



SUBMISSION ON THE FINANCIAL ADVISERS BILL: CONSULTATION ON POLICY PROPOSALS ISSUED APRIL 2008

To the Finance and Expenditure Select committee.

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Introduction

This submission is from the Institute of Financial Advisers.

We wish to appear before the committee to speak to our submission.

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Background information on the Institute of Financial Advisers

The Institute of Financial Advisers (IFA) is the professional body for some 1,400 members, representing financial advisers in New Zealand. All members are individual members, not corporate members. We estimate that our members provide advice to over 200,000 New Zealanders each year, many of whom would be couples rather than individuals, with an overall client base of around 600,000.

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.

Key overall points

1. IFA supports the intention of the Financial Advisers Bill to improve regulation of financial advisers, but is disappointed that after years of research and consultation, the solution agreed with industry, namely co-regulation through Approved Professional Bodies (APBs) has been abandoned without further consultation. We are also concerned that many of the principles used as a basis for policy decisions may also be discarded, e.g. a level playing field, a single register of all financial advisers and protection of consumers on all aspects of financial advice.
2. The way in which these major changes in policy were developed and released is creating considerable unease throughout the finance industry. The Policy Proposal lacks detail, so we cannot make a proper assessment and the resulting uncertainty is very unsettling.

We need to see draft legislation and be able to make further submissions as the Policy Proposal lacks sufficient detail to allow proper assessment.

3. Too much is being left to future regulation, rather than being set out in well designed legislation. The industry needs certainty so that it can ensure that financial advisers are adequately prepared for regulation e.g. if advisers require additional educational qualifications, these may have a two-year lead time for an individual adviser.

IFA considers that the detail of proposed regulation needs to be announced before the Bill becomes law so that everyone knows the full implications of legislation, including having draft regulations for comment, allowing the industry to plan for orderly implementation.

4. IFA liked the broad approach proposed in the Bill, using financial advice as the basis and making a few considered exclusions. The proposed new approach is to start with a limited list of products and areas of advice with provision to perhaps add in other areas through regulation. We consider this is conceptually worse.
5. Some aspects of the Policy Proposal seem to be based upon faulty assumptions. For example, the suggestion that multiple APBs would lead to barriers to entry, silo-like behaviour, higher competency standards with resultant increased pricing has no basis in practical reality. The comments reflect a lack of knowledge of the industry. In the sector of the industry in which IFA's members operate, the existing industry associations (a group colloquially called the G4) have been working constructively together for nearly a year with the aim of forming a single APB. The G4 discussions have recognised the necessity of setting "appropriate" (not "high") minimum standards, recognise that these will need to be lower than some existing standards for entry where the advice roles are narrow and/or involve less complex products, as well as acknowledging that provision would need to be made for new types of advisers. The suggestion that advisers through APBs would have the market power to raise prices has no basis in fact. Pricing in most parts of this sector is largely set by the suppliers of financial products, not by advisers; and competition amongst product companies is what drives pricing. The only individual advisers able to set prices are those who charge fees. They typically deal with higher net-worth clients, where any fee is likely to be less than would be paid through commission and where the clients are more likely to be able to negotiate pricing.
6. The only sound arguments in favour of abandoning co-regulation in favour of licensing are that it will shorten the timeframe for implementation without reducing quality and that simpler systems are often better systems. While we support shortening the timeframe for implementation of regulation, we are fearful that this will be achieved only through having

the form of regulation – through licensing – but not the necessary substance. A short time scale might require licensing all existing advisers without testing their competency. This may be the only feasible approach as the industry ITO was only approved in August 2007, qualifications are still under development and have a lead time of approximately 2 years. Having recognised qualifications on the NZ Qualifications framework and matching these to adviser roles is an essential pre-requisite for being able to assess competency of existing advisers, most of whom do not have formal qualifications but do have experience.

IFA recommends that if licensing is initially introduced without competency testing, then formal requirements for competency should be required to be achieved by a set future date. The competency requirements and date by which competency needs to be demonstrated should be announced early so that advisers have time to complete qualifications or undertake assessment of prior learning and current competency.

