**INVESTMENT SAVINGS & INSURANCE ASSOCIATION OF NZ INC**

# Submission

to

# Ministry of Economic Development

on the

# Discussion Document:

# Financial Advisers Act 2008: Disclosure Regulations

**12 August 2009**

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# Investment Savings and Insurance Association of NZ Inc.

## 1.0 Introduction

1.1 The Investment Savings and Insurance Association ("ISI") is the industry association for the companies that issue and manage life insurance, superannuation and managed funds in New Zealand. ISI members are responsible for approximately $50 billion funds under management. ISI members are also the leading providers of KiwiSaver funds and all six default providers are members of ISI.

A list of members is attached.

1.2 We welcome the opportunity to comment on the discussion document *Financial Advisers Act 2008: Disclosure Regulations.* These regulations have particular relevance for ISI members as they will have a direct impact on their distribution of products and advice and consequently upon their relationships with consumers.

1.3 ISI has maintained a close interest in the development of the financial adviser legislation and has also recently commented on the staff papers issued by the Securities Commission. We believe that the development of workable disclosure regulations is in the interests of consumers, advisers and product providers.

1.4 This submission focuses on answering the specific questions in the discussion document.

**Question One**
**a. Do you agree that the provision in the legislation that disclosure can be provided as soon as practicable after the service is performed allows sufficient flexibility to ensure disclosure is provided appropriately?**

Yes, that provision does allow sufficient flexibility, similar to the current exemption for telephone investment advice in the Securities Markets (Investment advisers and Brokers) Regulations which requires some immediate verbal disclosure, followed with written disclosure to be sent within 5 working days.

**b. If not, please detail the instances where problems could occur and any potential solutions.**

**Question Two**
**a. Do you agree that some general content required to be disclosed by all financial advisers will aid consumers' understanding?**

Yes, the general content proposed in section C would help consumers to compare the details of different advisers.

Although the legislation does not require it for registered but not authorised advisers, we believe that consumers would benefit from regulations requiring disclosure of remuneration and material interests, relationships or associations by all advisers, other than those giving advice on behalf of their employer.

**b. Do you agree that contact details, the status of the adviser, a guiding statement for the consumer dispute resolution arrangements and contact details for the Securities Commission should be contained in all financial adviser disclosure statements?**

Yes, that is basic information that should be included in all disclosure statements. We believe that the statement on the status of the adviser should indicate the types of product on which the adviser can provide advice and should make it clear that, if the adviser is not authorised, no other advice or services may be provided.

**c. Should anything else be included?**

No.

**d. Do you agree that no content should be permitted unless required by the regulations?**

We agree that it is important for the disclosure document to remain just that and not to be cluttered with extraneous material. However, as section 28 appears to allow for disclosure of additional material, perhaps the regulations should focus on the form of the disclosure statement to ensure that the mandatory disclosure is up-front and clearly visible.

**Question Three**
**a. Do you agree that financial advisers should be required to include a guiding statement in their disclosure document?**

Yes, we support the proposal for a guiding statement along the lines suggested.

**b. Do you believe that the wording of this statement should be mandated?**

Yes, we agree but would like the opportunity to comment on the final version of the wording before it is regulated.

**Questions Four**
**a. Do you agree that contact details for the Securities Commission be required to be included in all financial advisers disclosure document?**

Yes.

**b. Do you agree that details on the role of the Securities Commission should be included in the disclosure statement?**

Yes, but it should be limited to a brief statement in relation to complaints rather than a detailed description of the full Securities Commission role.

**Question Five**
**a. Do you agree that additional content for the disclosure documents should be prescribed in order to help disclosure to achieve its purpose?**

Yes, we recommend that the format of disclosure documents should be prescribed in order to enable consumers to compare the contents easily. As noted earlier, section 28 allows disclosure of additional material but we recommend that regulations should specify the format that would be considered to comply with the requirement not to be "deceptive, misleading, or confusing".

**b. Do you agree that mandated headings should form the basis of the disclosure document for authorised financial advisers?**

Yes, for the same reason as above.

**c. Do you agree that the headings should be in the form of questions?**

Yes, although the form of the headings is less important than their wording.

**d. Do you agree that the order of the headings in the document should be mandated?**

Yes, the disclosure document should be as standardised as possible.

**Question Six**
**a. Do you agree that authorised financial advisers should be required to disclose that they have been authorised by the Securities Commission in the mandated form discussed?**

Yes, consumers must be able to see clearly that they are dealing with an authorised financial adviser.

**b. Do you agree that the class of authorisation should be disclosed (if applicable)?**

Yes, an AFA should be required to disclose the class of authorisation that he/she has.

