduct programmes (FCPs) and in their approach to intermediated distribution. It reflects good early engagement with the industry through the workshops held in 2022 with the FMA, insurers, and brokers. We support ongoing early engagement with the industry as the CoFI regime embeds.

The Guidance is useful in several ways, especially in that it:

a) Provides examples of what a financial institution should have in place to assess the risk arising from its distribution methods.
b) Highlights the benefit and usefulness of a written distribution strategy for treating customers fairly.

[1] The regulatory regime introduced by the Financial Markets (Conduct of Financial Institutions) Amendment Act 2022 (**CoFI**).

c) Emphasizes the need for determining the likely consumers of products and services by identifying and documenting: the intended purpose, likely consumers, and likely objectives and requirements of those consumers.
d) Elaborates on the requirement for distribution methods to operate consistently with the fair conduct principle in the Act.
e) Examines the key themes one-by one and, in each case, gives examples of what they mean and what the FMA might expect to see.
f) Notes the importance of developing policies, processes, systems and controls that are fit for purpose for the business in question to provide that distribution methods operate in a manner that is consistent with the fair conduct principle.
g) Provides examples of what the FMA does not expect.

In particular, the practical examples, 'spotlights', 'useful questions', and the table which includes examples of factors that may increase or decrease risk are helpful[2].

We support the risk based, proportionate approach and appreciate the FMA acknowledging that fair customer outcomes are a shared responsibility between financial institutions and intermediaries (although we do have some questions below on the practicalities of implementing that shared responsibility).

2. Are there any aspects of the guidance you think are unclear or need to be improved? If so, please explain what these are and provide your suggested wording or approach to address these.

Training

The Guidance states that financial institutions are responsible for providing appropriate product information and training to intermediaries to ensure they understand the product. However, we note that the provision of training to intermediaries is not a legislative requirement of CoFI and was removed from an earlier version of the CoFI legislation.

Whilst it does make good sense in ensuring that products are not mis-sold, the Guidance should acknowledge that providing training is only one of the tools that may be used to achieve this objective; there are other options that can be introduced to mitigate the risk of mis-selling. For example, in the context of a FAP intermediary, their existing competence requirements under the financial advice regime requires them to undertake general training on insurance products, therefore it would not be a proportionate approach for each insurer to be required to provide training to FAP intermediaries where the insurer assesses the risk associated with that FAP intermediary to be low.

Likewise, if the intermediary is themselves required to be licensed under CoFI, then the manufacturing insurer should not be required to provide training to the employees of the CoFI-licensed intermediary.

High risk channels and audits

It is still unclear what properly needs to be done to differentiate between low risk and high-risk intermediaries. For example, it would be helpful if the FMA confirmed whether they still consider a FAP as lower risk in a distribution arrangement where the FAP is not providing regulated financial advice and is only providing information support, and therefore (in providing those "information only" services) is not required to comply with the regulatory regime for FAPs. Does the fact that the intermediary holds a FAP licence and therefore has processes in place to adhere to the financial advice regime mean it is still considered lower risk even when providing information support only?

It would also be useful to have a clearer understanding of what sort of activity the FMA considers necessitates an external audit (refer also to our answer to Question 3, below).

[2] Although, as noted later in this submission, the identification and assessment of risk factors could be improved.

3. Are there any aspects of the guidance you think may have unintended consequences?

Communication

An example in the Guidance suggests that where an insurer does not have any direct communication with consumers, it should put in place agreements and processes for intermediaries to regularly communicate with their clients to encourage them to review their cover and products. This seems contrary to the FMA statement that it does not expect insurers to "supervise a FAP intermediary's compliance with their obligations under the financial advice regime".

The implementation of such a process in the context of a FAP intermediary could result in insurers interfering with the financial advice obligations of the FAP intermediary. For clarity, a FAP intermediary undertakes a detailed review of their client's background circumstances and position (in accordance with their financial advice obligations) to determine whether it is appropriate to review their cover or product choice, etc. Such a review may result in the client changing products or, in some circumstances, changing insurers.