7. We are concerned that these changes appear to abandon the principles that have been agreed with industry, especially the co-regulatory approach to regulation. The industry associations have the necessary knowledge of competency and practice standards. The Securities Commission has not had widespread involvement with the full range of advisers or the products they advise on, as their focus has been on securities and the stock exchange.
8. As stated in our submission on the Bill itself, we consider the following principles should be retained in this legislation and the companion Bill on registration and dispute resolution:
 - The purpose of regulation of financial advisers is to protect consumers through ensuring that there are appropriate, uniform, minimum standards for all those involved in giving financial advice. Any “exemptions” or “exclusions” detract from this aim. The key elements that need to be retained are:
 - Inclusion of all aspects of financial advice and all financial products – so there are no gaps in consumer protection.
 - Uniformity in standards for advisers giving advice on the same or similar products/services – so consumers receive the same protection irrespective of who employs the adviser and there is a level playing field.
 - A single register of financial advisers – so consumers have only one source to check.
 - Co-regulation and principles-based regulation rather than a prescriptive approach where rules are dictated by a governmental agency and may be changed rapidly through regulation.
9. As presently drafted, these principles are not consistently reflected in the Bills and are made worse by some of the proposed policy changes. For example:
 - **There is no single register of financial advisers for consumers to access.** Under the Bill, accountants and lawyers are excluded. Under the Policy Proposal, advisers working under an accredited institution do not seem to be required to be registered. There would be a separate register of real estate agents who may also be giving financial advice.
 - Under the Bill, Lawyers are fully exempt and accountants partially exempt. **Under the Policy Proposal the proposed exemptions are extended** to include budget advisers, and perhaps real estate advisers who are not real estate agents. We need to be convinced that consumers will be adequately protected to be able to support any exemptions.
 - **The definition of “security” excludes important categories such as real estate.** The Policy Proposal suggests that “advisers on real property are covered by the Real Estate Agents Bill”, but many advisers involved in real property are not real estate agents and are not selling the property itself, and few who are real estate agents are competent investment advisers. The Policy Proposal is that this group is

to be covered by regulation, but this makes it difficult to assess adequacy of what is proposed.

- **It is still unclear how real estate agents who provide advice on investment property are to be regulated and whether a different standard will apply to them, compared with regulation of financial advisers.** The Real Estate Agents Bill needs to be co-ordinated with the legislation for financial advisers. It is important to ensure consistency and also to avoid some advisers being caught under two different regulatory regimes. However it is also important to provide an environment in which New Zealand consumers can be confident about financial advice. The Policy Proposal has insufficient detail to enable us to determine whether this issue has been adequately resolved and the Justice and Electoral Reform Select Committee is not due to report back on the bill until 10 June 2008.

10. There are acknowledged issues with the wording of the definitions in the Bill. These are discussed in the Policy Proposal, and a different approach is proposed, which has its own issues and limitations. In making changes, our view is that it is essential that the principles outlined in paragraph 8 are adhered to, so that there is adequate coverage. Our view is that financial advisers that should be covered by regulation are those providing advice on: borrowing, budgeting, credit, estate planning, financial planning, insurance, investments (including real estate), mortgages, saving, superannuation, giving security, a guarantee or indemnity.
11. The approach suggested in the Policy Proposal faces the risk of inadvertently excluding types of advisers or financial products that should be regulated to provide consumer protection.
12. If there are to be exclusions, IFA's view is that this might best be done by excluding financial advice relating to transactions or assets below a certain value, perhaps \$5-10,000, i.e. taking account of proportionality. This would exclude most budget advice through voluntary groups but retain the emphasis on consumer protection for significant transactions, requiring those providing financial advice to have appropriate competency and to follow appropriate practice standards.

