FINANCIAL SERVICES FEDERATION

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Financial Markets Policy
Building, Resources & Markets
Ministry of Business, Innovation & Employment   By email: financialconduct@mbie.govt.nz

Introduction:
The Financial Services Federation "(FSF") is grateful for the opportunity to submit on the Options Paper: Conduct of Financial Institutions. By way of background, the FSF is the industry body representing the responsible and ethical finance and leasing providers of New Zealand. We have nearly sixty members and affiliates providing financing, leasing, and credit-related insurance products to more than 1.5 million New Zealand consumers and businesses. Our affiliate members include internationally recognised legal and consulting partners. A list of our members is attached as Appendix A.

General Comments:
Before providing answers to the questions raised in the Options Paper, the FSF has some general comments to make with regard to the Paper itself.

Much of what is being proposed in the Options Paper is also simultaneously being addressed in other consultation currently open into the review of New Zealand's insurance contract law and the review of the Credit Contracts and Consumer Finance Act 2003 ("the CCCFA"). Many of the questions raised in this Options Paper are also being raised in the Options Paper: Insurance Contract Law Review as well as within the Bill to amend the CCCFA. To have two Options Papers out for consultation at the same time essentially looking to provide solutions to the same problems but via two different legal regimes, as well as a Bill currently progressing through Parliament that will also address other matters raised in the Conduct Options Paper, is confusing at best and potentially dangerous at worst.

The probability of regulatory overlap and confusion on the part of those being regulated as to with what they are being expected to comply, is very real and, on this basis, the FSF suggests that any further work on a conduct regime should be deferred until such time as the simultaneous reviews of insurance contract law and the CCCFA have been completed, at which point any gaps (assuming there are any) in conduct regulation could then be addressed.

Further to the above, the FSF has some particular issues with the contents of the Options Paper itself. In paragraph 11 of the Options Paper, it states: "When we refer to financial institutions in this paper, we are primarily referring to banks and insurers. However, as discussed in section 7, there is a question regarding whether the regime proposed in this paper should apply more broadly to other types of financial institution." Firstly, the FSF notes that the definition applied to "insurers" in the footnote to this paragraph is "all types of insurers: life, health and general (house, contents, motor vehicle)." This definition would therefore not capture those of the FSF's members who are credit-related insurance product providers. Secondly, if the regime proposed in the Paper is applied more broadly to other types of financial institutions, the FSF's finance company members would be captured under it.

However, the FSF also notes that paragraph 212 of the Options Paper states: "With this in mind, the options in this paper should be read as applying to banks and insurers." The FSF submits that the lack of clarity as to which financial institutions the proposals in the Options Paper is aimed at is unhelpful.

Whilst the FSF is fully supportive of all financial institutions taking their conduct obligations to consumers seriously, and actively promotes best practice in conduct and every other aspect of business for its members, should all financial institutions be brought into the scope of this regime, it should be remembered that there is a vast difference in scale between a registered bank or insurer and a small finance company.

The FSF has among its membership some very large multi-national companies operating with significant resources to enable them to comply with every obligation that applies to them. By contrast, however, the FSF also has among its membership finance companies that are so small they have only 2 employees. The FSF submits that there is a very real risk of regulatory overload and overlap on such small firms who will struggle to meet further compliance obligations. Such entities are arguably much closer to their customers and are more nimble and able to act positively when they sense that there is an issue impacting their customers. Perhaps if a conduct regime for financial institutions is going to be introduced, some consideration could be given to limiting its scope to larger institutions only in order to exclude such small entities who already bear a heavy regulatory burden.

It should also be remembered that consumer credit and credit-related insurance providers are also being faced with a further review of the overarching credit law which is currently underway (the Credit Contracts and Consumer Finance Act 2003 – "CCCFA"). This will also involve accompanying regulation with more prescriptive requirements in areas such as determining the affordability and suitability of a loan and the way in which credit is advertised. Also, to the FSF's previous point, the changes required of consumer credit and credit-related insurance providers arising out of this CCCFA review, will also address conduct issues relating to these institutions (which include all registered banks providing finance to consumers), so would it not be more efficient to allow this legislation to proceed to enactment before introducing further potentially overlapping or competing legislation?