For that reason, it would be helpful if the examples could be accompanied by a statement that the examples given are not the *only* way to address responsibility for customer communications, and that the insurers' risk assessment is a relevant factor in the approach taken. We acknowledge that that the "*What we do not expect*" section on page 19 is helpful in this respect.

Increased compliance costs

It is helpful that the Guidance states that the "FCP factors" should be "considered in their totality" when financial institutions make their risk assessment of distribution methods. The Guidance gives an example of the presence of one factor which might decrease risk (e.g. using a FAP intermediary) with other factors which may increase the risk. For completeness, this example should be extended in the opposite direction; that is, providing a scenario where an institution assesses factors that increase the risk (e.g. non-FAP) and balances those with factors that reduce the risk (e.g. experience working with the intermediary).

While it might be inferred that both assessment directions are possible, it would be useful to have this clearly laid out. Without knowing clearly what the FMA's approach will be, a reasonable financial institution may seek to err on the side of caution and treat all non-FAP intermediaries as "higher risk" and thus implement more onerous review processes (eg external audit) for that distribution method. This would be counter to the FMA's view that compliance with CoFI distribution requirements can be done without "adding unnecessary cost" (page 18).

By using FAP intermediaries as the *only* example of a low-risk channel, the FMA might inadvertently incentivise certain behaviour which comes with a cost. Placing too much emphasis on the lower risk of FAP intermediaries might lead institutions to rationalise their distribution models to only use these methods. This may then reduce the available channels for consumers and/or increase the cost of access. We would suggest making it explicitly clear that this is just one of several factors that would deem an intermediary to be lower risk.

4. Are there any aspects of the guidance you do not agree with, or you think should not be included? Please give reasons for your view.

There needs to be clarity about the expected use of external audits. The "Spotlight" on this issue (pp19-20) notes that external audits would not be expected as a "routine compliance measure" but they are expected to be considered for "higher-risk distribution methods". We note that the Guidance does try to limit the expectation for external audits by saying this type of tool should "be considered only for higher-risk distribution methods or to respond to a specific risk" (page 20).

But, if an insurer regularly uses an intermediary distribution channel that is seen as "higher risk" (such as a non-FAP intermediary), does that not then suggest that regular external audits would need to be considered? The Guidance seems to lend itself to this interpretation; if this is not the intent, then this should be clarified.

As we have noted, regular use of external audits for intermediaries will not only increase compliance costs but will also hinder relationships that certain insurers have with their intermediaries and, we think, go against the principle-

based approach of the CoFI regime. The relationships between the insurer and the intermediary are critical to maintaining a partnership approach ("shared responsibility") towards achieving fair treatment of consumers.

5. Are there any additional areas you consider the guidance should address? If so, please provide details.

FAPs not providing financial advice

As mentioned above, it would be helpful to have clarity around the approach for FAPs that are involved in distribution arrangements where they do not provide regulated financial advice, and therefore are not required to comply with the Financial Markets Conduct Act in respect of the service the FAP provides to the insurer.

Referral model

While the Guidance refers to "any" distribution methods, there may be some value in identifying guidance specifically for the "referral only" distribution model (that is, where advisers/agencies generate and refer customer leads to the insurer who then owns and manages the advice, sales, and onboarding process directly with the customer as per the direct distribution approach).

The insurer will still have an obligation to ensure that the customers are treated fairly (including those originating from the referral model) and it will need to be comfortable that its products and services are reaching its target customers and ensuring that they are meeting the requirements and objectives of those customers (when viewed as a group). There will still be an obligation to confirm that the insurer is monitoring this distribution method (and remediating any deficiencies) and reviewing whether this distribution method is operating in a manner that is consistent with the fair conduct principle on an on-going basis.

Remediating deficiencies

It would be useful to understand the FMA's view on or approach to a situation where a financial institution observes that an intermediary is not adequately performing the aspects of distribution for which it is responsible, despite attempts by the financial institution to work with that intermediary to improve. What advice or guidance is there for financial institutions as simply severing the contractual relationship may not be a fair outcome for existing customers.

6. Are the examples useful? Are there any examples that you would like to see changed, clarified, or omitted? Are there any additional examples that should be included? If so, please provide your suggested wording.