Summary of Recommendations

1. Proposed changes to the Bill, as a result of this Policy Proposal, should be made available for further industry submissions, as the Policy Proposal lacks sufficient detail to allow proper assessment.
2. The following principles should be retained in this legislation and the companion Bill on registration and dispute resolution:
 - The purpose of regulation of financial advisers is to protect consumers through ensuring that there are appropriate, uniform, minimum standards for all those involved in giving financial advice. Any “exemptions” or “exclusions” detract from this aim. The key elements that need to be retained are:
 - Inclusion of all aspects of financial advice and all financial products – so there are no gaps in consumer protection.
 - Uniformity in standards for advisers giving advice on the same or similar products/services – so consumers receive the same protection irrespective of who employs the adviser and there is a level playing field.
 - A single register of financial advisers – so consumers have only one source to check.
 - Co-regulation and principles-based regulation rather than a prescriptive approach where rules are dictated by a governmental agency and may be changed rapidly through regulation.
3. If licensing is initially introduced without competency testing, then formal requirements for competency be required to be achieved by a set future date. The competency requirements and date by which competency needs to be demonstrated should be announced early so that advisers have time to complete qualifications or undertake assessment of prior learning and current competency.
4. The detail of draft regulations need to be made available to the industry at the earliest opportunity for to allow comments and submissions and so the industry can plan for implementation.

Detailed Comments on the Policy Proposal

Comments on particular questions in the discussion paper follow. The questions are repeated from the Policy paper.

1. Do you agree with the occupational approach to the regulation of financial advisers?
2. Is the definition of a financial adviser (being a person whose primary business is the provision of financial advice, or who regularly provides such advice in the course of business) suitable?
3. Is the definition of financial advice sufficiently clear? Are there people who are likely to be caught within the definition of a financial adviser that should not be caught? How could such people be dealt with?

IFA was comfortable with the “financial adviser service” approach, though recognises that there were problems with the breadth of the definition in the Bill. The advantage of this approach was that it avoided the problems of having to “list” either occupations, areas of advice and/or products. The discussion in the Policy Proposal reflects the difficulties caused by boundary issues with the revised approach. Their suggested solution is to provide for additions (and perhaps exclusions) through regulation-making powers. This has the weakness of enabling expansion of the regulatory regime through administrative fiat, without agreement with the industry. It may also open up the possibility of expansion of exclusions, also without agreement with the industry, to the detriment of consumer protection.

Financial services as an industry is changing rapidly and new financial products and areas of advice are constantly being developed. This will no doubt cause continuing issues for regulators if the approach taken is based upon a “list”, since the list is in danger of becoming outdated. For example, home equity release lending is relatively new and there are now specialist advisers. A list established five years ago could not have anticipated this change.

There is an inherent weakness with the “occupational” approach too in that the occupations and areas of advice are also evolving. A trend is for financial advisers to expand the range of areas in which they provide of advice. Financial planners and risk insurance advisers used to be fairly distinct groups. Now there is considerable overlap in their work. Mortgage brokers often now also provide insurance advice – perhaps 40% now do so. So, “occupation” needs to be broadly defined. Front line banking employees have added insurance, KiwiSaver and managed investment products and advice to traditional menu of savings, cheque accounts and term deposits.

So, while our preference would have been to retain the broad “financial adviser service” approach, we reluctantly concede that an “occupational” approach could be made to work. But we really need to see the detailed provisions proposed for the legislation to be able to give definitive support.

We have concerns about the proposed definition of financial adviser. The issue is to ensure that anyone who gives financial advice in the course of business is included in the definition, even if this is a minor aspect of their overall work. Someone who gives some personal financial advice (but primarily works in other areas) should still be required to meet the same standards as a financial adviser who is full time. This is necessary for consumer protection as well as to ensure a level playing field.

We consider that consumers face more risk from dealing with an adviser who is “part time” as they are less likely to have competency or to have the incentive to keep fully up-to-date with best practice.

Of particular concern to IFA are chartered accountants and lawyers whose practices extend into personal financial advice. We consider that they should have to meet the same standards as other financial advisers, especially since their base training for professional registration does not include personal financial advice.

The issue for IFA is less whether financial advisers are inadvertently caught within the definition, but that there is a risk of people who provide financial advice being inadvertently excluded with resultant lack of consumer protection.