**c. Do you agree that the statement of being authorised is sufficient disclosure as to the status of the adviser?**

No, not if the intention is that the Securities Commission will authorise advisers in different classes of business depending on proven competence in those areas.

In addition, there is potential for confusion if the AFA is also covered by a QFE. The discussion document does not appear to consider that possibility. In that case will the QFE provide disclosure as well as the AFA? Alternatively, could another paragraph be mandated for the AFA disclosure statement to include details of the QFE?

**Question Seven**
**a. Do you agree that authorised financial advisers be required to disclose what products and/or services they can offer?**

Yes, it should be absolutely clear to consumers which types of financial service the AFA is competent and authorised to provide and whether there are any contractual agreements with product providers that limit the range of products on which advice can be provided.

**b. Do you agree that any limitations as to the products and/or services the adviser can offer should be included?**

Yes, for the same reason as given above.

**c. Do you agree that the products and/or services the adviser can offer should be disclosed through the adviser indicating from a prescribed list the services they can offer? If you agree with this approach to service disclosure which categories of services should be included?**

We do agree with that approach and we believe the categories of service should be those suggested ie financial planning services, life insurance services, mortgage services, general insurance services, debt security services and equity security services. AFAs will also need to disclose the product range they can advise on within those categories.

**Question Eight**
**a. Which option for disclosure of fees, remuneration and other interests and relationships do you prefer?**

**b. If you do not agree with any of the options how do you believe fees and other remuneration should be disclosed?**
None of the options describes how an AFA would disclose fees, remuneration and other interests and relationships where the advice given covers a range of Category 1 and Category 2 products.

Option 2 would have the benefit of not creating perverse incentives to load commissions onto products that do not require disclosure. However, under that option it would be difficult for a consumer to compare the possible impact of remuneration incentives for several advisers.

We believe that it is in the consumer's best interests to have information enabling them to compare the benefits that advisers would receive from recommending various products, including pure risk products. We consider, however, that meaningful disclosure will depend very much on how it is done and we recommend further consultation on the appropriate methodology.

As noted in response to Question Two, we would prefer all advisers (other than employees) to be subject to the same disclosure of fees, remuneration and other interests and relationships.

**c. Should any prescribed wording be included in the remuneration section to aid consumers' understanding of the differences in the types of remuneration an adviser receives and how this may influence the adviser's advice?**

Yes, we believe it will be essential to have a clear explanation of what is being disclosed. Remuneration is not a simple area of information and it has the potential to be confusing and misleading for consumers if it is not done in an easily comparable format.

The methodology for disclosure of remuneration should take into account the different channels for distribution and the need to avoid distortion between those channels.

**d. Do you agree that advisers that do not receive commission payments from issuers should be able to state in their disclosure document that they are "independent" or "unaligned" and that these terms should be restricted to advisers that meet this condition?**

It would be preferable to limit the statement to something like: "I do not receive payment of any kind from any product provider".

**Question Nine**
**a. Do you agree that disclosure of any material interests, relationships and associations the adviser or associates may have should be required?**

Yes, we agree that disclosure should include the matters covered in section 41E of the Securities Markets Act. We believe the consumer needs to know who is ultimately responsible for the advice that is given (ie who stands behind the adviser) and what other relationships may have an impact on the advice that is given. As well as relationships with QFEs, disclosure should cover relationships with any dealer groups and non-QFE entities.

**b. Do you consider that any prescribed wording should be included in the material interests, relationships and associations section to aid the consumer's understanding of other potential influences on the adviser and his/her advice?**

Yes. Prescribed wording should specifically disclose principal/employer relationships.

**Question Ten**
**a. Do you agree that an authorised financial adviser should only be required to disclose adverse disciplinary actions imposed on the adviser by the Code Committee?**

We agree that an AFA should only have to disclose disciplinary decisions by the Disciplinary Committee, on the basis that the adviser would not have been authorised if there had been any other relevant disciplinary actions by other bodies. We suggest that section 101 gives the Disciplinary Committee sufficient scope to require the AFA to disclose the decision if it is considered appropriate.

**b. Do you agree that proceedings within the previous 5 years is the appropriate time period?**

We consider that the nature and timing of the disclosure should be set by the Disciplinary Committee at the time the adverse decision is made.

**Question Eleven**
**a. Do you agree that the items discussed do not need to be disclosed by an authorised financial adviser in their disclosure statement?**

Yes, for the same reasons as given in answer to Question 10.

**b. If not, which matters do you believe need to be disclosed?**

**c. Should these matters be included in additional information specified for the form?**

No, the form should be kept as brief and focused as possible.