The useful questions on page 22 for remedying deficiencies do not align to what is said about a collaborative process and 'shared responsibility'. We suggest these questions could be reframed to reflect this approach, for example:

- "How do you work with your intermediaries to track issues that are identified in how your distribution methods are operating?"
- "When and how do you and your intermediaries notify each other of any issues identified with how distribution methods are operating?"

Whilst financial institutions have obligations to provide for distribution methods to operate in a manner that is consistent with the fair conduct principle[3], there may be difficulties in requiring compliance by intermediaries who are not subject to FMA regulation of any sort. We note that the insurer is not party to what an intermediary (be it a motor vehicle dealer or an insurance broker) is saying in conversations with the customer and an example on how an institution approaches this situation would be helpful.

The clarification on what the FMA does not expect and acknowledging the dangers of over-compliance is helpful. There will always be a danger of increased and unintentional non-compliance with principle-based legislation but the examples of factors that may increase or decrease risk are a good point of reference to assist businesses in determining what is appropriate.

[3] Section 446J(1)(b)(i).

7. Do you have any comments on the length, format, or presentation of the guidance? If so, please provide details.

The length seems appropriate, and it has a good balance of overall guidance, examples, and reference to the core legislative requirements.

8. Is the 'Overview' section summarising the guidance on a page useful? Are there any changes you would suggest to this?

It is useful as a map of the high-level concepts related to each focus area. However, as noted in previous answers, the detail in the body of the document does not always fully or clearly extrapolate the overview sections (perhaps lending itself to the need for a disclaimer sentence that the complete guidance document must be read in conjunction with relevant legislation to fully understand the obligations listed in the overview).

9. Do you have any other comments on the guidance?

The guidance notes on page 6 that it does not focus on incentive arrangements. Once the final form of the regulations for sales incentives have been promulgated, it would be useful for the Guidance to be updated to reference and/or summarise any further guidance from the FMA on the form and use of sales incentives under the new regulations in the context of intermediated distribution. In many instances, insurers will be requiring activity and reporting from intermediaries that goes beyond the current status quo – any such mode shift in requirements on intermediaries is likely to be met with demands from those intermediaries to renegotiate incentives for performing these modified distribution functions[4].

There may be challenges in renegotiating contractual agreements with intermediaries in time for the commencement of the regime in early 2025. Some intermediaries have been reluctant to agree to provisions in distribution agreements that have the intended effect of providing confidence to the financial institution that those intermediaries will operate consistently with the fair conduct principle when distributing the financial institution's products. Whilst the FMA's guidance notes that it is considered "good practice" to have contractual agreements in place, it would be helpful if the FMA provided a firmer view of the importance of requiring intermediaries to take appropriate steps to comply with the insurers' Fair Conduct Programme, where appropriate.

Page 4 of the guidance says the FMA 'will be focusing more on the outcomes resulting from treatment of consumers rather than just on the methods financial institutions have chosen to comply with CoFI obligations.' It would be good to understand how the FMA plans to do this? What would the FMA look at, and how would the FMA understand whether fair outcomes for consumers are achieved?

A better understanding of how the FMA intends to assess compliance can assist with understanding what actions are required for compliance.

[4] Noting intermediaries will be required to comply with the incentives regulations (CoFI, section 446L).

CONCLUSION

Thank you again for the opportunity to submit on the proposed guidance. If you have any questions, please contact our Regulatory Affairs Manager [redacted]

Yours sincerely,

[redacted]

[redacted]

[redacted]

[redacted]

New Zealand Banking Association
Te Rangapū Pēke

Submission

to the

Financial Markets Authority

on the

Consultation: Proposed CoFI Guidance Note on Intermediated Distribution

14 April 2023

NEW ZEALAND BANKING ASSOCIATION – TE RANGAPŪ PĒKE
PO Box 3043, Wellington 6140, New Zealand
www.nzba.org.nz

