

25 March 2010

Committee Secretariat
Commerce
Parliament Buildings
WELLINGTON

Dear Committee Secretariat

Financial Service Providers (Pre-Implementation Adjustments) Bill

1. This submission is made on behalf of the New Zealand Business Roundtable, an organisation comprising primarily chief executives of major business firms. The purpose of the organisation is to contribute to the development of sound public policies that reflect overall national interests.
2. We welcome the government's efforts to streamline the implementation of the previous government's Financial Advisers Act 2008 and the Financial Service Providers (Registration and Dispute Resolution) Act 2008, and in the process to reduce compliance costs. In our view the Regulatory Impact Statement associated with the FAA 2008 was inadequate and did not provide a rigorous assessment of its costs and benefits. We understand that the likely costs of the regime may amount to some tens of millions of dollars annually. We support moves to reduce these costs and consider the opportunity of the Committee's consideration of the present bill should be taken to make further improvements which we discuss below.
3. We are aware that other submitters, including the banks and other business organisations, are making detailed submissions on the bill from a similar perspective. We endorse their general thrust and commend their detailed suggestions to the Committee. We limit our comments to six general issues.
 - (i) **Definition of financial advice**
 4. We think that the definition of financial advice in section 11 of the FAA 2008 is too broad. Despite some limited exemptions and clarifications in section 12 and 13, we understand that industry participants are unclear about what correspondence or conversations with customers will constitute "financial advice". Simple conversations with bank tellers could be captured, for example. The lack of clarity could result in an unnecessarily high number of Authorised Financial Advisers (AFAs) and unwarranted protections (disclosure, competence, client care etc). This could lead to higher costs to customers, reductions in the availability of financial products and less focus by the regulator on areas of real concern.
 5. We recommend that the Committee consider either revisiting the definition of financial advice or include exemptions in section 12 of the Act when advice or transactions by certain persons do not amount to performing financial adviser services.
 - (ii) **Exclusion of advisers to wholesale or sophisticated customers**
 6. The Capital Market Development Taskforce recommended that the FAA should be restricted to advice to retail investors only. It also recommended that its scope should be limited to public markets.

7. We agree with these recommendations. Wholesale and sophisticated customers have access to internal and external financial and legal resources, and in their case caveat emptor should apply. An onerous regime applying to such investments could deter investment in New Zealand. The regime is not aligned with the financial services regimes of the United Kingdom and Australia. We recommend that there should be a carve-out for wholesale customers and that the definition of such customers should be the subject of consultations with major players in the industry to arrive at a workable solution.

(iii) **Grouping of Qualifying Financial Entities**

8. The government has put considerable effort into making the QFE regime workable for all involved but we understand there is still some inflexibility regarding its structure compared with other standard industry operating models. For instance, we note that the banks' financial services are generally provided by several entities within a corporate group, with each having its own separate legal identity but still having a central governance and risk management framework across the entities within the group.
9. As the QFE model stands, this structure would not be possible and would necessitate significant changes to business processes. There is also likely to be reductions in customer access to certain freely available products. We recommend that there should be the opportunity to allow QFE applicants the discretion to apply for group status.

(iv) **Online/brochure advice**

10. As the FAA currently stands, the development of automated online advisory services and generic brochures is not allowed. Instead, an individual must provide all the financial advice, even if it is generic and provided via internet-based tools or physical brochures.
11. Providing generic advice via these mechanisms is standard international practice as they are effective and efficient. We understand the government has suggested that a solution might be to provide the name and contact details of a specific person who is fully qualified as an AFA for such material. Unfortunately, this solution may not fit with the problem outlined. At a practical level, such publications and tools are by their very nature generic to the entity, not specific to an individual in terms of responsibility and quality of advice. It also means that the individual in question would have to be on call for all customers, with disclosure rules needing to be changed every time the individual changes, such as leaving the business for another role.
12. We suggest that liability and accountability in respect of the advice should rest with the entity rather than an individual, provided an AFA has approved the relevant components.

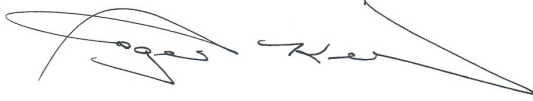
(v) **Transition period**

13. We are aware of industry views that the current timetable for implementation (1 December 2010) is too tight and we recommend the Committee consider proposals for a longer period made by other submitters.

(vi) **Review of Financial Advisers Act**

14. We remain concerned that the FAA (2008) may involve overreach and not maximise the net benefits of regulation. Accordingly, we submit that it should be subject to a formal review by the government five years after its implementation, using a regulatory impact analysis framework. We would regard such a review as good regulatory practice in any event.

Yours faithfully

A handwritten signature in black ink, appearing to read 'R L Kerr', written in a cursive style.

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EXECUTIVE DIRECTOR

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