



# Regulation of Financial Intermediaries

SIMPSON GRIERSON

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## Final Report of the Task Force on Financial Intermediaries

### Introduction

In early August 2005, the government-appointed Task Force established to consider the regulation of financial intermediaries released its final report ("Report"). The Report recommends to the Minister of Commerce a package of measures designed to increase consumer confidence in financial intermediaries. This FYI summarises its recommendations and the likely shape of legislation in this area.

### The Final Report

The Task Force issued an initial questionnaire and issues paper at the end of 2004. In May of this year, the Task Force released an options paper outlining regulatory approaches and sought submissions from interested parties. The Task Force has now considered the submissions and finalised its Report, and recommendations. The Task Force noted a commonality of views from the industry, consumers and other interested parties indicating widespread support for reform.

### The principal recommendations of the Report are:

- ♦ **enhanced standards:** clear and consistent general legal obligations and standards for intermediaries,

and consistent application of "baseline" obligations for intermediaries performing similar functions. This recommendation seeks to increase the overall quality of financial advice and facilitate more effective management of conflicts of interest;

- ♦ **enhanced redress, sanctions and enforcement:** effective dispute resolution and disciplinary processes under a regulatory regime, including penalties for non-compliance by intermediaries and effective remedies for consumers. The Task Force sees these measures as going a long way towards promoting consumer confidence in financial intermediaries; and
- ♦ **enhanced disclosure and financial literacy:** enhanced disclosure obligations applying to a broader range of financial intermediaries, and initiatives for improving consumer financial literacy. The Task Force stated it believes that these measures will assist consumers to compare financial intermediaries and the services offered by each.

The Task Force differentiates four types of financial intermediaries. This is to help consumers clearly distinguish their distinct roles which are:

- ♦ Personal Financial Advisers ("PFAs");
- ♦ Product Marketers;
- ♦ Information Only Intermediaries; and
- ♦ Execution Only Intermediaries.

Product Marketers promote financial products and provide more than just factual information, but do not advise on the suitability or appropriateness of the product for the consumer's personal circumstances. That role is left to PFAs. Information Only Intermediaries, as the name implies, provide factual information only. Execution Only Intermediaries execute client instructions where that function is linked to a PFA or Product Marketer role.

The Task Force recommends that PFAs be subject to higher standards than other intermediaries. PFAs will also be required to become members of an approved professional body. The Report recognises that this will require a number of existing intermediaries to determine where they fit in the division between PFAs and Product Marketers. Some will need to upskill in order to obtain the qualifications needed to

become a PFA. Alternatively, they may decide to limit their role to that of a Product Marketer.

## Regulatory Framework

In order to implement its proposals for reform, the Task Force recommends a co-regulatory framework; all financial intermediaries will be subject to the jurisdiction of a single disputes resolution body, and a single disciplinary body.

The proposed regulatory framework is a combination of a statutory regulator and ministerial power. The statutory regulator would have a market overview role. It would advise the Minister on the appropriateness of professional bodies and rules for approval. It would also monitor these entities. Ultimate power to approve or disapprove an approved professional body, and its rules, will rest with the Minister. The Minister would also have similar authority governing the composition and procedures of the disciplinary body and the disputes resolution body.

The Task Force proposes the establishment of a central register for all individuals and businesses providing personal financial advice. No personal financial advice could be provided without registration, and businesses and/or individuals could be removed from the register for serious breaches of standards.

A disputes resolution body would be established by statute and have the jurisdiction to consider and make binding decisions on any consumer complaint. Complaints would be based on a breach of statutory duty or, for PFAs, a breach of the rules of the approved professional body.

A disciplinary body would also be established by statute with jurisdiction over all intermediaries. The disciplinary body could impose the following sanctions:

- ♦ temporary and permanent banning orders;
- ♦ orders for supervision or management of practice;
- ♦ orders for correction of information;

and

- ♦ orders for reimbursement of fees to consumers, and fines.

The Task Force believes that, should the government accept the recommendations contained in its Report, implementation should be reasonably swift in order to build on the public support noted in the consultation process. In particular, the Task Force recommends a specified notice period for introduction of the reforms. This would enable the industry to adjust and allow education training providers to introduce new education and qualifications requirements. The timeframe should also allow existing financial intermediaries to decide where they fall within the new categories of financial intermediaries (including allowing time to upskill in order to become a PFA).

## Timeframe

The Minister of Commerce indicated that the present government wished to keep the momentum and consensus for change going. There is cross-party support for the regulation of financial intermediaries but not its extent. The National Party believes any legislation should be light-touch and designed to support self-regulation. National will also oppose any moves to mirror the Australian FSRA. The General Election aside, the Minister indicated that some policy options will be ready later this year. Detailed work on the regulatory framework could be completed by the middle of 2006, with legislation to follow. The process could also run concurrently with the government's review of financial products and providers.

## Further Information

If you require any further information regarding the changes proposed by the Financial Intermediaries Task Force, please contact any of our Commercial, Simpson Grierson Corporate Advisory, or Banking and Finance lawyers listed on this page.

# Contact Information



**Stephen Ward, Partner**

DDI: 04 924 3418  
Mobile: 021 987 056  
stephen.ward@simpsongrierson.com



**Mariette van Ryn, Partner**

DDI: 09 977 5018  
Mobile: 021 970 517  
mvr@simpsongrierson.com



**Peter Hinton, Partner**

DDI: 09 977 5056  
Mobile: 0275 610 900  
peter.hinton@simpsongrierson.com



**Andrew Harkness, Partner**

DDI: 09 977 5008  
Mobile: 021 770 770  
andrew.harkness@simpsongrierson.com



**Peter Eady, Partner**

DDI: 04 924 3403  
Mobile: 029 924 3403  
peter.eady@simpsongrierson.com



**Stephen Layburn, Senior Associate**

DDI: 09 977 5312  
Mobile: 027 445 4130  
stephen.layburn@simpsongrierson.com



**Adam Jackson, Senior Associate**

DDI: 04 924 3529  
adam.jackson@simpsongrierson.com

Auckland Office.  
Simpson Grierson Building,  
92-96 Albert Street,  
Private Bag 92518, Wellesley Street,  
Auckland, New Zealand.  
Tel +64 9 358 2222 Fax +64 9 307 0331  
DX CX 10092.

Wellington Office.  
HSBC Tower, 195 Lambton Quay,  
PO Box 2402, Wellington, New Zealand.  
Tel +64 4 499 4599 Fax +64 4 472 6986  
DX SX 11174.

E-mail: [info@simpsongrierson.com](mailto:info@simpsongrierson.com)

[www.simpsongrierson.com](http://www.simpsongrierson.com)



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