About NZBA

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

2. The following eighteen registered banks in New Zealand are members of NZBA:
   - ANZ Bank New Zealand Limited
   - ASB Bank Limited
   - Bank of China (NZ) Limited
   - Bank of New Zealand
   - China Construction Bank
   - Citibank N.A.
   - The Co-operative Bank Limited
   - Heartland Bank Limited
   - The Hongkong and Shanghai Banking Corporation Limited
   - Industrial and Commercial Bank of China (New Zealand) Limited
   - JPMorgan Chase Bank N.A.
   - KB Kookmin Bank Auckland Branch
   - Kiwibank Limited
   - MUFG Bank Ltd
   - Rabobank New Zealand Limited
   - SBS Bank
   - TSB Bank Limited
   - Westpac New Zealand Limited

Contact details

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

[redacted]

[redacted]

Introduction

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

Feedback

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

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

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

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

    3.3. *Attestations*: The Guidance currently says on page 18 that the FMA would only expect to see attestations being used for lower-risk distribution methods, and in combination with other review processes. Attestations are one of a number of useful

tools that financial institutions may use to get assurance over distribution methods in order to achieve good customer outcomes. We generally consider that attestations are helpful, and lead to financial institutions being able to ask further questions if there are any issues. Financial institutions use the information provided as a prompt to ask further questions and they are of value. We would prefer that the Guidance retain flexibility for financial institutions to use attestations as they consider appropriate yet recognising the need for proportionality. We would therefore prefer that the Guidance does not say what types of situations are best suited to attestations. An unintended consequence of the Guidance as drafted is that it could make organisations consider that attestations can be used less widely and could lead to pressure to drop these for the broker industry. There needs to be a range of tools and options available, rather than limiting these.

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

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

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

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

[redacted]

Subject: FW: FMA Consultation: CoFI Guidance for Intermediated Distribution

[redacted]
Sent: Tuesday, May 23, 2023 11:37 AM
[redacted]
Subject: FMA Consultation: CoFI Guidance for Intermediated Distribution

[redacted]

I refer to our recent telephone conversation. Hope you and the team are well.

As part of our submission on your *Consultation: CoFI Guidance for Intermediated Distribution,* we submitted (at paragraph 3.6) that:

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

We have considered this further with our members, and believe that at this stage it would not be practicable to determine an industry standard approach. One particular issue is that specifying common information requirements could raise potential competition law issues around cartel conduct to the extent that it arguably impacts the banks' competitive position as it relates to the management of risk.

We would therefore like to further submit that the possibility of an industry approach to attestations or other information provided by intermediaries should not be addressed in the final CoFI Guidance for Intermediated Distribution.

Ngā mihi
[redacted]

[redacted]

[redacted]

New Zealand Banking Association
Te Rangapū Pēke

Feedback form

Consultation paper: Proposed CoFI guidance note on intermediated distribution

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at consultation@fma.govt.nz with 'Feedback: Proposed CoFI guidance note on intermediated distribution: [your organisation's name]' in the subject line. Thank you. **Submissions close on 14 April 2023.**

Date: 14 April 2023 Number of pages:

Name of submitter: [redacted]

Company or entity: The New Zealand Home Loan Company Ltd (NZHL)

Organisation type: Home Loan and Insurance Advisor Network

Contact name (if different): [redacted]

Contact email and phone: [redacted]

Question number	Response
1.Do you think this guidance will help financial institutions develop their fair conduct programmes in relation to intermediated distribution methods? Please provide reasons for your answer.	We support a principles-based approach to guidance as opposed to rigid requirements to ensure that the focus is customer-centric and not a tick-box exercise to simply meet those requirements. Additionally, we support a risk-based approach to the guidance around the intensity of review. There is a risk that if this guidance isn't in place, financial institutions may mandate conduct requirements for intermediaries - rather than working collaboratively with licenced intermediaries creating additional compliance and reporting requirements and adding additional cost and resources that may be unsustainable for some intermediaries. Consequently, fewer qualified financial advisors will be available to provide personalised financial advice to New Zealanders.
4. Are there any aspects of the guidance you do not agree with, or you think should not be included? Please give reasons for your view.	Pg 20. What we do not expect - we support this section except we recommend removing the following sentence: "This does not prevent institutions from adopting these measures if they choose." The rationale is that financial institutions are more likely to adopt these measures than not which does not support a risk-based approach. The consequences of this will be creating additional compliance and reporting requirements adding additional cost and resources which may be unsustainable for some intermediaries - resulting in fewer qualified financial advisors available to provide personalised financial advice to New Zealanders.