The FSF further submits that whilst the FMA and RBNZ's reviews of banks and life insurers might have identified some conduct issues in the institutions they reviewed, no such review has been conducted of the myriad of other organisations that make up the wider financial services sector in New Zealand. It is not clear to the FSF whether there are similar issues evident in other parts of the sector and therefore whether in fact there is a problem that is needing to be solved by a regime such as that which is being suggested in the Options Paper. Indeed it is not clear to the FSF whether the objectives stated in paragraph 19 including focusing on ensuring good customer outcomes over the product lifecycle; retaining access to financial products and services that promote good customer outcomes; alleviating the imbalance of power between customers and financial institutions; fairly and transparently managing conflicts of interest; and taking responsibility for managing conduct risks across the business, are not already taking place in those financial institutions that have not been reviewed.

With regard to the inherent challenge of the significant imbalance of knowledge and power between financial institutions and consumers as discussed further in paragraphs 39 – 41 of the Options Paper, the FSF suggests that such an imbalance exists between any institution and its consumers – not just financial institutions. Regardless of the product being sold – financial or otherwise – the provider has considerably more knowledge than the consumer. Also, not all financial products are complex just as not all non-financial products are simple.

A further point the FSF wishes to make is that there is a great deal of confusion within the Options Paper as to who it is the proposals are trying to help. This is because there is inconsistency in the terms used to describe to whom the good outcomes of appropriate conduct and culture are being delivered. In paragraphs 16 and 17 the Paper refers to "customers". In paragraph 15 it refers to "consumers". The FSF submits that clarity as to whose outcomes the regime is aimed at, would be helpful. If it is "customers" then that would include all individuals and businesses in New Zealand, if it is "consumers" then that would include individuals but not business.

It is also not clear from the Options Paper what "delivering good outcomes" actually looks like or what is expected of financial institutions to deliver such outcomes. In the case of insurance, for example, a good outcome for the insured would be that they never have to make a claim on their insurance policy, but the policy holder might not necessarily see that the payment of their insurance premiums for a policy on which they never make a claim, is the best possible outcome for them.

The FSF also believes that the Options Paper is not sufficiently clear on the matter of which entity would be regulating the regime were it to be put in place. Paragraph 22 states that "The FMA and the RBNZ are New Zealand's two main regulators of financial markets." This is in fact not the case for those financial institutions that are lenders but who do not raise deposits from the public to fund their activities. As paragraph 26 quite rightly points out, the CCCFA is enforced by the Commerce Commission. Bringing in a further regime with a requirement for lenders to report to another regulator has the potential to create both regulatory gaps and overlaps and the FSF therefore strongly submits that whatever becomes of the proposals in the

Options Paper, as much as is possible financial institutions should only be required to report to one regulator for all aspects of their compliance.

When paragraph 29 talks about industry self-regulation and lists industry bodies in the sector and their various codes of practice, the Paper has failed to mention the FSF which has a Code of Conduct for Members – a breach of which could result in the member organisation being expelled from membership of the FSF – as well as Responsible Lending Guidelines, a Responsible Credit-Related Insurance Code and a Responsible Mobile Trader Code to which members pledge to adhere (as appropriate) when they join the FSF.

Paragraphs 70 – 72 detail problems identified at the product distribution stage and, in particular, paragraph 72 talks about issues that arise from the use of intermediaries to manage the sales relationship with the end customer. The FSF is surprised that the paper does not consider that these issues are clearly managed under the newly-enacted Financial Adviser Legislation Amendment Act 2019 ("FSLAA""), which very clearly states what is required of such intermediaries including adherence with the Code of Conduct for financial advisers. Indeed, this legislation deals with most issues arising out of the mis-selling of financial products so the FSF believes that it should be allowed to be implemented and bedded in before any further review of the need for further legislation is carried out.

1. **Which overarching duties should and should not be included in the regime? Are there other duties that should be considered? Do you agree with the pros and cons of each duty? Do you have any estimates of the size of the costs and benefits of these options? Are there other impacts that are not identified?**

The FSF submits that, were a regime to govern the customer outcomes required of financial institutions to be put in place, there is a very real risk of regulatory overlap and competing tensions developing between regulation that is already in place and what might be required under the new regime. For example, the duty to act with care, diligence and skill exists elsewhere – for lenders it is required as part of Lender Responsibility Principle number 2 of the CCCFA. The Code of Professional Conduct for Authorised Financial Advisers requires minimum standards of competence, knowledge and skills and the new Code coming into force following the passing of the FSLAA will have similar requirements for all advisers.