4. Is the list of financial products appropriate? Are there additional financial products that ought to be specified in the legislation or is the regulation-making power sufficient?
5. How should advice on investments linked to real property be dealt with under the Bill?
6. Should advisers who provide advice that is not related to products be brought into the regime? How?

As stated in the summary comments, IFA considers that regulation of financial advisers and advice on financial products needs to be comprehensive. A list approach has the weakness of not automatically keeping pace with changes in what is a dynamic industry. While the suggestion of being able to add financial products by regulation may enable this weakness to be overcome, it has potential for this to be done without adequate industry involvement and could lead to uncertainty.

In terms of the products listed in paragraph 10 of the Policy Proposal:

- The definition of Securities excludes real property, chattels and mortgages as investments (other than contributory schemes).
- The consumer credit contract definition covers only borrowing for “personal, domestic, or household purposes” so would exclude borrowing to fund investment property, that frequently uses the family home as security. We understand it also excludes contracts for loans to family trusts and LAQCs.

IFA considers that all of these areas need to be included under the definitions of financial products as they are all areas where consumers seek financial advice.

The Securities Act definitions focus on products that require formal investment statements, rather than those products where consumers need to receive proper professional advice. Accordingly, we do not consider it a good place to start for a definition of what should be included.

Investment in real property and financial advice relating to investment in real property must be covered by regulation especially as NZers have a high preference for property investment and the majority of this investment is done using borrowing, often secured against the family home. Such leveraged investment has high risks. The schemes now being developed are becoming more complex with bundling of services (e.g. collection of rents, property management) and with services such as insurance being tied to associated providers (who inherently have a conflict of interest). The Blue Chip investment schemes are a typical example. This emphasises the necessity of including these areas under regulation and the

desirability of consumers being able to access independent advice. Bear in mind too, that advice to invest in property can often also mean or imply advice not to invest in other ways.

We consider the suggestion in the Policy Paper that “advisers on real property are covered by the Real Estate Agents Bill”, even if correct, may not provide sufficient protection to consumers, for many of whom one or more properties constitute their largest asset exposure, whether or not some or all of this exposure is intended as an investment. At a time when authoritative research¹ suggests that housing may be 30% to 40% overvalued in New Zealand the risks in unqualified property investment advice are higher than ever.

It is also doubtful that the majority of advice on investment property is given by real estate agents. While many real estate agents do advise on investment property, there are many others (including a significant proportion of our members) who are also involved in this area. Typically, investors do not have the protection of formal schemes required to register investment statements, as real property is not a “security”.

IFA does not favour separating regulation of real estate agents giving advice on investment property from other financial advisers. Our preference is for a single regulatory regime to ensure consistency, provide reasonable protection to the public, and a level playing field. Alternatively, the two regimes should have the same requirements.

Question 6 concerns advice unrelated to products. These advisers are typically financial planners who provide comprehensive customised financial plans but deliberately neither sell products nor undertake implementation of the plan. We consider that these advisers would be captured by the definition of “a person whose primary business is the provision of financial advice or who regularly provides such advice in the course of their business”.

7. Do you think that such a regulation-making power is needed?
8. What sorts of occupations may need to be specified in any such regulations?
9. Should any criteria be specified in the legislation in relation to the exercise of such regulation making power? What criteria should be included?
10. How, in your view, could you distinguish between those that hold themselves out as Financial Advisers and those that do not? Is a form of name reservation appropriate? Why? Why not?

As we have commented earlier, the need for a regulation-making power to prescribe occupations is a reflection of the inherent weakness of the “list” approach. If such an approach is adopted, we would reluctantly agree that such a power is necessary.

At this stage it is not possible to say what additional occupations may need to be specified in regulations – since we do not know what precise definitions are being proposed as no draft legislative wording has been provided. We suspect that advice on real property may need to be included if the narrow definition of securities is used. If not covered by the definitions, financial planning unrelated to product (question 6) may be an aspect requiring specification.

¹ See for example, Cox, W and Pavletich H, *Annual Demographia International Housing Affordability Survey: 2008*, downloaded from <http://www.demographia.com/> 5 May 2008

IFA does have concerns about broad regulation making powers without specified limits and criteria. Broadly, we consider that the criteria should require that such regulation be to provide for:

- Adequate consumer protection for areas of financial advice not covered in the legislation, such as where new products or areas of advice develop, and
- appropriate consultation with the industry.