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.

28 April 2023

Financial Markets Authority,
Level 2 Grey Street,
Wellington 6140

By email: consultation@fma.govt.nz

Tēnā koe Financial Markets Authority,

Securities Industry Association submission: Proposed CoFI guidance note on intermediated distribution

Please find attached the submission prepared by the Securities Industry Association (**SIA**) in response to the Consultation paper: *Proposed CoFI guidance note on intermediated distribution (February 2023).*

Thank you for the opportunity to present our comments on this consultation paper. We also appreciate the extension granted for this submission due to my recent injury and surgery.

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

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

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

Please get in touch should you have any questions about this submission or require further information.

Nāku noa, na

[redacted]

[redacted]

[redacted]

SECURITIES INDUSTRY ASSOCIATION

[redacted]

SIA | SECURITIES INDUSTRY ASSOCIATION

Feedback form

Consultation: Proposed CoFI guidance note on intermediated distribution

Date: 28 April 2023 Number of pages: 7 (p1 cover letter; pp2-6 submission)

Name of submitter: [redacted]

Company or entity: Securities Industry Association (SIA)

Organisation type: Industry Association

Contact name (if different): -

Contact email and phone: [redacted]

Question number	Response
1. Do you think this guidance will help financial institutions develop their fair conduct programmes in relation to intermediated distribution methods? Please provide reasons for your answer.	1.1 The Securities Industry Association (**SIA**) welcomes the proposed Conduct of Institutions (**CoFI**) guidance note on intermediated distribution providing clarity on what entities and parts of the sector are considered low-risk intermediaries and indicating that Financial Institutions (**FIs**) should not act as pseudo-regulators. However, given the guidance is non-prescriptive, it remains to be seen how this will manifest in practice. 1.2 SIA strongly believes that Financial Institutions (**FIs**) will continue to take a strict view of the CoFI regime and their fair conduct programmes. 1.3 We expect that FIs, left to their own devices, will naturally and understandably take all precautions not to breach the Financial Markets (Conduct of Institutions) Amendment Act 2022 and related regulations. It is, therefore, our deep concern that in doing so, this may extend to FIs undertaking additional preventative measures and activities, even if they are not explicitly required to do so by the conduct regime. 1.4 The impact of this is that SIA's members, who are NZX Market Participant Firms (**NZX Participants**) and other intermediaries, may be required to provide additional information or undertake activities that are outside the scope of the regulatory requirements and a fair conduct programme, but could be included as part of the terms and conditions of the business relationship as a catch-all for ensuring under no uncertain terms that the FI will find themselves in breach.

		1.5 There is potential for a highly conservative approach to the CoFI regime. An example of this is the approach of financial sector lenders to the Credit Contracts and Consumer Finance Act 2003 (**CCCFA**) to ensure they would not breach their obligations. Lenders took a highly conservative interpretation that resulted in unintended consequences for consumers. 1.6 We suggest the wording of the guidance could be made more apparent that FIs should not impose conduct-related obligations on intermediaries or behave in a supervisory nature that they are not legally required or expected to under the COFI regime.
2.	Are there any aspects of the guidance you think are unclear or need to be improved? If so, please explain what these are and provide your suggested wording or approach to address these. Please provide reasons for your answer	2.1 Please see response to Question 1.
3	Are there any aspects of the guidance you think may have unintended consequences?	3.1 Please see response to Questions 1 and 4.
4	Are there any aspects of the guidance you do not agree with, or you think should not be included? Please give reasons for your view.	4.1 We appreciate that the Financial Markets Authority (**FMA**) has sought to understand the scope of the use of attestations by FIs. We expect that for low-risk intermediaries, such as NZX Participant Firms, attestations will continue to be requested by FIs. 4.2 We support the notion of a standardised or industry-specific approach to attestations. However, SIA disagrees with the proposal that each industry should lead the development of an industry-specific template. It is a good idea in principle; however, our concern is despite any best efforts of industry to develop a template, a range of FIs would have to be in agreement with what is included. There would be no legislative or regulatory obligation of the FIs to adopt the template. 4.3 The nature of the business relationship with each FI is individual. There may be scope for commercially sensitive information or issues relating to competitive advantage captured in such document, as well as the confidential discussions between a FI and NZX Participant