Another example is the suggested duty to pay due regard to the information needs of customers and to communicate in a way which is clear and timely. Once again this obligation already exists for all consumer credit and credit-related insurance providers as part of the Lender Responsibility Principles of the CCCFA (Responsibility 3.b, 3.c, 4.b and 5.b) which require the lender to assist the borrower to reach an informed decision as to whether or not to enter into the contract and to be reasonably aware of the full implications of entering into the contract, including to ensure that any information provided to the borrower is not presented in a manner that is, or is likely to be, misleading, deceptive or confusing.

A further example where the obligation to meet these duties already exists outside of this proposed regime is where institutions are being asked to ensure complaints handling is fair, timely and transparent. You will be aware that all financial institutions operating in New Zealand are required under the Financial Services (Registration & Disputes Resolution) Act 2008 ("FSPRA") to belong to an external and independent approved disputes resolution scheme. The service offered by these schemes is free to customers and they exist to resolve consumer complaints that are unable to be resolved via the institution's internal disputes resolution process. The handling of complaints by these external schemes is not free to the financial institution however and it is therefore in the best interest of the institutions themselves to resolve their complaints fairly, in a timely manner and transparently as soon as is practicable.

The FSF believes that the overarching duties and the corresponding options in regard to each are too broadly drafted to be of any positive effect alongside existing legislation or they are duties that already exist either through legislation or for the purposes of sound business management. For example, there is a sound business imperative requiring institutions to ensure that their products are designed to be fit-for-purpose for their intended audience by ensuring that consumers get value for money from the products they acquire in order to remain a sustainable and profitable business.

Further the FSF believes that introducing such broad duties very clearly creates a risk that consumers will use the duties against institutions by, for example, taking a one-off bad customer service experience and turning that into an issue with product design.

2. **Do you think the overarching duty for managing conflicts of interest should be general (as it is currently worded) or focus on conflicts of interest that arise through remuneration? What are some examples of conflicts of interest that arise outside of conflicted remuneration and incentives?**

The FSF supports the concept of keeping any duty to manage conflicts of interest general rather than specifically focusing on conflicts of interest that might arise through remuneration. As the Options Paper quite rightly points out, what is "fair" and "transparent" is open to varying interpretation which ultimately creates uncertainty both for the consumer and the financial institution.

3. **Is a code of practice required to provide greater certainty about what each overarching duty means in practice?**

The FSF would not support the development of any more codes of practice for the financial services sector. As previously mentioned, there are already several Codes in place for various parts of the sector such as the Responsible Lending Code for consumer credit and credit-related insurance providers, debt collectors and repossession agents and the Financial Advisers Code as well as other industry codes such as the Code of Banking Practice and the Fair Insurance Code (not to mention FSF's own Codes for its members). Creating any further codes will only serve to

muddy the waters in the FSF's view and will not be helpful in ensuring that institutions are clear as to what their conduct duties actually are.

Aside from the very real concern that development of a further code of practice would be likely to create unnecessary overlap and confusion when taken alongside all the codes already in existence, the FSF suggests that consideration might be given to better promoting to consumers the codes that do exist which would not only reinforce their value as consumer protection mechanisms but would also clarify for consumers how they should expect to be treated by the financial institutions with which they deal.

4. **Which options for improving product design do you prefer and why? Do you agree with the pros and cons of the options? Are there other impacts that are not identified? Are there other options that should be considered? Do you have any estimates of the size of the costs and benefits of the options?**

Before answering this question, the FSF questions what evidence exists for the assertion in paragraph 147 of the Options Paper that payment protection insurance and add on car insurance provide poor value to consumers and strongly disputes that this is the case. The FSF believes that the provision of the cover provided by payment protection or car insurances is an essential part of responsible lending. To provide debt to consumers without offering them a way to repay that debt if something goes wrong other than falling into default, hardship, bad debt, poor credit history, bankruptcy or repossession is highly irresponsible.