IFA considers that name reservation will be an essential element of regulation of financial advisers. This will be necessary, not only to distinguish between those who are licensed and those who are not licensed, but also to distinguish between different levels of financial adviser based upon skills and qualifications. We have called a number of industry-wide meeting to discuss competencies for financial advisers and are part of the Industry Training Organisation finance panel on qualifications. The industry has formed a view that there are clear differences in the types of financial adviser. There are two main categories:

- Customer or product advisers who typically provide advice on the features, benefits and costs of a product, but where the customer generally makes the decision.
- Full financial advisers who undertake to do a needs-based assessment of the customer's requirements and then develops personalised or customised advice.

The second category obviously requires more skill and education than the first category. Both levels of advice also need designations that indicate the areas of advice where the financial adviser is competent.

We consider that consumers need to be able to distinguish between different types of adviser – by both area of advice and level of skill. We think this can be achieved through name reservation. For example, at present terms such as “financial planner” can be used by anyone, irrespective of whether they have any qualifications or professional status. We consider that this term should be restricted to those operating at the higher level and who have demonstrated competency at an appropriate level.

Our view is that it would be practical for industry to develop a set of designations that would assist both regulation and consumers. The difficulty is that when membership of professional bodies is entirely voluntary it is hard for any group – even G4 – to speak with authority. However the term “financial planner” is well established here and internationally as denoting a broadly qualified financial adviser who agrees to act in the interests of clients and follow a professional advice process².

11. Do you believe that an accreditation approach for institutions is appropriate? What risks are there with such an approach?

12. What are the types of criteria that would be relevant to such institutional accreditation?

A significant issue with institutional accreditation, as described in the Policy Paper, is that since financial adviser employees of accredited institutions would not need to be individually licensed, they would not be on the register of licensed advisers. This would mean that consumers would have no single source of information as to who is properly licensed. Under the proposal, consumers dealing with institution advisers may have no way of knowing the

² The Financial Planning Standards Board (FPSB) manages, develops and operates certification, education and related programmes for the benefit of global consumers. FPSB controls the Certified Financial Planner (CFP) marks outside the USA and uses these to further its mission. There are more than 110,000 CFP professionals around the world.

competency level of the staff member they were dealing with. This would detract from the simplicity of a single unified system.

We have a number of comments on the practical aspects of the proposal, as set out in the paper:

- The assertion is that the corporation is providing advice, rather than the employee (paragraph 18). This may apply to advertisements and websites but as soon as an individual staff member becomes involved with the customer, the actual advice may vary between staff members from the same institution.
- There is an underlying assumption that a staff member selling their employers products is somehow a “lower risk” to the consumer than a non-aligned adviser able to advise on or sell products from a number of companies. The risk to the consumer is that the staff adviser will push to sell their employer’s products, irrespective of whether or not they are suitable for the consumer or meet their needs.
- Financial institutions often source products from other companies. Does this mean that only those institutions that sell their own products will be able to become accredited?
- A staff member of an accredited institution, but who is not licensed as an individual may well be disadvantaged if they wish to change jobs or become self-employed, as this will entail seeking an individual licence.

The inherent risk in the accreditation approach is that there may be divergence from a single standard for regulation, with individual institutions having differing standards for staff. The way to limit this risk is for the criteria for institutional accreditation to match those for licensing, including requiring advisers to have the same competencies, use the same designations (see the section on name reservation), etc. **IFA strongly recommends that advisers in accredited institutions also be included in the register of advisers.**

13. Should Budget Advisers be exempted from the Financial Advisers regime? What should be the criteria for such an exemption to be granted?

IFA has concerns about exempting Budget Advisers from regulation. Free budget advice should still be given by technically competent advisers so as to protect consumers, especially those in financial difficulty. We understand that in many cases Budget Advisers already undertake training (e.g. most of those in Citizen’s Advice Bureaux) so would probably already have adequate competency.

