



Member Newsletter

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Commerce Minister Announces Financial Sector Changes

Commerce Minister Lianne Dalziel yesterday announced the first phase in a package of new rules for the non-bank financial sector.

Lianne Dalziel said that new rules arising from the reviews of Financial Products and Providers and Financial Intermediaries are relatively light-handed and reflect feedback from industry. The main changes include:

- regulation of financial advisers by a co-regulatory model involving industry led Approved Professional Bodies (APBs) with oversight by the Securities Commission;
- registration of all financial service providers on a publicly-searchable database;
- implementing comprehensive consumer dispute resolution and redress mechanisms;
- licensing trustees and retaining them as frontline supervisors while enhancing the approval and monitoring role of the Securities Commission;
- making the Reserve Bank of New Zealand the single prudential regulator for banks, non-bank deposit takers and insurers;

Both reviews received input from a taskforce and expert advisory groups made up of people from key industry organisations, industry participants, professional organisations and government bodies.

The term "financial intermediaries" has been changed to "financial advisers" to better reflect the work that they do.

The following two Bills that make the phase one changes will be introduced later this year and passed in 2008:

- Financial Advisers Bill
- Financial Service Providers Registration and Disputes Resolution Bill

Phase two decisions on insurance, collective investment schemes and debt issuers, regulation of platform and portfolio management services and an enhanced disclosure regime, will be made later this year, Lianne Dalziel said.

There is still considerable design work to be done on the proposed co-regulatory legislative framework, including work on the definitions and obligations of financial advisers and the roles and responsibilities of the government regulator, Minister and the industry-based approved professional bodies.

Financial Advisers will be subject to enhanced disclosure obligations when providing advice dependant upon the class of financial adviser. The form and content of disclosure requirements to be placed on investment advisers and brokers are already contained in the Securities Legislation Bill.

Legislation will set a number of conduct standards for financial advisers, and APBs will set additional standards to allow for variation in different sectors.

The Ministry will be consulting with potential APBs, the regulator and other stakeholders. Part of their brief will be to minimise the costs of the co-

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regulatory model. They will look at how existing practises can best fit with the suggested regulation.

The Securities Commission will not be replicating the role of ASIC in Australia, it will instead focus on the health of the overall industry, and oversee APBs, while APBs are responsible for the day to day monitoring of advisers. Australian officials are generally receptive towards the co-regulatory model and the main matters to be resolved relate to ongoing monitoring. The aim is to have a framework which can be used as the basis of trans-Tasman mutual recognition of financial advisers.

The framework will include:

- **Disclosure:** ensuring adequate disclosure of advisers' conflicts of interests, fees and competency so that members of the public can make informed decisions about whether to use an adviser and whether to take their advice;
- **Competence:** members of the public having advisers available that have the experience, expertise and integrity to effectively match members of the public with products that best meet their needs and risk profile; and
- **Accountability:** advisers being held accountable for any advice given and that there are incentives for advisers to manage appropriately conflicts of interest.

The following definitions have been proposed:

- **Financial Advisor:** an entity or person who gives advice on financial products and/or investment and savings decisions to a member of the public. The new regulatory regime will primarily apply to individual advisers. However, businesses which employ financial advisers (e.g. banks, insurance companies, financial planning firms, etc) will have the choice to join APBs as corporate members.

The term "intermediary" has been dropped in favour of the term "adviser" as this more accurately reflects the focus of regime, the function of an adviser and is a term more commonly understood and recognised.

A financial adviser will have to belong to an APB to practice. Businesses have the option

of a corporate membership of an APB.

- **Financial Advice:** includes opinions, recommendations, and guidance on the buying, selling and holding of financial products or investment and savings decisions, given to a member of the public, in the course of the adviser's business.

Some exclusions apply such as collecting information for a policy, transmitting factual advice given by an insurer, journalists and teachers. Included is material published by an adviser and certain paid advertising which gives advice.

- **Financial Product:** covers all categories of financial product, including debt/equity, credit and risk products, investment (real) property and other tangible products where there is an investment and savings element.
- **Approved Professional Body (APB):** an APB is an industry-based self-regulatory organisation/entity approved by the Minister of Commerce. All Financial Advisers will be required to be a member of at least one APB. An APB will:
 1. maintain a register of its members
 2. pass this information to the publicly searchable register of Financial Service Providers
 3. set entry level standards
 4. set ongoing standards
 5. monitor members (on a risk based approach sufficient to enforce compliance)
 6. carry out discipline for breaches of APB rules (with sufficient powers to investigate possible breaches)
 7. participate in a dispute resolution process
 8. report to the Securities Commission on its own corporate governance as well as Financial Advisers' behaviour

- **"Corporate Membership" of an Approved Professional Body:** Businesses which employ financial advisers (e.g. banks, insurance companies, financial planning firms, etc) will have the choice to join an APB as a "corporate member". In order to obtain corporate membership, a business must satisfy the APB that it has the necessary processes to ensure the competency and integrity of its employees. While individual businesses are not precluded from becoming an APB, this is

unlikely to happen in practice, because of the potential conflict that would arise between the businesses obligations as an APB and as an employer. Instead, corporate membership allows businesses to retain responsibility for competency setting and monitoring, provided that, at a minimum, they meet the APB's standards.

SUMMARY

The above is a brief outline of key points released yesterday by the Government. For the full details go to the Ministry of Economic Developments web site: <http://www.med.govt.nz> and under the **Regulation** tab select **Recent Updates**.

We will shortly be putting these papers on our web site as PDF documents which you can download. IBANZ will undertake a thorough review of the proposals over the coming days.

Our initial overview is encouraging in that it appears many of the ideas promoted by IBANZ are included in the proposals. We are pleased that our submissions have been noted and we look forward to engaging with officials as they work through the lengthy process of implementation.

Although the legislation is expected to be passed next year, before the General Election, it is not anticipated that APBs will be in place until 2010 with the full regime operable in 2012. As always we would be glad to hear your views on the proposed regulation to ensure we are working to get the best outcomes for you and your clients when talking with Government.

Gary Young
Chief Executive