		leading to the development of it. We are also concerned that NZX Participants could potentially breach competition laws by discussing what the attestation should include. And in some circumstances, the NZX Participant can also be a competitor of the FI. 4.4 Furthermore, given there can be a range of FI-related products offered to clients through an NZX Participant, each NZ Participant Firm will have an individual business relationship with multiple FIs. 4.5 We would support the FMA in developing a template as a basis for the securities industry or the broader financial services sector to illustrate what could reasonably be expected to be included in an attestation. A standard approved attestation is more likely to be adopted by a FI. 4.6 We would be happy to work with FMA to determine the details of a template. This could include meeting the disclosure requirements of the Financial Markets Conduct Act 2013 Schedule 1 [1]*Provisions relating to when disclosure is required and exclusions for offers and services.*
5	Are there any additional areas you consider the guidance should address? If so, please provide details.	5.1 No further comment.
6	Are the examples useful? Are there any examples that you would like to see changed, clarified, or omitted? Are there any additional examples that should be included? If so, please provide your suggested wording.	6.1 SIA thanks the FMA for providing examples in the guidance that are relevant to the securities industry. We believe this will help provide clarity and context for FIs and give assurance to NZX Participants. 6.2 Should further examples be required, SIA would gladly assist in their development.
7	Do you have any comments on the length, format, or presentation of the guidance? If so, please provide details.	7.1 SIA submits that this guidance is long, which makes it difficult to find specific information. However, given the complexities of the regime and the breadth of its application to various industries within the financial services sector, all the information contained within it is pertinent. 7.2 For the benefit of the end-user and easier referencing, we suggest that the contents page be more detailed.

[1]https://www.legislation.govt.nz/act/public/2013/0069/latest/whole.html?search=sw_096be8ed81cb9f9c_schedule_25_se&p=1#DLM4092365

8 Is the 'Overview' section summarising the guidance on page useful? Are there any changes you would suggest to this?	8.1 The Overview provides a concise summary on a page. It supports that fairness to the consumer should be the centre of any products and services and any FI's or intermediary's approach to its fair conduct programme.
9 Do you have other comments on the guidance?	9.1 SIA is supportive of the guidance acknowledging the complementary nature of the Conduct of Financial Institutions (**CoFI**) regime and the obligations under the financial advice regime and articulating that firms holding a Financial Advice Providers licence provide a reduced level of risk and that FIs can take this into account. 9.2 We further iterate that due to the guidance being non-prescriptive, there are no firm guardrails for Financial Institutions. Should the guidance be implemented as it is currently written, it would help the broader sector if a review of what was being requested by FIs was audited to ensure that no over-reach by FIs extends to imposing unnecessary obligations or requests for information from intermediaries or straying into behaviours of a supervisory nature.

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

10.1 SIA maintains that due to the specific way NZX Participants operate through the fair conduct requirements already in place via the Financial Markets Conduct Act, Financial Services Legislation Amendment Act and regulation via the NZX Participant Rules, and the very nature of the industry to provide individual advice and recommendations, they should be exempt from the CoFI regime.

10.2 We support a high bar for the standard of conduct and fair treatment of customers and believe through the aforementioned regulatory regimes that the securities industry meets this high standard.

10.3 We note that the guidance acknowledges that these elements contribute to decreasing the risk for a FI, and that FI and regulators can have confidence in the industry to meet its fair conduct obligations.

10.4 As noted in response to the consultation's questions above, we have concerns regarding the non-prescriptive nature of the guidance and the potential for FIs to overreach in terms of what they require from intermediaries.

10.5 We support the notion of standardised attestation templates in principle; however, we believe that the FMA is well-positioned to outline the expectations for what this should contain to meet obligations. We are not confident that FIs will adopt industry-developed templates as they may each take a different view of what is appropriate to their business and business risk.

10.6 Thank you for the opportunity to contribute to the discussion regarding the CoFI regime and the development of the intermediated distribution guidance to ensure the regime achieves its intended purpose and is effectively implemented as a workable regime.