As for the concern about the title, this could be covered by the “name reservation” already discussed.

If there was to be an exemption, perhaps this could be for advice relating to transactions or assets/debt below a certain dollar value, perhaps \$5-10,000. Alternatively, the limitation might be restricted to advice in relation to income and expenditure, rather than assets such as a house. This would limit potential harm to consumers from poor advice from Budget Advisers without adequate competencies.

14. Do you agree with the concept of the Securities Commission having the role as outlined above? Why? Why not?

15. Should the way the Commission discharges its new functions be specified in the legislation?

The finance industry supported regulation of financial advisers under the co-regulatory model initially proposed. The concept of central regulation departs substantially from what had been agreed with industry and has been developed without consultation. Industry associations have the necessary knowledge of competency and practice standards to develop a workable co-regulatory model. The Securities Commission has not had widespread involvement with the full range of advisers and products they advise upon, as their focus has been on securities and the stock exchange. So, they are not currently well placed to implement a licensing regime requiring features such as setting competencies, education, ethics and practice standards.

IFA supported co-regulation and was working closely and harmoniously with other industry associations towards establishing a single APB for the broad areas of advice provided by members, while also being open to expanding the breath and depth of coverage to embrace new areas of advice and products – not with an elitist but with a very pragmatic approach.

We disagree strongly with paragraphs 27-29 of the Policy Paper as being out of touch with practical reality. The suggestion that multiple APBs would lead to barriers to entry, silo-like behaviour, inflated competency standards with resultant increased pricing has no basis in practical reality. This reflects a lack of knowledge of the industry.

In the sector of the industry IFA's members operate in, the existing industry associations (a group colloquially called the G4) have been working constructively together for nearly a year with the aim of forming a single APB. The G4 discussions have recognised the necessity of setting "appropriate" minimum standards; recognise that these will need to be lower than some existing standards for entry where the advice roles are narrow and/or involve less complex products, and have acknowledged that provision would need to be made for new types of advisers.

The suggestion that advisers through APBs would have the market power to raise prices has no basis in fact. Pricing is largely set by the product companies, not by advisers, and competition amongst product companies is what drives pricing. The only individual advisers able to set prices are those who charge fees. They typically deal with higher net-worth clients, where any fee is likely to be less than would be paid through commission, and where clients are more likely to be able to negotiate pricing.

The only sound arguments in favour of abandoning co-regulation in favour of licensing are that it will shorten the time for implementation without reducing quality, and that simpler systems are often better systems. While we support shortening the timeframe for implementation, we are fearful that this will be achieved only through having the form of regulation – through licensing – but not the necessary substance. A short time scale might require licensing all existing advisers without testing their competency. This may be the only feasible approach as the industry ITO was only approved in August 2007, qualifications are still under development and have a lead time of approximately 2 years. Having recognised qualifications on the NZ Qualifications framework and matching these to adviser roles is an essential pre-requisite for being able to assess competency of existing advisers, most of whom do not have formal qualifications but do have experience.

So, we regard the proposal for the centralisation of regulation under the Securities Commission as a poor second preference.

Paragraph 27 of the Policy Paper sets out the conflict that will exist between supporting and encouraging advisers to improve their standards and the enforcement role of the Securities Commission. The APB co-regulatory model is superior in separation of these two aspects.

If the Securities Commission is to become the license issuer as well as have the enforcement role, the need for separation of these functions should be specified in legislation.

16. Do you agree that the Securities Commission may recommend the development of rules to the Minister of Commerce for approval in relation to minimum standards for financial advisers?
17. Do you agree the Securities Commission should develop rules on all of the issues set out in the list in paragraph 42 (sic – we suspect this should refer to paragraph 39)? If not, please provide modified or alternative means by which the rules for financial advisers could be established.

The areas where rules are suggested are listed in paragraph 37. These are the fundamental areas where existing professional associations have expertise. IFA has spent most of the past decade developing robust rules for these areas, drawing upon international best practice standards. The cost of this development work has been met by the members of IFA as well as through the unpaid work of members of the Board and task forces. The Securities Commission does not have experience in developing these rules.