All consumers would suffer greater hardship without such insurances if they suffer an event that leaves them unable to repay their debt or keep their vehicle on the road in the case of accident, theft or similar but this most particularly applies to those consumers whose circumstances make them more vulnerable. If, as a result of the introduction of a conduct regime, an unintended consequence was to make access to responsibly-sold credit-related insurance harder for consumers, particularly the more vulnerable ones in the community, this would in the FSF's view be a highly retrograde step and would be completely counterproductive in terms of good consumer outcomes. It should also be remembered that all insurances are taken out in the hope that nothing will go wrong to cause a claim to be made. Unfortunately, that is not always the case and to restrict or ban products that genuinely help consumers in unforeseen circumstances is not, in the opinion of the FSF, something that should even be contemplated.

If there is an issue with product design such that genuinely poor outcomes are being created for consumers, the answer surely lies in applying existing law against the providers concerned. For example, the Fair Trading Act 1986 ("FTA") prohibits misleading or deceptive conduct, making unsubstantiated or false representations and unfair practices. The Consumer Guarantees Act 1993 ("CGA") requires that goods and services are safe and fit for purpose and of an acceptable quality as well as that services are carried out with reasonable care and skill. The CCCFA also imposes quite specific obligations on the providers of credit-related insurance products to ensure that their products are suitable for the individual consumer, sold responsibly and at a

reasonable price. On this basis, the FSF submits that sufficient consumer protection against poor product design already exists and any further prescription for financial institutions would be unfair.

5. **If a design and distribution requirement like option 3 were chosen, are there particular products for which this is more necessary than others? If so, please explain what and why.**

The FSF submits that for a product to be successful in any market – particularly one as competitive as the financial services sector – it has to be designed with the end user in mind. The FTA, the CGA, the CCCFA and various other statutes all provide adequate consumer protection to also ensure that this is the case and there have been cases where the law has been effective in dealing with any issues that may arise, for example where credit-related insurances have been mis-sold to people who were unable to claim against them. In the FSF's view the issue is not about whether the industry requires more prescription it is more a case of the need for existing law to be properly enforced when such instances occur.

6. **Which options to improve product distribution do you prefer and why? Do you agree with the pros and cons of the options? Are there other impacts that are not identified – such as unintended consequences or impacts on particular business models? Are there other options that should be considered? Do you have any estimates of the size of the costs and benefits of the options?**

The financial services sector is extremely diverse and includes many sectors within that including registered banks; life, health and fire and general insurers; finance companies; credit-related insurance providers; payday lenders; mobile traders etc. Some of the institutions within these sectors are vast multi-national organisations like the banks, some insurers and some finance companies. Many others are extremely small and trying to develop a "one size fits all" model for anything from product design to the design of remuneration and incentives is impossible in the FSF's view.

Remuneration incentives exist in every industry – not just financial services – and are an essential tool to reward performance. Their existence does not mean (as the Options Paper states under the first "pro" for Option 1) that they are not good for customers. For that reason, the FSF is pleased to see that a total ban on commissions is not being considered at this time.

Of all the options provided on this subject, Option 1 is the most preferred by FSF members because it is the least prescriptive and allows business models already in place to continue and staff and agents to continue to be rewarded for good performance.

7. **To assist us in comparing the pros and cons of various options, please provide information about remuneration and commission structures currently in use (i.e. what are common structures, average amounts of remuneration/commissions, qualifying criteria etc?).**

FSF members have various structures in place depending on their business model. Many FSF member organisations have networks of dealers or agents who provide their products to consumers while others have teams of in-house staff and others use a mixture of both means to get their products to the consumer. There is no "one size fits all" remuneration model that would be appropriate for all financial institutions so the FSF submits that the more principles-based the approach taken to incentives and remuneration the better in ensuring that those affected organisations can continue to offer their products in the way that is appropriate to them.

8. **What is your feedback on imposing a duty to ensure claims handling is fair, timely and transparent? Do you agree with the pros and cons? Are there other impacts that are not identified? Are there other options that should be considered? Do you have any estimates of the size of the costs and benefits of this option?**

Firstly, the FSF points out that this question is also being raised in the Options Paper: Insurance Contract Law Review about which MBIE is currently seeking submissions. As previously stated, the FSF believes that any further work on a conduct regime should be deferred to allow the insurance contract law review to progress and the Bill to amend the CCCFA to be enacted to avoid the very real probability of regulatory overlap and confusion on the part of those being regulated as to with what they are being expected to comply.

Having said that, however, the FSF submits that the number of claims being handled by an insurance company at any one time can be subject to peaks and troughs depending on events. For example, a 1-in-100 year event such as the Christchurch earthquakes saw an exponential rise in the number of claims being made and understandably a lack of claims processing specialists available and ready to process them. A recession would have a similar affect for credit-related insurance providers if it was sufficiently severe to cause redundancies and job losses.

