



**Submission on
Securities Markets (Investment Advisers and Brokers)
Regulations 2007**

**Submission to the Ministry of Economic Development
20 September 2007
by Institute of Financial Advisers**

Privacy

The Institute of Financial Advisers (IFA) does not seek to have any part of our submission withheld for privacy reasons. We are happy to have our submission available on the Ministry of Economic Development and other websites.

Continued participation

The Institute is keen to support our submission by participating in any further discussion forums.

Contact Person

Our contact person for this submission is:

David Hutton
Chief Executive
Institute of Financial Advisers
PO Box 5513
Wellington

Phone (04) 499 8062
Fax (04) 499 8064
Mobile (0274) 462 656
Email david@ifa.org.nz
Website www.ifa.org.nz

[The Professional Body for Needs-Based Financial Advisers](http://www.ifa.org.nz)

Contents

- 1. The Institute..... 1
- 2. Introduction to the submission..... 1
- 3. Detailed responses 1
 - 3.1 Regulation 5: Conditions of exemption for telephone advice..... 1
 - 3.2 Regulation 6 and 7: Substitute Adviser 2
 - 3.3 Regulation 8: Exemption for lawyers or chartered accountants..... 3
 - 3.4 Regulation 12: Advice in relation to term life insurance 3

1. The Institute

The Institute of Financial Advisers (IFA) is the professional body for some 1,450 members, representing needs-based financial advisers in New Zealand. All members are individual members, not corporate members. We estimate that our members provide advice to over 600,000 clients, many of whom would be couples rather than individuals.

Our members provide advice to their clients in the areas of insurance, investments, financial planning, work-based savings and insurance, retirement planning, estate planning and financial services generally. Their professional practices reflect the broad spectrum of New Zealand businesses – they operate as local SME's, are part of large regional or national dealer groups, are associated with strong financial organisations, services companies in banking, funds management, or insurance, work in employee benefits organisations, or sometimes practice as lawyers, accountants and other professional advisers.

The Institute reinforces compliance with a code of ethics and practice standards, runs Dispute Resolution and Disciplinary Committees that are independently chaired, offers education pathways that can lead to tertiary qualifications and the attainment of internationally recognised adviser marks, maintains and ensures compliance with a continuing professional development programme, and provides networking, education, development, and business practice forums at a national and regional level for members. It represents its members with government, government agencies, and other stakeholders.

2. Introduction to the submission

This submission concerns only the draft Securities Markets (Investment Advisers and Brokers) Regulations 2007.

IFA supports the principle that consumers who are investor should receive adequate disclosure as part of investment advice. However, IFA considers some aspects of the proposed regulations are unworkable, especially the proposed telephone advice rules. We also suggest a different approach to non-investment insurance policies.

3. Detailed responses

Detailed comments follow, using the regulation numbers in the draft:

3.1 *Regulation 5: Conditions of exemption for telephone advice*

The requirements under the Act require disclosure of:

- Experience, qualifications, professional standing, etc.
- Certain criminal convictions, etc.
- Fees
- Other interests and relationships
- Details of securities about which advice is given

Regulation 5(a) requires that all these matters be disclosed verbally when giving telephone advice, where the person calling is not an existing client (who would have received formal written disclosure previously).

Typically, when an adviser receives a telephone call from a potential new client, it may not initially be readily apparent whether advice is being sought by phone. The practical difficulty is that an adviser can technically be in breach if they haven't been given an opportunity to provide the disclosure requirements verbally, or inadvertently omit an element of it. The practical reality in this day and age is that everyone - particularly consumers - are pressed for time and want quick answers or quick explanations – especially when the markets are volatile. The substantial list of information to be disclosed will take a considerable amount of time to read out as a typical disclosure document is around two pages in length and contains considerable detail. Frankly, a consumer is unlikely to absorb this amount of information over the telephone.

It would seem more practical for the requirement to be for there to be disclosure of those aspects that are relevant to the advice being sought, with the proviso that the full disclosure document is provided immediately afterwards. In terms of relevant information to be disclosed, we have the following suggestions:

- **Experience, qualifications, professional standing, etc.**
We suggest that the requirement be limited to state the area of advice that the financial adviser is qualified to provide and membership of any relevant professional association. For example, “I am a qualified financial planner with membership of the Institute of Financial Advisers and am qualified to provide investment advice on [managed funds and finance companies].”
- **Criminal convictions**
Obviously, these should be disclosed, if they exist.
- **Fees**
It is not always practical to disclose the full range of fees that might apply, especially in advance of knowing precisely what advice will be provided or whether the client is prepared to accept that advice. It would seem more realistic to require the adviser to disclose whether there is a fee for the telephone advice itself, together with a general description of the basis for fees, e.g. commission, an hourly rate, flat fee, etc. with more specific detail only if the client requests immediate implementation. Typically, implementation for a financial adviser would require signed documentation which would enable the formalities of full disclosure to be completed.
- **Other relationships**
This aspect relates to potential conflicts of interest. We consider this is what should be required to be disclosed but only if it is relevant to the advice being sought.
- **Details of securities about which advice is given**
Again, it seems impractical to require verbal disclosure of all potential securities about which advice may be provided. For a broadly based financial planner, this is a lengthy list. The practical requirement should be a response to questions from the client, i.e. whether or not they are competent to provide advice on that class of security.

3.2 Regulation 6 and 7: Substitute Adviser

There seems to be a tautology in the requirements of this regulation in the requirement that the regular adviser “cannot be located or contacted within a reasonable time.” The client would only be interested in advice from a substitute adviser if the person they normally dealt with was not available, but they wanted advice anyway. Typically, this will either be a minor

matter (in which case advice is probably low risk) or an urgent matter, in which case there has to be a workable provision that balances the risk to the client of them not receiving advice against the requirements for formal disclosure – remembering that they are already a client and will have previously received a disclosure document.

Our view is that it would be better to require the limited disclosure we have recommended in paragraph 3.1 rather than the complex process in the draft regulation.

3.3 Regulation 8: Exemption for lawyers or chartered accountants

We can accept the need for a narrow exemption relating to incidental aspects of professional work. However, the phrase "necessary incident of" professional ... advice, is open to broad interpretation and could be open to abuse.

In reality very few lawyers and accountants have experience or demonstrated competence in the complex array of areas that make up personal financial advice. Nor are their professional bodies expert in these areas.

IFA strongly argues for any exemption to be narrow, covering only those aspects where practicality and common sense suggest the legal or accounting advice needs to cross the personal advice boundary. An example of this may be the solicitor suggesting that a client invest the proceeds of a property settlement in a compliant trust account for a short period (say between the settlement dates of a sale and a replacement purchase expected within 30 days). But advising a client to leave the money there for an indefinite period would not comply. Similarly advising a client not to bother with a financial adviser, or (say) to keep the farm and lease it after retiring, would not comply.

3.4 Regulation 12: Advice in relation to term life insurance

The logic behind this exemption is not entirely clear. We suspect that the exemption is supposed to relate to insurance products that do not include an investment element. There are a range of insurance products other than term life, that exclude investment aspects, e.g. without profit whole of life policies and some income protection insurance. [Note: permanent term and indeed all term insurance has a technical cash value equal to the portion of any prepaid premium not yet due. So, terminology referring to policies without a cash value would not be a valid alternative.]

IFA suggests that the phrase "term life insurance" be changed to "personal insurance products that have no investment component". This would ensure that unbundled products, or whole lives would be captured by disclosure obligations as there is clearly a savings/investment component to them. Health insurance or disability insurance would not be inadvertently captured by the definition however.