The proposal that such rules be developed in consultation with industry suggests that the intellectual property that has been built up by organisations like IFA will effectively be converted into a public good without compensation.

The suggested areas for rules should include the following:

- **Competency** – consisting of both relevant minimum educational qualifications as well as supervised practical experience. Competence is more than having passed an exam and needs to be demonstrated in practice. Competence may also be demonstrated through assessments of current competence, and this should be required for existing financial advisers. These will need to be matched to both areas of advice and the level of advice. This is a complex area.
- **Suitable person** requirement – covering areas such as a lack of criminal convictions, positive credit rating, referee checks, to ensure that those who are licensed are suitable. These are for the protection of consumers.
- **Minimum standards of ethics and practice standards.** While a single code of ethics may be appropriate, practice standards need to be tailored to match areas of advice and levels of advice.
- **Ongoing continuing professional development** – which will also need to be matched to the roles and levels.
- **Complaints and disciplinary procedures** – there are two separate aspects (commented upon as part of the last set of questions).

If the Securities Commission is given the role of sole regulator, it will need statutory powers to make the rules. Rules will need to be developed in close consultation with those who have the relevant expertise and practical experience of the issues faced by advisers. The mechanism for amending the rules will need to be relatively simple as there will inevitably be a need for regular updates to reflect changes in the market.

If the Securities Commission is to be the sole regulator we recommend that consideration be given to allowing the Securities Commission to delegate its rule setting role to selected professional bodies, subject to their rules at least meeting the minimum standard under regulation, and to acceptance that members of such professional bodies would have to demonstrate compliance with its rules before licensing and on a continuing basis. This could mean that the Securities Commission would accept that membership of IFA exceeds the minimum requirement for licensing and would save IFA members from having to additionally

reassess their conformity to rules that are at a lower level than those already required by their professional body.

The Minister of Commerce is on record as saying that she is open to co-regulation, and this is suggested as a first step towards it.

18. Do you agree with the enforcement and disciplinary mechanisms proposed here for financial advisers?
19. Should there be an administrative appeal right for financial advisers on determinations by the Securities Commission, prior to appealing to Court? Who should that appeal body be?
20. Are the checks and balances provided on the exercise of disciplinary action sufficient? Are there additional requirements that should be imposed, or existing requirements that should be removed?

The discussion in the Policy Proposal covers only enforcement and discipline. There is no mention of a complaints process. Our experience is that the two are quite different and each needs to be provided.

Complaints and dispute resolution are related and concerned with consumer redress. This is best handled by some form of industry ombudsman. We have already made submissions on the need for a single industry ombudsman to avoid duplication – where a complaint has aspects relating to both product and advice – and to reduce costs.

Discipline relates to situations where a financial adviser has breached practice standards and the result of an adverse finding may lead to penalties, including fines, suspension, prohibition etc.

The mechanisms proposed in the Policy Proposal do not distinguish between complaints and discipline. The typical practical situation is that once a complaint is received it needs to be investigated which will require contact with the adviser. Many complaints can be readily resolved through informal dispute resolution processes.

The information resulting from the investigation may or may not indicate a breach of practice standards. Only if practice standards have been breached is a more formal process required.

We note that the Registered Architects Act (suggested in the Policy Proposal as a model) refers to the two step process outlined above – an investigating committee separate from a disciplinary committee. We would support the Securities Commission being required to form both types of committees and for these to include both independent members as well as some financial advisers with relevant technical expertise.

Our experience with disciplinary mechanisms is that when there is the possibility of serious consequences, such as large fines, loss of status or even prohibition, the adviser is highly likely to be represented by a lawyer and for proceedings to become formal. This is why we have suggested a separate disciplinary body rather than Securities Commission staff making decisions.

Adding an Administrative Appeal body would only seem necessary if there was not a separate disciplinary committee and initial decisions were to be made by staff. If introduced,

we suggest a majority of independent members (2) with a third member with background as an adviser with appropriate industry experience.

The most important aspect in checks and balances for discipline is for decisions to be made separately from those who are setting the rules and administering licensing.