It is in the interests of insurers to handle claims fairly, in a timely manner and transparently as the longer the claims process takes the more costly it can be to the insurer to manage it. It should also be remembered that insurers must belong to an external Disputes Resolution Scheme who can determine whether or not their claims handling processes are sufficiently fair, timely and transparent and order them to act accordingly if they are found wanting.

9. **If this option were to be adopted, should an attempt be made to clarify what fair, timely and transparent mean? Why? Why not? What are the benefits and costs of doing so?**

Notwithstanding what the FSF has already said about the rationality or otherwise of undertaking two other separate reviews of legislation essentially targeting the same issues as are being tackled in the Options Paper, as stated in the answer to question 8 above, the FSF is not in agreement with Option 1 given that it is already in the interests of insurers to ensure that claims are handled as fairly, timely and transparently as possible. If Option 1 was pursued then obviously clarity as to what is meant by fair, timely and transparent would be helpful to insurers

but the FSF submits that to provide such a definition when insurance products are so varied and complex would be very hard as a range of options to meet these criteria would have to be developed according to the complexity of the product and the circumstances under which the claim is being made.

The FSF also refers back to the Insurance Council of New Zealand's Fair Insurance Code, the Financial Services Council's Code of Conduct and the FSF's own Responsible Credit-Related Insurance Code – all of which require members of each of these bodies to abide by their criteria for settling claims fairly.

10. What is your feedback on requiring the settlement of claims within a set time? Are there other impacts that are not identified? How do you think that exceptions should be designed? Should there be different time requirements for different types of insurance? Do you have any estimates of the size of the costs and benefits of this option?

The FSF does not support a requirement to settle claims within a set time. A "one size fits all" approach will not work in the FSF's view as the range of insurance products available is vast and each one comes with varying degrees of complexity. The nature of different claims against different products including many involving very large sums of money to settle is not conducive to establishing a set timeframe for settlement.

It must also be remembered that settlement of insurance claims also depends on the insured providing all the information the insurer needs to be able to assess the claim and make the settlement. The point raised in the first bullet point under "Cons" on page 49 of the Options Paper is, in the view of the FSF, absolutely correct and for this and the reasons stated above, the set time option is not one the FSF could support.

11. Do you agree with this option to empower and resource the FMA to monitor and enforce compliance? Do you agree with the pros and cons? Are there other impacts that are not identified? Are there other options that should be considered? Do you have any estimates of the size of the costs and benefits of the options?

Lenders and credit-related insurance providers are regulated by the Commerce Commission which is charged with enforcing the CCCFA unless they are a Non-Bank Deposit Taker ("NBDT"). The FSF currently only has 3 NBDT members. NBDT's are licensed and supervised by the RBNZ with the FMA having oversight of their deposit offerings to the public. To introduce another regulator into the mix for lenders (were they to be covered by this regime) by empowering the FMA to monitor and enforce conduct compliance would create unnecessary confusion and potential regulatory overlap.

12. What is your feedback on the option to require banks and insurers to obtain a conduct licence? Do you agree with the pros and cons? Are there other impacts that are not identified? Are there other options that should be considered? Do you have any estimates of the size of the costs and benefits of the options?

The FSF submits that the point made in the third bullet point under "Cons" on page 51 of the Options Paper is a very real concern – that being that this option would create a dual licensing regime which is not ideal. It also goes back to the point made earlier about the general confusion within the Options Paper as to whom a conduct regime would apply. If it is to apply to the wider financial services sector as opposed to banks and insurers, a further licensing regime would be a very significant barrier to entry into the market and also a significant regulatory burden on smaller entities who may not be equipped to demonstrate how they meet the licensing requirements. Any reduction in options for consumers as a result of this would be a retrograde step in the view of the FSF.

13. What is your feedback on this broad range of regulatory tools? Do you agree with the pros and cons? Are there other impacts that are not identified? Are there other options that should be considered? Do you have any estimates of the size of the costs and benefits of the options?

Again, the FSF questions to whom the Options Paper is aimed. This question needs to be answered before it could be considered what regulatory tools the "regulator" would be given as until this question is answered it is not clear who the "regulator" would actually be.

