

## Securities Legislation Bill Regulations

The Financial Planners and Insurance Advisers Association (FPIA) makes the following submission.

We appreciate that submissions may be the subject of a request under the Official Information Act. There is no part of our submission that needs to be withheld under the Act.

FPIA wishes to be involved in the targeted consultation process. Our contact person is Ross Butler, Chief Executive Officer, on (04) 4998062.

### Background

The Financial Planners and Insurance Advisers Association is New Zealand's largest professional body for Financial Intermediaries, representing over 1400 financial advisers nationwide.

The Association's primary focus is to improve and enhance the professional status of financial planners, investment advisers, and insurance advisers, and to advance the interests of members and their clients.

The FPIA aims to:

- Increase the awareness of the role of financial advisers by consumers.
- Increase the level of confidence that consumers have in advisers.
- Increase the level of usage of financial advisers by consumers
- Raise advisory standards in ethics and professional conduct.
- Provide education standards designed to inspire greater confidence and trust between advisers and the public.
- Identify and serve the needs and interests of members.

Our members advise their clients on a range of financial matters.

## **General Submission Points**

Our submissions focus on the disclosure obligations under the Securities Legislation Bill.

Regulations arising from the Securities Legislation Bill and from the proposed Approved Professional Body (APB) structure, when introduced, should set general disclosure requirements, with each APB and professional body, such as the FPIA, setting disclosure standards and requirements directly relevant to the services that are offered by the financial advisers registered with those specific bodies.

Further, any particular regulation adopted should meet the simple test of ensuring that a consumer is still able to access services that they might reasonably expect to be available to them. In other words, regulation should not impose costs or other requirements that result in withdrawal of such services.

Finally, the requirement to make new disclosure where disclosure has previously been given should only arise where there is a material change in the content of the disclosure.

Submissions follow on particular questions included in the discussion document.

**Q1** Should investment advisers or brokers be required to disclose any information in addition to the requirements under the Securities Legislation Bill?

**No, other than as required by an APB or specific professional body such as the FPIA.**

**Q2** Ministry officials are working to review the Taskforce recommendations in relation to extended disclosure obligations. Do you agree with the disclosure obligations suggested by the Taskforce (at paragraph 38 above) should apply to investment advisers and brokers? In your view, what costs or obstacles would apply to investment advisers and brokers in providing the additional information as described at paragraph 38 above? And, would the additional information produced by these disclosure obligations assist consumers sufficiently to outweigh the cost to investment advisers and brokers?

**Disclosures should be generic in nature ahead of determining the relevant services and products to be provided.**

**It is impractical to fulfil the suggested requirement to complete ongoing disclosure “in dollar terms on a periodic basis, of the difference between the aggregate gross returns on all investments organised through the financial intermediary and the actual net return received by the consumer, with an explanation of the difference (in categories of costs, for example, the amount attributable to financial intermediary deductions, to ancillary service deductions, such as wrap providers, and any product generator fees or costs that are deducted after establishing gross return).” The only time this is likely to be practical is when the financial adviser arranges for the investment assets to be held in a custody system where the adviser has authority to arrange for the appropriate reporting to be provided and the system has been enhanced, (at some cost) to deliver such reporting. The delivery of such detailed reporting of returns should be an optional service delivery at the cost of the client, not a mandatory regulatory imposition.**

**Q3** In addition to the requirements at s41K of the Securities Legislation Bill, should regulations prescribe additional requirements for the set method or form of investment adviser and investment broker disclosure?

**No, other than a set of questions similar in form to Investment Statement questions**

**Q4** If regulations should prescribe additional requirements for the method and form of investment adviser and investment broker disclosure, what should these requirements be (for example, should there be a set page limit, set headings, set format or set size)?

***If there were to be a prescribed form for providing additional information as required it should contain information that would be useful to the investor and could be read by a reasonable person in less than 5 minutes. Regulators would therefore need to take into account the number of, and complexity of questions, when satisfying this requirement. It is likely that any longer document might not be read by the investor, thus defeating the purpose of the disclosure.***

***Apart from headings which might be in bold and larger font all answers should be in the same font size and easily readable by the average person with reasonable eyesight.***

**Q5** In your view, would the benefit of prescribing set methods or a form of investment adviser and investment broker disclosure through regulation outweigh the cost of the additional disclosure requirements?

**No submission**

**Q6** In your view, are there any obstacles which would make it difficult for investment advisers and investment brokers to disclose all required information prior to providing investment advice, or receiving investment money or property?