**Question Twelve**
**a. Do you agree that disclosure of criminal convictions and adverse findings by a Court or the Commission should not be required under the regulations but should be left to the discretion of the Securities Commission to require as a condition of authorisation?**

Yes. If the Securities Commission considers that the criminal convictions or adverse findings are serious enough to merit disclosure the adviser should probably not be authorised. Consumers should be able to rely on the Commission having assessed whether the adviser is fit to be authorised and should not have to assess the relevance and importance of that disclosure.

**Question Thirteen**
**a. Do you agree that indemnity insurance should not be required to be disclosed?**
**b. What are your reasons for agreeing or disagreeing that indemnity insurance should not be required to be disclosed?**

(a) No.

(b) We believe that consumers should be able to see what protection is available in the event that they receive bad advice. Some professional indemnity insurance policies are designed to protect the adviser's business rather than the interests of the consumer. Therefore, in order not to be misleading, indemnity insurance should qualify as such only when its terms are adequate to protect consumers as well as protecting the adviser's business.

**Question Fourteen**
**a. Are there any classes of authorised financial adviser, financial adviser service, or client for which different disclosure requirements should be considered? If so please detail the circumstances and how you believe the disclosure requirements should differ.**

Advice given to wholesale clients will not require the same level of disclosure as that given to the general public.

**Question Fifteen**
**a. How should individuals (who are not part of a QFE) who provide advice in regards to category 2 products, who are registered by not authorised, be required to disclose their status under the Financial Advisers Act 2008?**

Suggest disclosure should state: "I am a registered financial adviser. This means I can provide you with advice on…I am not authorised to provide advice on other products."

We consider there is potential for the public to be confused about the difference between 'registered' and 'authorised' and we recommend that resources are committed to public education in this area.

**Question Sixteen**
**a. Do you think that, on balance, there would be a benefit to allowing advisers who provide service in relation to category 2 products to opt to provide disclosure at the level of authorised financial advisers?**

We believe there should be clear differentiation between the disclosure of an authorised financial adviser and one who is registered but not authorised. It would be potentially confusing for consumers if a registered but not authorised adviser was to provide a disclosure form that looked similar to that of an authorised adviser.

However, as noted in response to Question Two we recommend that disclosure of remuneration should be the same for AFAs and for advisers who are registered but not authorised.

**b. If you have a view on optional disclosure, please describe the reasons for that view.**

In practical terms it will be difficult to distinguish between additional disclosure in a disclosure document and additional disclosure given alongside a disclosure document. We see no problem with optional additional disclosure as long as it doesn't take away from the clarity of the mandatory disclosure.

**Question Seventeen**
**a. Do you have any comments on the proposed disclosure requirements for QFEs?**

From a consumer point of view the most important information to be disclosed by a QFE is:

- its responsibility for the advice given by its employees and nominated advisers
- its dispute resolution arrangements
- its capacity to stand behind the advice that is given

As noted under question six, there is the potential for confusion in the disclosure of an adviser covered by a QFE and one that is not. We recommend that a form of joint disclosure is developed for advisers that are covered by QFEs.

**Question Eighteen**
**a. Do you agree that the means of communication for QFE disclosure need not be prescribed in the regulations?**

No. We believe QFE disclosure is important for consumers, especially disclosure of its responsibility for the advice that is given. Therefore we recommend that it should be subject to the same timing requirements as adviser disclosure.

# List of ISI Members

## ISI MEMBERS

AIG Life
AMP Financial Services
Asteron Life Ltd
AXA New Zealand
BNZ Investments and Insurance
CIGNA Life Insurance NZ Ltd
Dorchester Life
Equitable Group
Fidelity Life Assurance Co Ltd
Gen Re LifeHealth
Hannover Life Re of Australasia Ltd
ING New Zealand Ltd
Kiwibank Ltd
Medical Assurance Society NZ Ltd
Mercer
Munich Reinsurance Co of Australasia Ltd
Public Trust
RGA Reinsurance Co. of Australia Ltd
Sovereign Ltd
Southsure Assurance
Swiss Re Life & Health Australia Ltd
TOWER New Zealand
Westpac/ BT Funds Management Ltd

## Associate Members

Bell Gully Buddle Weir
BNP Paribas
Bravura Solutions
Burrowes & Co
Chapman Tripp
Davies Financial & Actuarial Ltd
Deloitte Touche Tohmatsu
DLA Phillips Fox
Ernst & Young
InvestmentLink (New Zealand) Ltd
KPMG
Kensington Swan
Melville Jessup Weaver
Minter Ellison Rudd Watts
Morningstar Research Ltd
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