The FSF also submits that the administrative tools suggested under paragraph 194 of the Options Paper already exist for the regulators of the wider financial services sector and it is more a question of the regulators enforcing the powers they already have than a need for any further such enforcement tools.

14. Do you think that the maximum pecuniary penalties available for breaches of any conduct duties should be the same as the existing FMC Act penalties? Is there a case for making the penalties higher?

The FSF submits that the review of the CCCFA which is currently underway is proposing stronger penalties for non-compliance with the Lender Responsibility Principles and suggests that this is the penalty regime that should apply to lenders for transgressions against any other statute that might apply to them.

15. What is your feedback on the options of executive accountability? Do you agree with the pros and cons? Are there other impacts that are not identified? Are there other options that should be considered? Do you have any estimates of the costs and benefits of the options?

The FSF is concerned that smaller financial institutions in particular will find it difficult to attract appropriately experienced people to become a director or senior manager in their business if they are to be made personally accountable for any breach of the conduct regime without the ability to insure or indemnify themselves against this risk. Whilst the FSF agrees with the "Pro" as set out on page 54 of the Options Paper the three "Cons" expressed alongside this, should outweigh any benefit that might be gained from such accountability.

Again, it should also be noted that the proposed amendments to the CCCFA will introduce liability for directors and senior managers of creditors and also includes a regime whereby the Commerce Commission will be tasked with certifying all such people working in the businesses they regulate. Whilst the FSF believes that the Commission is insufficiently resourced to be able to carry out this duty, the CCCFA amendment process should be allowed to be finalised before developing any further legislation relating to executive accountability. If after this and the process of the insurance contract law review, it is deemed that there are still gaps in executive accountability, this could be addressed along with any further conduct regulation gaps that are perceived at that time.

16. What is your feedback on the whistleblowing option? Do you agree with the pros and cons? Are there other impacts that are not identified? Are there other options that should be considered? Do you have any estimates of the size of the costs and benefits of the options?

The FSF believes that the mechanism already exists for whistleblowers to report conduct and culture issues to the regulator and to external disputes resolution services as appropriate and can see no benefit in setting up any other external complaints body which would only serve to complicate the issue of to whom to report as well as adding yet another layer of cost which will ultimately be passed on to the consumer. FSF members believe that it is in a company's best interest to have a robust process for staff to escalate issues in order to allow the matter to be rectified as soon as possible and before it becomes a reputational issue for the business.

However, different organisations have different processes depending on their structure and size and, if this regime is to apply across the financial services sector as a whole, it has to be taken into account that many businesses operating in the sector are small and therefore prescription as to how a whistleblower process should operate might not be practicable for such businesses.

Finally, the FSF has a role to play as a whistleblower on behalf of its members and frequently does report irresponsible lending practices to the regulator as a result.

17. What is your feedback on the option of regular reporting on the industry? Do you agree with the pros and cons? Are there other impacts that are not identified? Are there other options that should be considered? Do you have any estimates of the size of the costs and benefits of the options?

The FSF questions what exactly the "industry" is that the Options Paper is discussing here. As previously pointed out, the financial services industry is considerably more than just banks and insurers. To report on the entire industry would be a massive role for whatever entity was charged with doing so and clear guidelines as to what is being reported and who the reporting is targeting would have to be put in place before doing so.

Any statistical information gathered would have to be considered in the context of what part of the industry is being reported on, the size of the players within the sector, their number of customers and transactions relative to other players within the sector, and a whole raft of other considerations. For example, to say that company X generated 10 complaints to the regulator versus company Y which only generated 5 in a given period, does not take into account the fact that company X might have thousands of customers and transactions in that period versus Y company's hundreds.

18. What is your feedback on the role of industry bodies? Do you agree with the pros and cons? Are there other impacts that are not identified? Are there other options that should be considered? Do you have any estimates of the size of the costs and benefits of the options?

As previously stated, the FSF is the industry body representing responsible finance companies, fleet leasing providers and credit-related insurance providers. The FSF's members have chosen to restrict membership to only those businesses that can demonstrate that they take their compliance obligations seriously and a comprehensive due diligence process exists to determine whether a membership application should be approved or declined.

On this basis, the FSF does not represent the entire non-bank sector in New Zealand. There are many organisations that fall outside of the criteria for membership of the FSF which is the only industry body representing non-bank lending institutions. Therefore, there are many credit providers such as payday lenders and mobile traders that do not belong to any industry body and the FSF would not be sufficiently resourced to be able to play a regulatory role relating to them.

