



Submission

of

Finsec Incorporated

on the

Financial Advisers Act 2008: Disclosure Regulations

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Overview

Finsec is the union for finance sector workers in New Zealand representing approximately 5,500 staff of financial services providers (FSPs).

The majority of our members are employed by organisations we expect will apply for qualifying financial entity status (QFE) so we have a particular interest in the requirements for this class of FSPs.

Having said this, Finsec members have a strong interest in the disclosure requirements of other classes of FSPs. Finsec believes the issue of appropriate disclosure is of significant public concern given the complexity of the products provided, lower than desired levels of financial literacy and as has been seen recently the significant adverse impact of such transactions going wrong.

This submission follows the format of the consultation paper and addresses issues which we consider to be relevant. Where we do not comment, we are generally in agreement with the consultation paper proposals and would answer yes to the questions posed.

Disclosure by AFAs

Finsec supports a simplified and standardised disclosure format. We do however strongly disagree with the Ministry proposal that there be no requirement to disclose criminal convictions, disciplinary proceedings, adverse findings by a court or the commission or bankruptcy or other insolvency proceedings.

We understand the Ministry's rationale for this is that the Securities Commission will have considered these matters already and can make disclosure of these matters a part of an approval. As such, there is not a perceived need for these issues to be disclosed as a matter of course.

With respect, Finsec strongly disagrees with this rationale. These issues are of such significance to the consumer's choice as to which AFA to use (and trust) that we believe they must retain the right to make decisions about the importance of these matters, not the Commission.

We strongly submit that it is appropriate for these issues to be required to be disclosed by all AFAs as a matter of course and that decisions about the importance of such disclosures should not rest with an external agency

which has no investment (financial and emotional) in the outcome of using a particular AFA.

Remuneration and other incentives

The structure of remuneration and incentives is both an extremely complex and an extremely secretive issue. Given this and the overall concern in New Zealand about lower than desirable levels of financial literacy, Finsec believes disclosure of these matters is vital to the interests of consumers. Further, it is extremely important that this disclosure be meaningful and therefore made in ways that are easily understood by members of the general public.

Finsec supports the adoption of option 3 of the paper which requires indications of the types of services offered, the maximum fee or commission associated with each type of product, and the disclosure of any charges for services which are linked to commission or indirect remuneration.

We submit that this option would provide the greatest clarity to a consumer about what direct and indirect costs are associated with a transaction and also expose much more clearly for them the potential influence that indirect remuneration or commission payments may have on the range of products offered or promoted.

We believe that there should be prescribed wording included in the disclosure document. This would ensure a standardised form of disclosure that would assist consumer understanding of a complex issue. In addition, AFAs being unable to use their own wording would avoid the possibility of any 'word smithing' adding to confusion.

Disciplinary decisions

Finsec believes that where a breach of the code of conduct has been established by the disciplinary committee but the committee has decided to take no action, the breach and the decision to take no action should be disclosed.

Again, our rationale is this information being withheld from the consumer effectively substitutes their judgement of the importance of the breach with the judgement of the committee. This is inappropriate and not in accordance with the principles of disclosure allowing consumers to make choices for themselves.

Content not directly required

We reiterate our comments in the opening paragraphs of this submission that it is essential that adverse findings by a court or the commission, criminal convictions and bankruptcy or other insolvency proceedings be mandatorily disclosed.

These matters are at the heart of consumers having trust and confidence in not only AFAs but also the value of the disclosure regime that is being implemented. It is essential that there be as much transparency as possible and that the regime is not undermined by withholding of vital information from consumers.

There is also a conflict in the rationale on this matter in that much of this vital information is or would be a matter of public record already. One of the critical objectives in mandating disclosure and what needs to be disclosed is to simplify and standardise access to important information thereby enabling consumers to make better informed choices for themselves.

How does withholding such critical information (that may already be publicly available) do anything other than undermine this objective?

Indemnity insurance

Finsec recognises that there are considerable arguments for and against disclosure of indemnity insurance. Many of these arguments centre around the meaningfulness of such disclosure, the difficulty in making judgements as to whether or not indemnity insurance policies are comparable or indeed even useful for the consumer and concerns around additional complexity of decision making for consumers where such disclosure is made.

Finsec's view is that disclosure of indemnity insurance should be required. We take this view based on a first principles approach which is that the consumer should be given as much relevant information as possible to help them make a decision. In our view, the disclosure of indemnity insurance or the lack thereof will assist the consumer in this or prompt them to seek further information from potential AFAs. Both of these outcomes represent an improvement in practice and in our view outweigh the possible downsides of such disclosure.

Status of adviser

Finsec supports option 'c' - "I am a registered financial adviser and can provide you with advice on (insert products) only".

Finsec also supports registered but not authorised advisers being able to opt to provide the same disclosure as AFAs. We believe that the more information given to consumers, the better.

Delivery of QFE disclosure

Finsec believes the means of disclosure for QFEs should be prescribed in the regulations. A failure to do so would mean that there would be no standard model of disclosure across QFEs and that a key objective of the new disclosure regulation regime (simplified standardised disclosure) would not be met.

Given the size of the 'market' QFEs service and the number of individual transactions or 'advice' sessions that occur, this 'gap' in the regime would be significant.

Finsec submits that disclosure should be able to be given in a variety of ways to suit the circumstances but that in all situations, disclosure must be followed up in writing. We would also support a process whereby corporate clients could be given disclosure in writing once with no subsequent requirements to disclose for further transactions unless there was a fundamental change to what needs to be disclosed.