***Yes. Until sufficient information has been gathered to determine the appropriate services and products to be provided, generic disclosures of the required information only can be provided.***

***The absence of a person's usual adviser also creates a potential barrier to delivery of service if another adviser has not completed the required disclosure and is being asked for timely advice via a service delivery medium such as the telephone.***

**Q7** If any obstacles have been identified in relation to timing, which disclosure obligations do they affect? What would be the cost of requiring disclosure prior to the investment advice being provided, or investment money or investment property being received? Is there an appropriate time within which the required information could be disclosed so that it would still benefit the recipient of the advice or service?

***No submission***

**Q8** In your view, are there any obstacles which would make it difficult for investment advisers and investment brokers to disclose the amount or rate of all relevant remuneration, prior to the investment adviser or broker providing a service (this may be because it is difficult to calculate the amount or the remuneration, or because it is difficult to describe the remuneration prior to providing the service). Particularly, are there obstacles which may make it difficult to describe the full range of "soft" benefits or advantages which may be covered by the definition of "remuneration" at s41F(4), or if that benefit or advantage is received indirectly?

***Yes, refer question 6***

**Q9** If any obstacles have been identified, can you please describe them, and also the types of remuneration that the obstacles would affect?

***No further submission***

**Q10** Can you suggest any set method or form of disclosure which would allow investment advisers and brokers to describe any such remuneration in a more general form (e.g. through prescribed wording rather than referring to "amount" or "rates") or at a later time (e.g. through prescribed time limits which set the date by which the amount or rate has to be disclosed after the service has been provided)? What would be the costs and benefits applying to investment adviser, brokers and members of the public of such regulations?

***No further submission***

**Q11** Should regulations require any types of relevant remuneration to be disclosed in dollar figures to make it easier for consumers to understand?

***No further submission***

**Q12** The Ministry is interested whether or not regulations should require investment advisers to have a minimum level of professional indemnity insurance, and prescribe the amount of that minimum level, or to give an undertaking that the adviser has adequate professional indemnity insurance for the protection of the persons to whom the adviser gives investment advice? If

you believe that a minimum level should be set in regulation, how do you think this minimum level should be determined?

***It is a requirement that FPIA members hold professional indemnity insurance. We make no submission on whether others should.***

**Q13** What would be the costs and benefits applying to investment advisers, brokers and members of the public if such regulations were implemented?

***No submission***

**Q14** In your view, is there any class of persons which should be exempted from compliance with the investment adviser disclosure obligations or the investment broker disclosure obligations? If so, which class of person should be exempted, and why?

***No, not as investment advisers and investment brokers are currently defined, but the FPIA may have a different view if there is a later proposal that these regulations be extended to cover a wider range financial advisers***

**Q15** In your view, is there any definition of investment advice which should be excluded from all or some of the disclosure obligations in the Securities Legislation Bill? If so, which class of advice, and why?

***No***

**Q16** Would the benefit of excluding certain classes of investment advice outweigh the costs?

***No submission***

**Q17** In your view, what definition best describes a “bank term deposit”?

***No submission***

**Q18** Are there any other products similar to bank term deposits about which advice is provided? What are these products, and why are they similar to bank term deposits?

***No submission***

**Q19** What would be the costs and benefits to exempting other products in addition to “bank term deposits” from the definition of “security” under the Securities Legislation Bill?

***No submission***

**Q20** In your view, should advice/transactions on any bank term deposit or any other products still be subject to compliance with any investment adviser and broker disclosure obligations under the Securities Legislation Bill? If so, which disclosure obligations, and why?

***Advice given on currency and interest rate derivative products, investment properties and shares in closely held companies should be subject to the same or similar investment adviser and investment broker disclosure requirements***

**Q21** In your view, is there any class of investment advice which, when provided in certain situations, such as over the telephone, should be exempted from compliance with any or all investment adviser or investment broker disclosure obligations? If any, can you please describe the class?

***Any form of investment advice that the client might reasonably expect to receive in a timely manner that would otherwise be precluded by way of the disclosure regulations.***

**Q22** Should such advice be exempted from all or just some disclosure obligations?

***All, albeit there may be new disclosure requirements developed to meet the requirements of the particular circumstances, such as telephone advice, where disclosure may be required to be made within a set period after the advice has been given.***

**Q23** Would the benefit of excluding such a class of investment advice outweigh the cost of requiring full disclosure?

***No submission***

**Q24** In your view, should investment advice given in a public forum be exempted from compliance with any or all investment adviser or investment broker disclosure obligations?

***Yes, exempt all except information about the names and business contact details of the organisations and individuals giving the advice***

**Q25** How do you define advice available in a public forum? In your view, how much investment advice in New Zealand is provided in a public forum?

***No submission***

**Q26** If so, should such advice be exempted from all or just some disclosure obligations?

***No submission***

**Q27** Would the benefit of excluding such a class of investment advice outweigh the cost of requiring full disclosure?

***No submission***

For further comment, please contact:

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