Those credit providers operating outside of the membership of the FSF are therefore not obliged to comply with the Rules of the FSF or the Code of Conduct for Members – breaches of which can be considered by the FSF's Disciplinary Committee which is made up of the current Executive Committee (or Board) and which has the ability to terminate membership if they are upheld.

However, it could be possible that members of industry bodies that operate similarly to the FSF – i.e. industry bodies that do not cover the entire industry, but which choose to restrict their membership to only those players who have demonstrated to them that they already have high standards of compliance, conduct and culture – could also be recognised by the regulators as being of least concern to them with respect to the member's conduct and culture.

19. What is your feedback on the options regarding who the conduct regime should apply to? In particular: Do you agree with the pros and cons of the options? Are there other impacts that are not identified e.g. do the proposed overarching duties conflict with existing regulation that applies to other financial institutions? Are there other options that should be considered? Do you have any estimates of the size of the costs and benefits of these options? Which options do you prefer and why?

Whilst it is stated in paragraph 212 of the Options Paper that the options should be read as applying to banks and insurers, the FSF believes that this is not always entirely clear throughout the rest of the Paper. It is unlikely that the introduction of a conduct regime would remain solely applicable to banks and insurers when the regulators who would enforce such a regime have a mandate to also regulate the entire financial services industry. On this basis, some real clarity as to what applies to whom would be very helpful.

Indeed paragraph 212 starts by talking about "financial institutions" as providing services that are critical for consumers and serving a large and varied customer base. This confusion would need to be cleared up in any further iteration of a possible conduct regime.

The FSF notes that Option 1 is targeted at retail customers of banks of insurers and reiterates an earlier point made in this submission regarding the need for clarity of the target audience for the regime. "Retail customers" would tend to suggest "consumers" as opposed to commercial or business customers – but consistency of terms would be helpful.

The FSF believes there is definitely scope for a new conduct regime to overlap with existing regulation and the case for this is set out fairly clearly in paragraphs 224-226 under "Credit" on page 59 of the Options Paper. The FSF is very strongly of the view that any such regulatory overlap should be avoided at all costs due to the cumbersome burden it puts on businesses and the subsequent increase in cost of compliance which is necessarily passed on to consumers.

Once again, the FSF is grateful for the opportunity to make a submission on this matter and would be happy to discuss this further at any stage.

Lyn McMorran
EXECUTIVE DIRECTOR

Appendix A
FSF Membership List as at 31 March 2019

Debenture Issuers - (NBDT) Non-Bank Deposit Takers	Vehicle Lenders	Finance Company Diversified Lenders	Credit Reporting Other	Insurance	Affiliate Members
Rated Asset Finance (B) Non-Rated Mutual Credit Finance Gold Band Finance ➢ Loan Co	BMW Financial Services ➢ Mini ➢ Alphera Financial Services Branded Financial Services Community Financial Services European Financial Services Go Car Finance Ltd Honda Financial Services Mercedes-Benz Financial Motor Trade Finance Nissan Financial Services NZ Ltd ➢ Mitsubishi Motors Financial Services ➢ Skyline Car Finance Onyx Finance Limited Toyota Finance NZ Yamaha Motor Finance Leasing Providers Custom Fleet Fleet Partners NZ Ltd ORIX NZ SG Fleet Lease Plan	L & F Ltd Avanti Finance Caterpillar Financial Services NZ Ltd CentraCorp Finance 2000 Finance Now ➢ The Warehouse Financial Services Flexi Cards Future Finance Geneva Finance Home Direct Instant Finance ➢ Fair City ➢ My Finance John Deere Financial Latitude Financial Pioneer Finance South Pacific Loans Thorn Group Financial Services Ltd Turners Automotive Group Prospa NZ Ltd	Equifax (prev Veda) Centrix Debt Collection Agencies Baycorp (NZ) Illion (prev Dun & Bradstreet (NZ) Limited Experian Intercoll Receivables Management	Autosure Protecta Insurance Provident Insurance Corporation Ltd Southsure Assurance	AML Solutions Buddle Findlay Chapman Tripp EY Finzsoft KPMG Paul Davies Law Ltd PWC Simpson Western FinTech NZ HPD Software Ltd Total : 58 members