10.7 SIA welcomes the opportunity to engage further on this issue or provide any additional information or context to our submission if required.
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 form

Consultation paper: Proposed CoFI guidance note on intermediated distribution

Please submit this feedback form electronically in both PDF and MS Word formats and email it to us at consultation@fma.govt.nz with 'Feedback: Proposed CoFI guidance note on intermediated distribution: [your organization's name]' in the subject line. Thank you. **Submissions close on 14 April 2023.**

Date: 23/02/23 Number of pages: 1

Name of submitter: One

Company or entity: The Little Car Company

Organization type: Motor Vehicles, Insurance, Finance

Contact name (if different): [redacted]

Contact email and phone [redacted]

Question number	Response
One	*To what amount of Legal responsibility can an Employer expect to place on an Employee if they have.* 1. *The Employee has not had enough training regarding all Finance and Insurance products that the Employee has had to introduce to the client who is purchasing a Motor Vehicle as an example both the Finance and all associated Insurance products.* 2. *If the Employee has not by their own fault either forgotten or through lack of knowledge or training to offer a product or the Client is refusing to take any products that are there to protect them to what degree of protection does the employee have or will the employer be totally responsible for the employees 'actions as this could be both costly for all concerned.*

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

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

Feedback form

Consultation paper: Proposed CoFI guidance note on intermediated distribution

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Date: 13 April 2023 Number of pages: 2

Name of submitter: [redacted]

Company or entity: Wealthpoint Limited

Organisation type: Intermediary (hold a Financial Advice Provider Licence)

Contact name (if different):

Contact email and phone: [redacted]

Question number	Response
2	• We feel the guidance note should use stronger language throughout, stating that Financial Institutions should be able to place weight on the fact those intermediaries who have Financial Advice Provider Licences have FSLAA requirements they need to comply with. • In the first bullet point on Page 15, our view is the word, 'may' should be included after the word, 'These' in the following sentence, 'These include formal review processes,regular meetings….' • On page 16, we are not clear on the intent of the following sentence, 'However, when combined with other factors, the institution may consider that the overall potential risk of the distribution method operating in a manner inconsistent with the fair conduct principle is increased.' In particular, we are not clear if this sentence relates to the sentence directly preceding it or not. • On page 19, we would like the words, 'or audit' be inserted after the word, 'supervise' in the following sentence, 'We do not expect institutions to supervise FAP intermediaries' compliance with their obligations under the financial advice regime'. This will then match the wording on page 20 where it states the FMA's view that external audits are not necessary to ensure compliance with CoFI distribution requirements.Whilst this guidance note is in relation to CoFI, the interaction between CoFI and the financial advice regime is critical to the success of the CoFI legislation and clarity on this point should be provided here accordingly.
3	• On page 19, we suggest the words, 'or audit' be inserted after the word, 'supervise' in the following sentence, 'We do not expect institutions to supervise FAP intermediaries' compliance with their obligations under the financial advice regime'. This will then match the wording on page 20 where

	it states the FMA's view that external audits are not necessary to ensure compliance with CoFI distribution requirements.Whilst this guidance note is in relation to CoFI, the interaction between CoFI and the financial advice regime is critical to the success of the CoFI legislation and clarity on this point should be provided here accordingly. Without such clarity provided, we feel there is a risk providers may assume the FMAs view is that it is expected Financial Institutions may demand intermediaries have audits periodically conducted in relation to the financial advice regime. • We feel the guidance note should use stronger language throughout, stating that Financial Institutions should be able to place weight on the fact those intermediaries who have Financial Advice Provider Licences have FSLAA requirements they need to comply with. Otherwise there is the risk that Financial Institutions take a very conservative approach to ensuring intermediaries comply with CoFI resulting in an unnecessary compliance burden.
Feedback summary – *if you wish to highlight anything in particular*	

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

AUCKLAND – Level 5, Ernst & Young Building | 2 Takutai Square, Britomart | PO Box 106 672 | Auckland 1143
WELLINGTON – Level 2 | 1 Grey Street | PO Box 1179 | Wellington 6140

fma.govt.nz